

Freedom of information: path to justice

‘AT THE heart of possibly every grassroots struggle for social, economic or environmental justice there is a need for information,’ says the Right2Know campaign.

Ultimately, the right to information is founded on Article 19 of the 1948 Universal Declaration of Human Rights: the “freedom to receive and impart information and ideas through any media and regardless of frontiers”.

This could be access to a birth certificate or a larger developmental concern, such as a challenge to a mining company’s mineral rights.

We live in an information economy, where facts and figures mean money and power. Access to information is about ensuring that people are aware of their rights and know how to use them.

Freedom of information is also a prerequisite for promoting and enabling good governance by opening up a space for informed debate and decision-making.

We need information to hold the government and business to account. When the public and civil society are fully engaged, they are able to use the right to access to information, for example to monitor housing waiting lists and to challenge irregular procedures in awarding tenders.

In line with global trends, an increasing number of African countries are passing freedom of or access to information legislation, a push often driven by civil society.

Ombudsmen in countries such as Ethiopia, Kenya and South Africa have been mandated to play an oversight role in monitoring or investigating complaints about the implementation of such laws.

It is encouraging that governments are seeing the value of such legislation. Their reasons for doing so, however, are not always straightforward. Sometimes it is

OurView

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merely a public relations exercise rather than a genuine commitment to accountable governance.

It is one thing to get legislation passed and another to ensure that it is implemented. This is the challenge that lies ahead for African countries.

In South Africa we have the Promotion of Access to Information Act 2 of 2000, which applies to all public bodies, such as government departments and parastatals, as well as to private bodies where the information they hold relates to the exercise or protection of rights.

Under the Act, public bodies have proactive and reactive obligations.

Proactive obligations refer to the responsibility to publish and circulate information about their activities such as budgets, policies and plans so that the public is informed and able to participate in all public matters holding the government accountable.

Reactive obligations refer to the right to ask public officials for information about what they are doing and to request to see any documents they hold.

In accordance with the Act, every public body must have an information officer through whom requests for information are channelled. This officer is obliged by law to respond to requests within a set time frame (30 days, which may be extended to 60 days) and to give

reasons if the request is denied.

If the request is denied, the requester may lodge an internal appeal or an application to a court against the refusal of the request.

The public may have a last recourse to the public protector only if the information officer: does not respond or ignores a request for information; if there is a delay in the response; if the reasons given for refusal are invalid; or if the law is applied incorrectly. Such cases constitute maladministration and fall within the institution’s mandate.

The South African Human Rights Commission is the primary Chapter 9 institution under the constitution responsible for monitoring the implementation of the Promotion of Access to Information Act.

This includes ensuring that government departments have designated and trained information officers, publishing manuals and guidelines for government departments and collating the number of requests received.

Ombudsmen in several African countries have a dual mandate to oversee freedom of information legislation.

The oversight role of Kenya’s ombudsman – the Commission on Administrative Justice – is similarly intended to require the public sector to produce information upon request.

However, in Kenya the legislation is still new and full regulations regarding internal appeals are yet to be enacted. In practice, when the processes for enabling access to information are not working, there is a tendency for the public to bypass the new processes.

When we interviewed Julie Reid, an activist from the South African Right2Know campaign, she noted the Promotion of Access to Information Act was not working very well in South Africa.

One problem was that several government departments had not yet appointed information officers – which some suspect was a way of circumventing implementation.

And if the departments did not respond to requests within 60 days, requesters had to go to the public protector or courts. Of course, if requestors did not have money, the latter was not a realistic recourse.

The South African Human Rights Commission reports in its 2014-2015 annual report: “Unfortunately, lack of compliance and poor implementation of the Promotion of Access to Information Act within government and the private sector continues more than a decade after the enactment of the legislation.”

When systems to provide access to information are not in place or not working effectively, then good governance is imperilled and a culture of government secrecy continues unabated.

The ombudsman is a free service that can assist in ensuring freedom of information as envisioned by the universal declaration.

Generally, ombudsmen have the authority to assist the public to obtain information in two important ways.

The first is by investigating complaints directly about the failure to respond to information requests. The second is by investigating complaints about substantive issues – and, in the course of such investigations, the ombudsman usually requires governments to produce information that will allow the ombudsman to draw conclusions and explain in investigation reports how the governments had dealt with the issues.

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