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A TWIRL IN THE RIGHT TO ACCESS LEGAL INFORMATION IN TANZANIA

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Abstract

This article explores the role of global movement in access to legal information and how the same has influenced Tanzania's participation in the world campaigns on access to legal information. It focuses on the contributions of the Free Access to Law Movement (FALM), the World Legal Information Institutes (World LIIs) and the Montreal Declaration on Free Access to Law (MDFAL) of 2002 on the right to legal information in Tanzania. Some evidence show that, until 2019 Tanzania was far behind in recognizing legal information as a right that flows from the human rights norm of freedom of expression and opinion. However, after joining the movement on the right to legal information Tanzania has taken various strategies to facilitate its realization. This article exposes the position of legal information in Tanzanian perspective.

Key words: *Freedom of expression and opinion, Legal Information, Legal Information Institute, Right to Information*

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1.0 INTRODUCTION

This article is a subject of developments in legal regime around the right to legal information in Tanzania. It deals with development of the right to legal information in the world and how the same influenced strategies taken by Tanzania to realise the right to legal information. The right to legal information requires that the public must be able to access primary and secondary legal information available in the country.[1] Primary and secondary legal information may be accessible if a holder of such information complies with the international standards on access to legal information. The major international standards on access to legal information are three; proactive disclosure of legal information, publication and republication of legal information in all media and; removal of copyright restrictions on legal information.[2]

Access to legal information is important because it relates to human right which is expressed in broad concept of freedom of expression and opinion. It means that, access to legal information is one of the human rights, described as the right to information**.** Taking into context the recognition and enforcement of right to legal information as provided by the Free Access to Law Movement (FALM) and the Legal Information Institutes (LIIs), this regime makes a very an important step to the realization of the right to legal information in Tanzania. It results from the country's subscription to the World Legal Information Institutes (WorldLIIs). However, the status of the right to legal information in Tanzania is unclear. This is proved by the fact that, Tanzania does not have specific law that enforces proactive disclosure of legal information.[3] Therefore this article is a survey of the position of legal information in Tanzania after it has joined global movement for access to legal information.

The article covers global perspective of the right to legal information which is not recognized by specific domestic law for enforcement in Tanzania. It is subject to dictates of global movements particularly the FALM and the LIIs on the right to legal information which are carried through the Montreal Declaration on Free Access to Law (MDFAL) of 2002 and how these are reflected in the laws and policies of Tanzania. The laws recognizing the right to information in Tanzania

[1] This is one of the principles of the Montreal Deliration on Free Access to Law (MDFAL) of 2002
[2] Ibid
[3] Juma Mshana, E-Judiciary: A Step Towards Transforming Legal System, (IJA Journal, Vol. 1, Issue 1, 2021), 5
[3] GN No. 148 of 2018

are the Constitution of the United Republic of Tanzania (CURT) of 1977[4] and the Access to Information Act (AIA) of 2016.[5] While the CURT recognizes the right to access information without restrictions, the AIA sets out myriad of conditions necessary for enjoyment and enforcement of the right.

Conditions set in the AIA on enforcement of the right of access to information generally align with the requirement that the right to legal information must be recognized and enforced in Tanzania in compliance with the global FALM principles. Additionally, since the FALM, the LII and the MDFAL are global movements, it is expected that their principles to persuade Tanzania and thus must not have been set aside or suspended by the government of Tanzania. Since the CURT recognizes the right to information free from claw back or derogation clauses, one would expect the country to have strong legal regime that recognizes and enforces not only the right to information generally but the right to legal information specifically as it is in other jurisdictions particularly in the Republic of Lithuania, the United States of America (USA) and the People's Republic of China (China).[6] Absence of specific legislation similar to that of Lithuania, the USA and China makes the realization of right to legal information in Tanzania to virtually dependent on conduct of national actors in good faith. In this regard, the right to legal information is a test of the government of Tanzania's adherence to global FALM, the LII and the MDFAL principles as part of the customary international law norm of observation of treaties in good faith.

In collecting and organizing materials for this article, the author conducted research in libraries for literature that specifically focuses on freedom of expression and opinion in which the right to information generally emanates. This study examined the historical background of the right and its governing principles. The article relies mostly on books, article journals publications and comments from legal practitioners as well as other scholars that have addressed the issue of freedom of expression and opinion and the right to information at global level. Thereafter the author relates the freedom and the right to information generally with the right to legal information. The author also read various legal instruments, both international and local ones

[4] Cap 2 RE 2002
[5] Act No. 6 of 2016
[6] Lithuania has the Law of Courts of the Republic of Lithuania of 2000, the USA has the Uniform Electronic Legal Materials Act (UELMA) of 2011 as specific law on the right to access legal information and China has the Publication of Judgment Documents by People's Courts on the Internet (PJDPCI) of 2016. These two laws are discussed in 3.1

which cover the subject of freedom of expression and opinion and the right to information. Further, legal instruments like the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Human and Peoples' Rights (ICCPR) of 1966, the African Charter on Human and People's Rights of 1981 and the Montreal Declaration on Free Access to Law (MDFAL) have been analyzed. As for the local laws, the CURT and the AIA were visited and studied in line with the subject of the article.

Based on literature about the freedom of expression and opinion and the right to information, the author identifies and analyses the position of right in relation to legal information. The FALM, the LII and the MDFAL have been chosen since they represent global movements on the right to legal information. This means the right to legal information has its origin from the FALM, the LII and the MDFAL. Again, Tanzania joined the FALM by firstly participating in the regional movement for legal information by joining the Southern Africa Free Legal Information Institute (SAFLII) in 2003. Tanzania joined the SAFLII after being invited to the LII conference by South Africa. By joining the SAFLII Tanzania has expressed its willingness to recognize and enforce the right to legal information. However, despite a good step taken, the absence of specific law on enforcement of the right to legal information remains to be as a big challenge for the realization of the right in Tanzania.

The article is organized in six major parts: Part one provides a general introduction of the article. It covers the general overview of the right to information generally; the methodological coverage of the article; global overview on the LII and; meaning of key concepts in legal information. Part two covers legal framework on the right to information generally. This part of the article analyzes international and regional instruments on the right to information. Part three explores global perspective on the LII and inspiration which Tanzania may draw from other jurisdictions, like Lithuania, the USA and China. Part four deals with the right to information generally and legal information in particular from Tanzania perspective. Part five examines the influence of FALM in Tanzania, in relation to global movements in the right to legal information. Here the author explains strategies which Tanzania has taken to ensure that legal information is recognized and realized as emphasized by the FALM, the LIIs and the MDFAL of 2002. In the final part, the article makes conclusion and recommendations.

1.1 Concept of legal information

According to Singh, R legal information or public legal information is any information produced by public bodies that have a duty to produce law and make it public.[7] 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 resulting from boards of inquiry. It also includes legal documents created as a result of public funding.[8] From this definition it means legal information is any material which contains law. Again, legal information may be primary or secondary. Primary legal information refers to legislation and case laws while secondary legal information includes journals, cause lists, court summons and jurisprudence works are also published through the TANZLII. According to Makri, S secondary sources of legal information are very useful as a starting point when trying to understand the meaning and effect of the primary sources of legal information.[9] So the public needs to access both primary and secondary legal information for smooth administration of justice.

The MDFAL of 2002 defines 'legal information as 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.' According to the MDFAL, legal information like case law, legislation and other government documents form a greater role in awareness of duties and responsibilities to the citizens. If law is accessible to all, there is comparatively less chance to being its victim.

The following part of the article provides a global historical perspective of legal information. In this part, the article traces the origin of the struggles and how the same developed to the position it is now.

[7] Ranbir Singh, (Ed), Access to Legal Information and Research in Digital Age, (Delhi, National Law University Press, 2012), 29
[8] Ibid
[9] Stephann Makri, A Study of Lawyers' Information Behaviour to the Development of Two Methods for Evaluating Electronic Resources, (A Thesis Submitted in Fulfillment of the Requirement for the Degree of Doctor of Philosophy (Laws) of the University College of London, London, 2008), 97

1.2 Global overview on legal information

The previous part of the article presented the discussion of concept legal information in light of what scholars put it and in the way it is declared by the Montreal Declaration on Free Access to Law (MDFAL). This part presents the evaluation of global overview on legal information with the aim to put to light how the concept legal information is viewed globally. So this part provides global evolution of the concept legal information.

The first person to initiate or put struggles for access to legal information is believed to be John Horty.[10] John Horty was the professor of law at the University of Maryland. He was very much interested in philosophy, artificial intelligence and philosophy of law.[11] Thus in his endeavour he laid foundation for online access to legal information which in turn resulted in global movements for online publications of legal information.[12]

However, credit for transformation of the struggles goes to the Cornell Legal Information Institute (CornLII) which was founded by Tom Bruce.[13] The CornLII is the founder of legal information retrieval system. It was after the foundation of the CornLII that movements towards formation of access to law institutes in the world began. The first step in this line was the formation of the British and Irish Legal Education Association (BILETA) in 1985. The BILETA was formed to promote collaboration in all aspects to legal informatics and information law.[14] After formation of the BILETA nearly all law schools in Britain and Ireland which supported access to law movements joined the BILETA.[15] Expansion of the BILETA led to the formation of the Law Technology Center (LTC). This spawned law courseware consortium which *inter alia* developed several e-journals including Journal of Information Law and Technology (JILT).[16]

The second step towards legal information movements was formation of two prominent organizations on legal information. These are the International Conference on Legal Knowledge and Information System (JURIX) and the International Association for Artificial Intelligence and

[10] Graham Greenleaf, 'The Global Development of Free Access to Legal Informatics,'(2010, The European Journal of Law and Technology), 44
[11] Ibid
[12] Ibid
[13] Abdul Paliwala, (Ed), A History of Legal Informatics, (Prensas Universitaris de Zaragoza, 2010), 14
[14] Ibid
[15] Ibid
[16] Ibid, p. 17

Law (IAAIL).[17] The JURIX and IAAIL are traditional scientific conferences whose main activity is conference organization and publication of journals.[18] As a result the Legal Framework for Information Society (LEFIS) was formed. The LEFIS has brought together over 90 law schools throughout Europe with growing worldwide links with legal practitioners and Information and Communication Technology (ICT) professionals. Thus the ICT professionals are equally important in legal information movements because they are the tools for information system as the same are used for storing, communication, dissemination and retrieval of information. This is so because people can use computers to access text of statutes or case laws. It means by using computers, statutes can be communicated from the Parliament house after being enacted to the court houses and to the general public.

The LEFIS then organized a number of conferences and workshops and it published a series of journals on information and access to legal information. It also promoted a wide range of collaboration projects and the most common collaborative especially on legal information is the Legal Information Institutes (LII).[19]

The LII refers to providers of legal information that is independent of the government and provides free access on not for 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 as defined in the MDFAL.[20] It represents a reaction to a retrieval and protective attitude towards making legal materials available to lawyers.[21] Legal information which the LII offers to lawyers is freely available and without being curtailed by copyright laws.[22] The formation of the LII led to the formation of World Legal Information Institutes (WorldLII).

The WorldLII is an umbrella organization of all modern LII in the world. As Greenleaf and Bing indicate that, LII movements have been the basis for major worldwide transformation in access to justice for lawyers as well as for public. This trend and movements towards realization of access to legal information signifies the importance of legal information. Susskind suggests in

[17] Ibid
[18] Ibid
[19] Ibid, 23
[20] Peggy Garvin, (Ed), (2010), Government Information Management in the Twenty-First Century, (Butterworth 2010), 213
[21] Gregory Kondos 'Introduction to JURIS,' (Abidjan 1973), 47
[22] This is permitted by Article 2(4) of the Berne Convention on Protection of Literary and Artistic Works (BCPLAW) of 1888

line with this article that avoiding access to legal information is akin to burying our heads in the sand.[23] This then serves as an explanation as to why lawyers from the very beginning gave preference to a system which grant access to legal information. That is why nowadays there are websites in almost every country which provide legal information. It should be noted here that, although lawyers are not the ones who introduced new and experimental ideas of ICT text retrieval was developed by lawyers and for lawyers due to the need to access legal information.[24] It is therefore fair to argue that uploading and downloading systems of materials on the internet which are very common in the world today are fruits of efforts of the lawyers.

From 2000 the LIIs expanded and as a result there were various LIIs found in various countries.[25] As by April 2023 there were 176 LIIs in various countries in the world.[26] It is therefore un-denied fact that there are continental and country LIIs promoting the access to legal information in every continent and country.

A desire to have access to law via the internet has been a principal means by which this cooperation was established. To put this desire into effect, several conferences were convened, the first one being hosted by Australia LII (AustLII) in 1997.[27] It came as a result of associations of the group of the LIIs which made initial attempts to establish collaboration and organization to further access to law globally. The first sustained attempt to build some form of international network took place at Cornell University workshop in July 2000.[28] In this workshop, participants from the USA, Canada, Australia, the United Kingdom and the Republic of South Africa attended. As a result of this workshop two years later the Montreal Declaration on Free Access to Law (MDFAL) of 2002 was adopted.[29] The MDFAL is the first world document which declares the right to access legal information as one of the human rights.

[23] Abdul Paliwala, (Ed), (n 13), 25
[24] Jon Bing and Haavelmo Trygve, Legal Decisions and Information Systems, (Scandinavian University Press 1975), 76
[25] Ibid
[26] See WorldLII website http://www.worldlii.org/countries.html, accessed on 19th May 2023 at 1435 hours
[27] Richard Danner, (2000), The IALL International Handbook of Legal Information Management, (Routledge, 2000), 206
[28] Abdul Paliwala, The LII Workshop on Emerging Global Public Legal Information Standards, (Cornell University Press 2010), 21
[29] The MDFAL of 2002 is available at www.worldlii.org.worldlii/declaration, accessed on 25th October 2021 at 1435 hours

The MDFAL defines legal information, creates obligations to the member LIIs to support publication of legal information and calls up for formation and operation of the LII in individual countries, among other things.

Membership to the MDFAL is by invitation and consensus of the present members.[30] A new member therefore is admitted if it is nominated by a current member and the 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 and activities similar to but not necessarily identical with those of the LIIs. Membership of the MDFAL has ever since expanded beyond the initial members to include the LIIs from North America, South America, Europe, Asia and Africa.

2.0 INTERNATIONAL LEGAL FRAMEWORK ON THE RIGHT TO INFORMATION

Having understood the meaning of legal information and global struggles on evolution of the right to legal information it is now time to explain legal information in Tanzania perspective. Thus the following part of this article gives general overview of legal information. The part is divided in two levels: The first level is on international and regional legal framework on freedom of expression and opinion which embodies the right to information and the second part is on legal framework on the right to information in Tanzania perspective.

The right to information being one of the fundamental rights of the people is provided in several legal frameworks. Of all the major ones are three, which are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR) of 1981. Hereunder, the article analyses the extent to which these legal instruments cover the right to information.

2.1 The Universal Declaration of Human Rights (UDHR) of 1948

Under the Universal Declaration on Human Rights (UDHR) of 1948 the right to information is not recognized as a discrete right but a right which is linked to and combined with the freedom of

[30] The MDFAL of 2002, Paragraph 1

expression and opinion.[31] This is proved by the way Article 19 of the UDHR 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, the right to information is part of the freedom of expression and opinion and both are international human rights norms. 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. Article 19 of the UDHR does not limit the information that one may seek, receive and impart. This means people have the right to seek, receive and impart any information including legal information. This confirms that freedom of expression and opinion from which the right to information flows is a fundamental right as the same applies to all persons, irrespective of their nationality, place of residence or other criteria.[32] It is so argued because Article 19 of the UDHR uses the phrase '*without frontier'* which implies that the right is guaranteed to all persons, irrespective of their nationality, place of residence or other criteria.

Admittedly, the UDHR does not define the phrase freedom of expression and opinion. The UDHR however provides for the components of the right to information. It is arguably stated by this article that the right to information as stipulated in the UDHR includes and transcends ability for an individual to seek, receive and impart information effectively. The significance of Article 19 of the UDHR with regards to the freedom of expression and opinion lays in the fact that freedom of expression and opinion is wider than the right to information. It includes seeking, receiving and imparting information without limitations. This is so because Article 19 of the UDHR covers both information and communication of information regardless of frontiers.

The UDHR approaches of explaining the right to information in line with freedom of expression and opinion is based on the fact that enjoyment of freedom of expression, opinion and the right to information includes other rights such as the right to respect right to life, right to fair trial and

[31] The UNDP, Access to Information, New York, New York, Practice Note, 2003, 3
[32] Tarlach McGonagle, and Yvonne Daniel, (Eds), Ten Challenges for the Right to Information in the Era of Mega-Leaks, (United Nations, 2015), 13

the right to participation in public affairs.[33] More importantly, it is debatable that the way Article 19 of the UDHR has been coached integrates several human rights in one provision.[34] On that basis, Article 19 of the UDHR describes the right to information within the broad meaning of freedom of expression and opinion. Thus Article 19 of the UDHR imposes a positive obligation on the states to ensure the right to information.[35] In that score and in modern time individual 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 person.

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

Another important international instrument on the right to information is the International Covenant on Civil and Political Rights (ICCPR) of 1966. In perspective of Article 19 (2) of the ICCPR, it is a right of everyone to have freedom of expression and opinion, the right which include freedom to seek, receive and impart information. But the right provided by Article 19(2) of the ICCPR is not absolutely provided as it carries with it responsibility to the person who wishes to enjoy or enforce it.[36] Again freedom of expression and opinion has limitations although are few, justified and explicitly mentioned in the ICCPR itself.[37] The obligations are specified in Article 19(3) (a) and (b) of the ICCPR. Hereunder is the extract of Article 19(2) and (3) (a) and (b) of the ICCPR, 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.

[33] Ibid, 26
[34] See Felipe Gomez Isa and Koen de Feyter (Eds) International Human Rights Law in Global Context, (University of Deusto, Bilbao, 2009), 196
[35] The African Commission on Human and Peoples' Rights, Model Law on Access to Information for Africa, (Addis Ababa 2017), 29
[36] Prashant Srivastava, 'Protection of Freedom of Expression: An International Perspective,' (Journal of Research Scholar, 2016), 1
[37] Organization for Economic Co-operation and Development (OECD), (Right to Access Information, Better Policies for Better Lives, Organic Law, 2017), 5

(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 information, Article 19(2) and (3) of the ICCPR imposes duties and responsibilities on an 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 information as provided by Article 19(2) and the exercise of the rights as provided by Article 19(3) both of the ICCPR, the United Nations Human Rights Committee (UNHRC) published general comment on Article 19 of the ICCPR.[38] The general comment thereof expressly acknowledges that Article 19 of the ICCPR embraces a general right of accessing information held by public bodies.[39]

The general comment noted in arriving at this position is that, Article 19 taken together with Article 25 both of the ICCPR (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.[40] In this way, the public is ensured of the right to information through various media.

2.3 The African Charter on Human and Peoples' Rights (ACHPR) of 1981

Freedom of expression and opinion is among fundamental rights recognized and guaranteed by the African Charter on Human and Peoples' Rights (ACHPR) of 1981. The ACHPR regards freedom of expression and opinion as a fundamental guarantor of human rights.[41] The right to

[38] Human Rights Committee (HRC), General Comment No. 34/2012: Freedoms of Opinion and Expression (Article 19), 12 September 2011, ICCPR/C/GC/34 19IHRR 303, 303

[39] The African Commission on Human and Peoples' Rights (ACHPR), Model Law on Access to Information for Africa, (Addis Ababa, 2017), 30

[40]See the case of *Gauthier v Canada* (1633/1995*), Merits, CCPR/C/65/D633/1995 (1999)*

[41] Agnes Callamard, Accountability, Transparency and Freedom of Expression in Africa, Social Research, From Impunity to Accountability, Africa's Development in the 21st Century, (The Johns Hopkins University Press 2010), 1211

receive and access information is also one of the human right norms recognized by the African Union (AU) and it regards the freedom as a cross cutting right.[42] This means the AU underscores long understanding maxim that freedom of expression and opinion is a broad term underpinning many different human rights. From international human right stand point, freedom of expression and opinion is often juxtaposed with the right to receive and access information including legal information. Thus the AU takes right to information as a right which is necessary for realisation of other human rights.

Article 9 (1) and (2) of the ACHPR provides for the right of individual to information of any kind but of course in accordance with the law. The provision reads that; 'every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.' According to the words of Article 9 (1) and (2) of the ACHPR the right to information serves very important aspect of administration of justice especially if the same is linked with the right to legal information.

Basing on this provision it is the responsibility of all 55 African countries which are the member state to the AU to create atmosphere that fosters access to information in a manner that offers necessary facilities and eliminate existing obstacles to its attainment. It is on this basis the member states of the AU are urged to adopt legislative or other measures to give effect to the freedom of expression and opinion and access to information.[43] The purpose of the ACHPR of 1981 then is to provide legal framework to the member states on their undertaking towards freedom of expression and opinions particularly the right to receive and access information.

Freedom of expression and opinion entrenched in Article 9(1) and (2) of the ACHPR is a central to achieving other human rights. In law freedom of expression and opinion has been interoperated and understood as including two main dimensions; the right to express one's ideas and the right to receive information. This article focuses on the right to receive legal information. This is so because reading Article 9(1) and (2) of the ACHPR there is no demarcation of information to receive and impart. It means therefore that freedom of expression and opinion is construed as the right to receive legal information as well.

[42] The African Commission on Human and Peoples' Rights (n 39)
[43] The African Charter of Human and People's Rights, art 1

3.0 GLOBAL PERSPECTIVE ON LEGAL INFORMATION

Having seen legal framework on the right to information at international and regional levels the article now turns on legal information. The following part of the article therefore presents the general idea on legal information. The article explains the general perspective on legal information, meaning of legal information and justification for legal information.

The right to legal information is important for enforcement of legal rights and obligations. On the contrary, the failure to access legal information constitutes a violation of obligation of the states which they agreed when ratifying, acceding or succeeding the Universal Declaration on Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and Peoples' Rights (ACHPR) of 1981. Again without access to accurate, credible and reliable legal information people will be the victim of law by being punished for breach of law which they cannot access. The importance of accessing legal information comes from a maxim *ingorancia juris non execusat*, which is plain English it means 'ignorance of the law excuses no one.' Thus it is good that legal information is accessed and then if any one breaches law to be punished accordingly. By guaranteeing the right of access to legal information the governments will not be blamed and individuals will have no excuse when punished for violation of any law.

3.1 Experiences from the USA and China

To function properly, the right to access legal information through the internet needs more detailed guidelines, either in the law, legal policy framework or in instructions to those responsible for its publication and republication.[44] To start with, two countries (the United States of America and the Peoples' Republic of China) have specific legislation on the right to legal information which require legal information to be online published and republished. The USA has been chosen because her legal information has its origin from Cornell University which is in New York. Again, the USA has a comprehensive and more developed legislation on the right to legal information and publication of the same online. Since legal information originates from the USA, it is wise to draw inference there form. China has been chosen because it also has specific

[44] Marc van Opijnen, et al, Online Publication of Court Decisions in the European Union: Report of the Policy Group of the Project Building on the European Case Law Identifier, (Brussels, 2017), 9

law which creates responsibility for online publication of legal information, although not as explicit as it is in the USA.

In the USA, there is the Uniform Electronic Legal Material Act (UELMA) of 2011. Sections 2, 7, 8 and 9 of the UELMA cover almost the objectives of the Montreal Declaration on Free Access to Law (MDFAL). Section 2 of the UELMA provides for the interpretation of legal information. According to the UELMA legal information is referred to as legal material and it means the Constitution of individual state making up the USA, the laws, the codes, a state agency rule that has or had the effect of law, the state administrative agency decision, reported decisions of the state courts, state court rules and any other category of legal material. Implicitly, the interpretation given herein is almost the same as the meaning of legal material given by Singh and the MDFAL itself. From the way the interpretation of legal material is provided by section 2 of the UELMA there are two categories of legal information, which are primary legal information and secondary legal information.[45] Primary legal information is the Constitution of the state, legislation and decisions of the courts of law and other administrative agencies.[46] Secondary legal information includes legal notices, law journals, periodicals, encyclopaedias, causes list, court summons and jurisprudence works.[47] These are covered in section 2(h) of the UELMA.

The other relevant provisions of the UELMA in relation to the right to legal information are sections 7, 8 and 9 thereof. Section 7 provides for preservation and security of legal information in official electronic records, section 8 is for public access to legal information in official electronic records and section 9 covers standards in publication of legal information in official electronic records. These provisions reflect what the MDFAL provides in so far as the right to legal information is concerned.

Section 7(a) and (b) of the UELMA require that official publisher provides for the preservation and security of legal information designated as official in either electronic or none electronic form. The way section 7(a) of the UELMA has been drafted gives the flexibility to the states in

[45] Stephann Makri, A Study of Lawyers' Information Behaviour to the Development of Two Methods for Evaluating Electronic Resources, (n 9), 87
[46] See the UELMA of 2011, s 2(a), (b), (c), (d), (e), (f) and (g)
[47] Stephann Makri, A Study of Lawyers' Information Behaviour to the Development of Two Methods for Evaluating Electronic Resources (n 9), 90

the USA to preserve legal information in a print format or in electronic format. This goes in line with the MDFAL principles. The MDFAL calls up for publication of legal information in all media. This means legal information in member states to the MDFAL may be published in electronic format or in print format, although online publication is the most encouraged.[48] This is because publication of legal information online is cost neutral when compared with storing it in print medium.

But then good as it is, publication of legal information in electronic records has a security challenge. For that, section 7(b) of the UELMA requires that legal information which is preserved electronically, must be secured stored to ensure their integrity. The issue of integrity and security is well covered by the MDFAL principles. Principle 6 of the MDFAL requires legal information to be published online with high level of security and integrity. This is so because, sometimes there is a possibility of persons to temper with the original version of legal information and manipulate it to cover their interest.[49] For that to avoid such a possibility section 7(b) of the UELMA requires security to be put into consideration when legal information is stored in electronic format.

Section 8 of the UELMA provides that 'an official publisher of legal material in an electronic record that is required to be preserved under section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.' The meaning of section 8 of the UELMA is that the holder of legal information must publish it online for easy access by the public. This is very important especially when it comes to access of legal information by the magistrates, judges and justices of appeal. This is because these persons are responsible for administration of justice. Administration of justice depends on very well informed judicial officers. Thus access to legal information is very essential to the magistrates, judges and justices of appeal especially legal information which is current and which is in hierarchical value. So, section 8 of the UELMA highlights the importance to legal materials to the judicial officers and the public generally by requiring permanent public access to it. This again, is in line with the MDFAL principles. It is

[48] Graham Greenleaf, 'The Global Development of Free Access to Legal Informatics,' (n 10), 46
[49] Adam Juma Mambi, ICT Law Book: A Source Book for Information and Communication Technologies and Cybercrime Law, (Mkuki na Nyota, Dar es Salaam), 2014, 203

mandatory for the subscribers to the MDFAL to make sure that all legal information in their respective countries is published for public access.[50]

The last provision of the UELMA in respect to the access to legal information is section 9 thereof. Section 9 of the UELMA provides for standards in publication of legal information in electronic records. It provides that in implementing the UELMA provisions the publisher of legal information must take into consideration standards and procedures of the other jurisdictions regarding authentication, preservation and security of and public access to legal information in electronic records.[51] This provision deals with consideration of standards and best practice for the authentication, preservation and permanent access of electronic records. This is important because appropriate information security is a key element of the authentication process and security standard for accessing legal information. This provision therefore urges the states in their endeavour to make legal information accessible and include a method to evaluate the effectiveness of the official enforcement of the obligation to publish legal information.

China is another country in the world which has specific law governing online publication of court decisions. This is the Publication of Judgment Documents by People's Courts on the Internet (PJDPCI) of 2016. The PJDPCI requires all Chinese courts to post their judgments on the People's Supreme Court online platform.[52] The revised provisions create it as a mandatory for court decisions to be posted online within seven business days of taking effect.[53] Thus the PJDPCI underlines the fact that China is determined to promote access to legal information especially the decisions of the Supreme Court of China. As it is seen, publication of legal information is undeniably linked with effective administration of justice. In other words for judicial officers to truly and effectively administer justice access to legal information is absolutely necessary. It is for this reason that the PJDPCI argues for publication of legal information online in shortest possible opportunity. That is to say that obligation to publish legal information is not to be understood in its simplest sense of formal right but that it should include improvement in quality justice.

[50] The MDFAL, Principle 4
[51] See the UELMA of 2011, s 9 (1) and (2)
[52] Zhang Laney, Internet and Judiciary, (Library Conference, Zhong guo, 2017), 1
[53] Ibid, 7

The position in the USA and China proves that, in order to improve delivery of justice it will be vital to make it obligatory that legal information is published and easily accessible. This right is internationally recognized and it is declared by the MDFAL. It is this fact that led Leonard Susskind to argue that avoiding access to legal information is akin to burying our heads in the sand. And the fact is that in a country characterized by inaccessibility of legal information administration of justice will not be a reality without the existence of a specific legislation on the access to legal information.

For lawyers, access to laws and reliable court decisions is essential in order to decide what legal principle applies to a dispute on which they have been asked to advice.[54] Online publishers of legal information operate on the basis that unless there is a good reason to the contrary, for example where there is significant privacy concerns every decision of superior court should be reported or published.[55] In practice online database inevitably contains both gold and dross; that is decisions of legal and practical importance as well as decisions that are likely to be of no interest to anyone except the parties themselves.[56] It means comprehensive national database does not select decisions on the basis of their legal significance. All decisions to which the provider has access are to be uploaded online or are to be reported in a regular law reports. It is left to the user to make selection of cases relevant to him.[57] This article submits that logically this position is good since relevancy is, in some circumstances subjective.

4.0 THE RIGHT TO INFORMATION IN TANZANIA PERSPECTIVE

A twirl of arrival of new era of campaigns and struggles for realization of the right to information in the world did not spare Tanzania. As Tanzania is the member to the United Nations, African Union, the East African Community and the World Legal Information Institutes, the movements to facilitate the right to information generally and the right to legal information in particular which took place in other parts of the world also invaded the country. For that even in Tanzania the right to information laws are now commonplace and have been enacted and implemented in the same manner as in other countries. This is so because the right to information is essential requirement for modern government and for maintenance of a civil and

[54] Michael Bryan, The Modern History of Law Reporting, (University of Melbourne Press, Melbourne, 2012), 32
[55] Ibid
[56] Ibid
[57] Ibid

democratic society. In Tanzania, the right to information is guaranteed by the Constitution of the United Republic of Tanzania (CURT) of 1977 and the Access to Information Act (AIA) of 2016, among the key laws thereof. Hereunder, these two laws are analysed in line to the right to information.

4.1 The Constitution of the United Republic of Tanzania of 1977

The Constitution of the United Republic of Tanzania (CURT) of 1977 has entrenched the right to access information in Tanzania. Article 18 of the CURT provides for the freedom of expression. Article 18 of the CURT was entrenched therein in 1984 through the fifth constitutional amendments which were carried out by the Fifth Constitutional Amendment Act of 1984.[58] It was entrenched in the CURT as part of the Bill of Rights of Tanzanian.

Freedom of expression as provided by Article 18 of the CURT embodies the right of every person to seek, receive and/or disseminate information regardless of national boundaries. Hereunder is the extract of Article of 18 of the CURT which provides that, every person:

(a). Has a freedom of opinion and expression of his ideas;

(b). Has a right to seek, receive and, or disseminate information regardless of national boundaries;

(c). Has the freedom to communicate and a freedom with protection from interference from his communication; and

(d). Has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

This provision therefore guarantees the right to access information in Tanzania as constitutional right. For that, Tanzania is among the countries in the world whose constitutions have express provisions which guarantee and protect the right to information by the people. As it is at international level where the right to information emanates from a broad concept of freedom of expression and opinion, it is the same for Tanzania. This means the right to information in Tanzania is entrenched within the freedom of expression.

[58] Act No. 15 of 1984

However, Article 18 of the CURT does not impose obligation on the government to make information available to the public. Again, Article 18 of the CURT does not set out procedure that enables citizens to directly enforce the right through the courts of law. Nonetheless the fact that the CURT has entrenched Article 18 has afforded the right to information a constitutional status.[59] Again, the right is justifiable through the Basic Rights and Duties Enforcement Act (BRDEA) of 1994.[60] This law sets out procedures for enjoyment and enforcement of the right to information being one of the basic rights in Tanzania.

This then shows the honest of the government to support the right to information which is guaranteed in international and regional instruments. Furthermore, Tanzania is not the only country in the world which has provision on the right to information in the way Article 18(b) of the CURT is 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.[61] Thus this is not new phenomenon in the world and the same can be enhanced by the right to information (RTI) laws. This article submits that although the CURT does not create obligation to the government and its agencies or institutions to provide information to the people it nevertheless guarantee the right to information which is held by the government and private institutions.

Ever since the inclusion of the right to information in the CURT there has been slow progress in giving legislative binding to this right. This was so because there were no RTI laws which were enacted to facilitate the access to information. Absence of specific RTI law made it unwieldy for citizen to make request and access information held by public institutions. The first step to give right to 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 the Parliament of Tanzania enacted the Access to Information Act (AIA) of 2016.

[59] Open Society, Constitutional Protection of the Right to Information: Right to Information, Good Law and Practice (2016), available through https://www.right2info.org/archived-content/constitutional-protections, accessed on 4th May 2021, at 2012 hours. Herein Tanzania is listed among 60 countries in the world and 17 countries in African whose constitution guarantee access to information

[60] Cap 3 RE 2019

[61] Open Society, Constitutional Protection of the Right to Information: Right to Information, Good Law and Practice (n 59)

4.2 The Access to Information Act (AIA) of 2016

The Access to Information Act (AIA) of 2016 establishes the rights to access information for citizens and public at large.[62] The AIA also, under section 9 create obligation to the information holder to publish information. Section 10 of the AIA provides for the procedure to follow by any person who wants information from information holder. Reading section 10(1) of the AIA 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 information requested.[63] Section 10(4) of the AIA 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.[64] Information which is the subject of the AIA 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 the AIA covers the right to legal information as well as provided by section 3 above.

The AIA also provides for a wide range of information that cannot be disclosed by information holder. Section 6(2) of the AIA covers exempted information. The said provision reads that;

> Exempt information may be withheld if the disclosure of such information is likely to-
>
> a) undermine the defence, national security and international relations of the United Republic;
> b) impede due process of law or endanger safety of life of any person;

[62] The Access to Information Act, s 4(a)
[63] The Access to Information Act, s 10(2)
[64] Ibid, s 11(1)

c) undermine lawful investigations being conducted by a law enforcement agent;
d) facilitate or encourage the commission of an offence;
e) Involve unwarranted invasion of the privacy of an individual, other than an applicant or a person on whose behalf an application has been made;
f) Infringe lawful commercial interests, including intellectual property rights of that information holder or a third party from whom information was obtained;
g) Hinder or cause substantial ham to the Government to manage the economy;
h) Significantly undermine the information holder's ability to give adequate and judicious consideration to a matter of which remains the subject of active consideration;
i) damage the information holder's position in any actual or contemplated legal proceedings, or infringe professional privilege;
j) Undermine Cabinet records and those of its committee; or
k) Distort or dramatise record or data of court proceedings before the conclusion of the case.

None of the above-mentioned exempts cover legal information to wit legislation, case laws and others of similar nature. The remotely related exemptions are that provided by paragraphs (a) and (f) which has something to do with defense and national security and commercial interest and intellectual property rights. But then even that, one cannot be used to withhold legal information. This is because legal information does not undermine defense and national security and does not create commercial interest to the Members of Parliament or to the legislature itself. Again judges do not make precedents for commercial gain but rather for performance of legal and contractual duties. In some cases it is argued that judges make precedents for prestige they get when such precedents are frequently cited by magistrates and other legal professionals. More importantly, legislation and case law are not although *ex facie* are literate works covered by copyright law.[65] It means legal information like legislation and case laws are accessible free from any legal restrains so far as the AIA of 2016 is concerned.

[65] The Copyrights and Neighbouring Rights Act, s 7

The above exposition represents legislative position of the right to information in Tanzania. The article has shown that Tanzania recognizes the right to information by entrenching constitutional provision and enacting a law for that purpose. The following part of this article explains the participation of Tanzania in global FALM campaigns.

5.0 INFLUENCE OF THE FALM ON THE RIGHT TO LEGAL INFORMATION IN TANZANIA

Over the past five years, Tanzania's progress on the right to legal information had been insignificant. This was partly ascribed by the fact that Tanzania had and still has no specific law on enforcement of the right to legal information. However participation of Tanzania in the Free Access to Law Movement (FALM) marked the beginning of the strategies taken by Tanzania on realization of the right to legal information. This began when Tanzania joined the Southern African Legal Information Institute (SAFLII) in 2003.[66] From then Tanzania began to participate in the FALM conferences. Being the member of the SAFLII Tanzania was invited by South Africa to the Montreal Declaration on Free Access to Law (MDFAL) conference of 2017.[67] Invitation of Tanzania to the FALM conference marked official participation of Tanzania to the FALM and membership to the MDFAL. In 2019 the judiciary of Tanzania through the office of the Chief Justice established the Tanzania Legal Information Institute (TANZLII) as a response to the requirement of the MDFAL.

According to the judiciary of Tanzania website, the overall objective of the TANZLII is online publication of legal information.[68] This means therefore that the TANZLII was formed as a response towards the requirements of the MDFAL. The TANZLII publishes both primary and secondary legal information which are collected from the Parliament and all registries of the Court of Appeal and the High Court in Tanzania. The TANZLII operates under the auspices of the judiciary of Tanzania.[69] After the formation of the TANZLII the judiciary of Tanzania publishes legislation and decisions in both online and hard copy law reports and legislation.[70]

[66] Siviwe Bangani, Open Access to Legal Resources in South Africa: The Benefits and Challenges, Stellenbosch University, 2018, 9
[67] Ibid, 12
[68] See the website of the judiciary of Tanzania https://www.judiciary.go.tz/web/ accessed on 19th September, 2022 at 1935 hours
[69] Ibid
[70] A latest law report published by the judiciary is the Judiciary Law Reports of 2007-2020

Publication of legislation and decisions on the TANZLII marked official participation of Tanzania to the FALM.

The author submits that as there is constitutional provision which guarantees freedom of expression and opinion the right to legal information is therefore guaranteed. That has been enhanced by Tanzania's involvement and participation in international movements to achieve the right to information.[71] Tanzania has subscribed to the MDFAL on legal information. The MDFAL emphasizes on attaining of improved access to legal information by requiring Legal Information Institutes (LIIs) which are the member thereof to take purposive initiatives to guarantee that legal information in their respective countries is accessible.

The MDFAL sets standards and targets which relate to right to legal information and acts as a benchmark for measuring country's involvement in access to legal information by all the LIIs. The agreed goals serve as a tool for assessing commitment of the LIIs to access legal information within the respective country. Tanzania participated in the MDFAL from 2003 and became part of the same in that year. This article reveals that each member state to the MDFAL Tanzania inclusive, seek to attain 6 agreed goals within specified period.[72] Out of 6 agreed goals, the first 5 are directly related to access to legal information. To attain these 6 goals specific targets were attached thereto which are to publish via the internet all legal information available in the country, to provide free and anonymous public access to legal information and to support objectives set out in the MDFAL. More so the MDFAL fights to remove copyright restrains in relation to publication and accessing legal information. The MDFAL fights for the right to legal information because everyone has the right to gain knowledge of the law and LIIs have obligations to put forth legal information by enabling access to the law using all available and reasonable media.[73] The TANZLII is one of such available and reasonable media.

In order to achieve its international commitments towards the attainment of the MDFAL the government of Tanzania adopted the first national strategy by forming the LII which is called the TANZLII. The TANZLII sets goals to facilitate access to legal information and improving

[71] Ololade Shyllon, The Model Law on Access to Information for Africa and Other Regional Instruments, (Pretoria University Press, Pretoria, 2018), 16
[72] The Objectives are articulated in the Montreal Declaration on Free Access to Law of 2002
[73] Maria Angela Biasiotti, and Ginevra Peruginelli, Supporting Access to Online Legal Information Semantic Strategies, (Institute of Legal Information Technology and Technique, Rome, 2010), 344

accessibility of legal information in Tanzania.[74] It acts as a guiding national strategy on reducing difficulties of accessing legal information in the country. Establishment of the TANZLII therefore is a get way strategy to comply with the requirements and objectives of the FALM and the MDFAL.

The subscription of Tanzania to the SAFLII and establishment of the TANZLII as strategies for supporting access to legal information movements have becomes national initiatives towards the achievements of the MDFAL. Since the TANZLII is recent institution being established in March 2019 its evaluation after hardly four year of its formation in a developing country like Tanzania will be taken as premature assessment of a project and or policy performance. Thus, it suffices to argue that, the FALM has very much influenced Tanzania in the right and access to legal information movements. Tanzania has involved and participated in the FALM and the LIIs through formation of the TANZLII which guarantee the widest dissemination of legal information national wide. Implementation of accessibility and realization of the right to legal information allows judges, researchers and the citizens to have access to legal information.

6.0 CONCLUSION

The author has a view that the trend, efforts and strategies taken by Tanzania in recognizing and enforcing the right to legal information renders a good starting point in elevating the right to legal information into being one of the most important rights to people of Tanzania. This also makes Tanzania to be in line with the global movement in so far as realization of legal information as human right tenet. Taking from this angle, there are two possible consecutive results to approach the right to legal information in Tanzania. Firstly, sensitization of legal professionals and academic that legal information is a distinct right which is recognized globally. Secondly, upon recognizing that legal information is independent human right tenet it is hoped that in a near future Tanzania will have a distinct legislation on the right to legal information as it is in the USA and China instead of relying on the Access to Information Act (AIA) of 2016 for realization of this right. Otherwise in as far as recognizing and enforcing the right to legal information in Tanzania ,this right is a twirl which blows in a positive direction. This is because joining the South African Legal Information Institute (SAFLII) and formation of the Tanzania

[74] Charles Rickard, Tanzania Judges: Nowhere to Hide Underperformance, (Dar es Salaam, 2019), 2

legal Information Institute (TANZLII) are great successes for realization of the right to access legal information in the light of the Free Access to Law Movement (FALM) and the Montreal Declaration on Free Access to Law (MDFAL). While the author concurs with the view that absence of a specific legislation for enforcement of legal information which would catch up with the principles of the MDFAL is an impediment for full realization of the access to legal information, he also feels that the AIA of 2016 and the TANZLII include the right to access legal information in a satisfactory degree. The author nevertheless recommends that Tanzania must enact a robust legislation specifically for the right to access legal information. This is because principles for the right to information (RTI) laws and the right to legal information differ. One of the differences is that the RTI laws emphasises on request for information before the same is disclosed and accessible while the right to legal information is the right which does not require one to make request for it to be disclosed and accessible.