



**Commonwealth Human Rights Initiative**

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**Katiba Institute**

**WORKSHOP ON**  
**USE AND IMPLEMENTATION OF ACCESS TO INFORMATION**

*for civil society representatives in Kenya*  
*supported by the Commonwealth Foundation*

16 November, 2018

*Ole Ken Hotel, Nakuru*

**Workshop Report**

*Prepared by*

**Commonwealth Human Rights Initiative (CHRI) and Katiba Institute (KI)**

**For CHRI: Ms. Tahmina Laskar**

(Sr. Programme Officer, Access to Information Programme)

**For KI: Ben Nyabira, Hilda Njoki, Angelica Gonzalez**

**Commonwealth Human Rights Initiative**

#55A, Third Floor, Siddharth Chambers,

Kalu Sarai, New Delhi-110016. INDIA

Telephone: +91-11-4318 0200;

Fax: +91 11 4318 0217

Website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

E-mail: [info@humanrightsinitiative.org](mailto:info@humanrightsinitiative.org)

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## **WORKSHOP ON** **USE AND IMPLEMENTATION OF ACCESS TO INFORMATION**

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### **Executive Summary**

#### **Objectives of the Workshop**

Kenya enacted its Access to Information Act (ATI Act) in August 2016 and it took effect in September 2016. The Act also requires enactment of regulations which would clarify aspects such as cost for accessing information where applicable. The development of the said regulations is still in progress. Meanwhile, several civil society actors are among the bodies testing the efficacy of the law by making requests for information of public interest and a number have reached courts for adjudication. Some key provisions in the ATI Act draw inspiration from India's Right to Information Act (RTI Act)..

India enacted its *Right to Information Act* in 2005. Hundreds of thousands of citizens and collectives are making use of this law to seek information to make the functioning of public authorities transparent and accountable. According to CHRI's estimate in recent times between 5-5.5 million information requests are received across the thousands of public authorities spread across various jurisdictions in a year in India. The civil society not only participated in the law making exercise in 2004-05 but also works the law to demand disclosure of information of public interest. Hundreds of thousands of citizens have used the RTI Act to secure their rightful entitlements or expose human rights violations and corruption and wrongdoing in government. Civil society actors also monitor the use and implementation of the law from time to time and report their findings to government and other public authorities in order to press for improving implementation and enhancing transparency in the their functioning. As a result there are thousands of stories of success and impact. There are also several hundred stories of challenges faced by citizens and CSOs who use the law in matters of public interest. One of the purposes of the workshop was to share these experiences with participants so that they are encouraged to use the law more frequently and effectively. The workshop aimed to encourage widespread use of the law on people's access to information in Kenya with civil society acting as a catalyst.

CHRI with its field partner in Kenya, Katiba Institute with help from MidRift Human Rights Network organized this workshop with the following overall objectives:

- to identify key issues involved in using and implementation of the ATI Act in Kenya;
- to better understand the procedures for seeking information under the ATI Act through practical exercises;
- to explore the value of the access to information (ATI) as a tool for ensuring greater transparency and accountability;
- to use ATI for the purpose of evidence building to ensure greater transparency and accountability of public entities.
- To understand the experience of participants who had sought information under the ATI Act already despite the absence of detailed regulations.
- To share India's experience of CSOs using RTI in public interest issues.

### **Profile of the participants**

CHRI worked with Katiba Institute, Kenya and MidRift Human Rights Network based in Nakuru to select participants in accordance with the overall objectives of the workshop. The participants were chosen keeping in mind their interests in usage of ATI for redressing individual grievances about public service delivery and bringing in systemic reforms. Some of the participants had already used the law to make formal information requests from multiple public entities. Around 50 participants from Nakuru County including representatives from MidRift Human Rights Network (Midrift Hurinet) participated in the workshop.

**Action points identified for improving implementation and use:** The three main points that were identified in taking the ATI advocacy forward by the participants during the workshop.

#### ***Awareness generation:***

Participants felt that there is a pressing need for conducting awareness workshops on ATI outside of Nairobi, particularly in the counties and villages so that people use this tool widely.

#### ***Engaging with information access officers and government machinery:***

Participants felt the need to engage more with information access officers in particular and the government machinery in general. The advocacy around proactive disclosure and record management needs to be stronger.

#### ***Advocacy for having regulations in place:***

Participants said that there is an urgent need to put in place ATI regulations in order to bring greater clarity to the access procedures and increased use of the law across the country.

#### **Follow-up action:**

The two follow-up action points identified were:

- Partners on the ground Katiba Institute would follow up on the ATI requests if any, filed by the participants after the workshop. They would also assist during the process who approach them for help with their ATI requests.
- CHRI and Katiba Institute would collaborate with MidRift Hurinet on Training of Trainers (ToTs). The trainings would be focused on developing a corps of trainers to spread awareness on use of the ATI law by citizens and civil society actors in Nakuru.



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## **WORKSHOP ON IMPLEMENTATION OF ACCESS TO INFORMATION**

*for civil society representatives in Kenya*  
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### **Event Report**

#### **Background**

This workshop was a part of capacity building exercise of civil society representatives to help them use the ATI Act more effectively. It was also conceived to generate awareness regarding various aspects of implementation of the ATI Act, 2016 through discussions and also generating inputs and suggestions from the participants regarding the furthering of the smooth implementation of the Act. One of the primary objectives of the workshop was to encourage the participants to use the ATI Act to promote access to basic services and entitlements for the marginalized segments of society, exposure of instances of mal-governance, mismanagement of public funds and corruption. The workshop aimed to encourage widespread use of the law on people's access to information in Kenya with civil society acting as a catalyst.

#### **Objectives**

The overall objectives of the workshop were:

- to identify key issues involved in using and implementation of the ATI Act in Kenya;
- to better understand the procedures for seeking information under the ATI Act through practical exercises;
- to explore the value of the access to information (ATI) as a tool for ensuring greater transparency and accountability;
- to use ATI for the purpose of evidence building to ensure greater transparency and accountability of public entities.;
- to understand the experience of participants who had sought information under the ATI Act already despite the absence of detailed regulations; and
- to share India's experience of CSOs using RTI in public interest.

### **Workshop Proceedings**

## **Session 1 –Introduction**

Mr. Ben Nyabira, Senior Researcher, Katiba Institute, introduced the participants and thanked the Midrift Human Rights Network for partnering with KI and CHRI to put together this workshop. He explained the purposes of the workshop as outlined above. He took the participants through the programme agenda explaining the objectives of each session and activity that had been planned out. Participants validated the schedule subsequently without making any changes. Mr. Nyabira also introduced the key speakers in the workshop including Mr. Yash Pal Ghai, Ms. Christine Kuria, and the CHRI team. After facilitating a round of introductions, Mr. Nyabira invited Ms. Christine Kuria, Katiba Institute to give her opening remarks.

### **1.1 Opening Remarks**

#### **Christine Kuria, Programme Coordinator, Katiba Institute**

Ms. Christine Kuria opened her remarks by welcoming the participants and expressing her thanks to the organizations that were able to make time to attend. She also thanked the Commonwealth Human Rights Initiative for taking an active role in the implementation of the ATI act in Kenya. Some civil society organizations from Kenya went to India in September of the previous year to learn about progressing implementation of the Access to Information Act in Kenya.

Ms. Kuria then briefed the participants that the Access to Information Act was passed over two years ago and by September of 2019, all information should be digitized by public entities and relevant private entities. She said that, as we draw closer to the deadline there is still a lot which needs to be done. She emphasized that when the government promotes systemic disclosure of information, the public entities can use their funds effectively and involve the citizens in decision-making processes. An open government is more transparent, accountable, and efficient. By providing accessible information to the public, people can take an active role in project discussion. This would not only reduce the number of unnecessary projects but also create more sustainable projects.

She then familiarized the participants to the objectives of the workshop. She pointed out that this particular workshop is aimed at identifying the key issues involved in using and implementation of the ATI Act in Kenya and also to learn about the usage of the Act. At the heart of the objectives is to popularize the usage of the law and exploring its value as a tool for ensuring greater transparency and accountability. She hoped that the participants would learn about the law at greater detail in the workshop and use it to their own benefit and also contributing to systemic changes.

#### **Joseph Omondi, Executive Director, Midrift Human Rights Network**

Mr. Joseph Omondi spoke on the importance of the ATI Act. . He first highlighted the importance the Act holds for media and CSOs. He emphasized that both CSOs and the media can benefit from ATI in order to hold the government accountable and true to its mandate which is to serve the people. The CSOs and the media houses being consumers of the information should use this Act extensively, he added.

Mr. Omondi then highlighted some of the challenges that hindered the implementation of access to information in Kenya. The first challenge to which he drew attention was the course that the implementation process had taken in Kenya. He pointed, the government at both the county level and the national level had taken too few initiatives as far as proactive disclosure is concerned. He emphasized that if the proactive disclosure requirements under the ATI Act were complied with in letter and spirit by the public entities, the information so disclosed would have helped the public immensely. He lamented about the condition of the digitization of information by the public entities, he said that there is still a lot to be achieved when it comes to digitizing critical information of public interest. He emphasized on the importance of the Article 10 of the Kenyan Constitution which embodies national values and principles of governance. He urged that the participants should use ATI law frequently to make themselves aware of the decision making in the government and hold the government accountable for any irregularities in the process. He emphasized that since the government is largely involved in the development of national infrastructure citizens should make themselves aware of the process involved in carrying out of these projects so that they can keep a tab if the public

money is used properly in these projects or not. He said that, “access to information can also be useful in reducing instances of corruption and holding public officials accountable for their actions and decisions”.

Mr. Omondi shared his own experiences when requesting information in Nakuru County using the ATI Act. He said that it was almost impossible to obtain any information from any public office in the county. , For example, it is very difficult to get information about budgets and the allocation of revenue generated in the county, he added. In order to have a meaningful public participation in governance, there needs to be a well-informed body of citizens. He pointed out that although many civil society organizations and individuals have been asked for their opinions or viewpoints on certain issues of governance yet they are not involved in the decision making around procurement processes. This is a major lacuna in the institutionalization of public participation in decision-making processes, he said.

Mr. Omondi emphasized the importance of public participation. He said that if the government machinery were to be held accountable it is very important that people are a part of the process and are well aware of government process and procedures. He believed that a strong public opinion on important governmental decisions is very important in a democracy. Citing Article 1 of the Kenyan Constitution he said that people’s sovereignty is supreme in a democracy and the county and national governments must recognize and respect the people’s right to access information. He believed that meaningful public participation can only be achieved if people and organizations are armed with accurate information. He urged the participants to push more for proactive disclosure of information by public entities. He mentioned that one way to achieve it is by filing more and more ATI requests on matters of public interest and reminding the government of its responsibility to disclose.

**Venkatesh Nayak, Programme Coordinator, Access to Information Programme, CHRI**

Mr. Venkatesh Nayak apprised the participants about the work of Commonwealth Human Rights Initiative (CHRI). He said that CHRI is the first UN accredited civil society organization in the global south and worked for the practical realisation of human rights in Commonwealth countries. He then familiarized the participants CHRI’s focus areas in which it has acquired specialization thanks to more than three decades of work. i.e. “Access to Information” and “Access to Justice”. He gave a brief introduction highlighting CHRI’s experience of promoting RTI laws across Commonwealth countries with particular reference to the South Asian region. He explained how people in small groups working across the country on a wide range of developmental and governance issues came together as part of the National Campaign for People’s Right to Information (NCPRI) in India in 1997 and the impact was such that the policymakers could not ignore the very public and vocal demand for a strong access to information law. He narrated how CHRI went out to sensitize big and small organizations about the value that an RTI law could add to their work after the legislation was enacted. Many national conventions and regional meetings were organized bringing people from far flung areas together to discuss the potential and possibilities of the strong law that had been enacted and how such a law would help improve people’s participation in decision-making processes and provide them with a democratic tool to demand accountability from government.

Mr. Nayak shared an experience about the use of the right to information by activists in India for making high level public officials accountable for their actions. He shared an [Indian](#) story of how through the use of RTI, activists were able to expose a Minister’s actions that were in contempt of an order of a constitutional court which eventually resulted in him spending a month behind bars. Initially, this Minister had been found guilty of allowing saw mills to operate on forest lands where timber logging was prohibited by an order of the Supreme Court. Environmental activists accessed these papers and proved that his actions were in contempt of the Apex Court’s order. The Bombay High Court found him guilty and sentenced him to imprisonment for a month. However, activists discovered informally that he had spent many days in a plush hospital claiming ill health instead of serving his jail term. Suspecting foul play the activists sought copies of his medical records under India’s RTI Act to ascertain the status of his health. The information was denied initially on the ground that disclosure would violate his privacy - a valid ground to reject a request for information. The Public Information Officer also argued that no public interest would be served by

disclosing such information. The activists eventually moved the Bombay High Court for disclosure of the ex-Minister's medical records. The Bombay High Court ruled that disclosure of his medical records indeed was in public interest as the people had the right to know whether he had escaped his prison term by falsely claiming poor health. The records were eventually released and it was shown that he spent barely a week in jail. He was hospitalized for the remaining duration of the month despite having no major complaints that required hospitalization for such a long period of time. Thanks to this revelation the ex-Minister was sent back to prison to serve the full term of imprisonment. Mr. Nayak emphasized that RTI is a powerful tool to speak truth to power and to ensure that justice is served.

Mr. Nayak concluded his speech by expressing his enthusiasm for a stronger partnership with civil society organisations in Kenya to ensure widespread use of the ATI Act and to advocate for its effective implementation. Making government accountable and bringing the individual back to the focus of democratic governance were the main purposes of an ATI law, he emphasised.

## **1.2 Situating the ATI Act in the Context of Governance and Developing Processes in Kenya**

### **Prof. Yash Pal Ghai, Founder Director, Katiba Institute**

Professor Yash Pal Ghai, Founder Director, Katiba Institute (KI), began his speech by highlighting the importance of interpreting Article 35 in the context of other Articles in the constitution. According to Professor Ghai, Article 35 goes beyond the right to information it expands upon people's sovereignty. Furthermore, he stated, that Article ensures people can access information from any public entity and some private entities. The second part of Article 35 states that every person has the right to the deletion of incorrect information about them contained in the records of the government or from other organizations. Professor Ghai then dwelt upon Section 3 of the Act which obligates the state to proactively publicize any important information affecting the nation or an individual.

Professor Ghai then provided examples of access to information procedures and regulations from other jurisdictions. He pointed out that in the United Kingdom when there is critical legislation to be enacted, the government conducts public consultation through the mechanism widely known as "green papers". Green papers are consultation documents produced by the government on which they elicit and gather public opinion. Their aim is to allow people to give their feedback on policies or legislative proposals which are considered during the parliamentary discussion on the bill or legislation. Professor Ghai encouraged the participants to consider advocating something similar to these green papers as it promotes meaningful public participation in law and policy making in Kenya.

He emphasized the use of Article 35 for advocating for proactive information disclosure in government at all levels. It is one of many provisions of the Kenyan Constitution that deals with obligatory disclosure of information, he added. Furthermore, a citizen should not be required to ask or seek the information they should already have access to. Professor Ghai then outlined the responsibilities of the State as listed in the preamble of the Constitution. He said that there are many more provisions in the Constitution that implicitly promote Article 35 including the portion on devolution. He emphasized his point by providing the following inputs:

- The State was created to serve the people and it should be transparent. The people are the owners of the Constitution and the State is there to serve them. This is repeated several times throughout the Constitution.
- The people are the ultimate custodians of the Constitution, not the government.
- The people should uphold the Constitution by assuming responsibility and taking an active role in decision-making processes.
- In order to have Article 35 and the ATI Act fully implemented, we need to look beyond Article 35.

Professor Ghai called attention to several provisions in the constitution including:

- ❖ Article 10 which is concerned with the fundamental principles of governance, state information, and human rights.
- ❖ Chapter 6 in the constitution which is on the governing behavior of politicians and public servants and their obligation to practice basic standards of conduct.
- ❖ Article 73 under Chapter 6. He emphasized that if Article 73 were to be fully implemented there would in fact be no requirement of Article 35. Article 73 mentions about the responsibilities about leadership and lists down the guiding principles of integrity and accountability in public decisions and actions. He felt that if these principles are followed in letter and spirit it would be much easier to realize the goals set out in Article 35 which deals with freedom of information.
- ❖ Article 118 which promotes Parliament's responsibility in promoting engagement.
- ❖ The connection between Article 35 and Article 47 i.e. the right to fair administrative action.

He then urged that action should be taken to revive Chapter 6 of the constitution which deals with leadership and integrity. The Chapter is predicated upon the assumption that State officers are the nerve Centre of the Republic and carry the highest level of responsibility in the management of state affairs and, therefore, their conduct should be beyond reproach. He also urged that citizens should actively hold the judiciary accountable for its actions as well as other branches of government including the Parliament. He illustrated his point saying that the Parliament has an obligation to involve people in the process of lawmaking which would, therefore, increase public participation. He added that public participation is only possible when people begin understanding what the government is doing and have the opportunity to comment on government processes and procedures.

Professor Ghai concluded his presentation by calling attention to the Government's obligation to provide good governance, integrity, transparency, and accountability to the people. The State owes people more attention and the tools to practice meaningful participation, he added. He said that there needs to be a revamping of the system and the government and citizens need to actively enforce what is written in the Constitution and begin holding the government accountable. The notion of sharing information is a part of people's sovereignty and should be actively pursued, he concluded

### **1.3 Audio-Visual Clip on Access to Information and Open Discussion**

In the next session participants watched a three-minute [audio-visual clip about a student](#) approaching a government office to offer her services as a freelance researcher. In the course of the video, she negotiates the maze of bureaucratic procedure for submitting her application. The Spanish language audio-visual snippet was developed to convey the image of a citizen who is empowered with information about governmental procedures and is able to engage with public functionaries with confidence and on an equal footing.

Mr. Venkatesh Nayak, CHRI facilitated a discussion on the participants' impressions and takeaways from the short film. Discussions centered on the actual experience of many citizens who visit government offices to seek access to some service but are often frustrated by bureaucratic procedures and red tape.

One of the participants said, he noticed that the public servant treated the student in a callous manner because she was a woman. This was discriminatory attitude he said. The official in the video kept asking her for form after form to be filled up and every time the student was ready with the necessary forms and handed them over to him. He simply could not shoo her away like he was probably doing with others who were less knowledgeable. This clearly shows she had

done her research and had come prepared to handle every possible obstacle. In the end, she got her clearance by forcing the hand of the official to put the stamp of approval on her application because she had all the information she needed to deal with the official's demands regarding procedures.

Then the participants listed the important learnings from the video. Some participants pointed out that background research helps a lot in navigating the bureaucratic system; the officers cannot take an applicant for a ride if he or she is well informed. Another participant pointed out that this video aims at raising awareness about the democratic rights a citizen has and how knowledge empowers a person to deal with bureaucratic red tape. Some participants felt that it is the government's responsibility to provide citizens with the tools they need to engage with public institutions and officials in an effective manner.

The film also brought out the importance of proactive disclosure of information by government offices so that government decision-making processes become predictable for citizens i.e., with adequate prior knowledge of such procedures a citizen will have some degree of certainty about the outcome of such procedures if all requirements are fulfilled. Participants agreed that the citizens' experience of apathy or maltreatment in government offices would change considerably if they had more access to information about decision-making processes in real time. Mr. Nayak also pointed out that RTI not only empowers people with information but it also holds up a mirror to public authorities about the impact their functioning has on people who approach them.

#### **1.4-Perspectives on the Access to Information Act 2016**

##### **Ben Nyabira, Program Officer, Katiba Institute**

Mr. Ben Nyabira presented an overview of the state of implementation of the ATI Act in Kenya. He emphasized that the absence of ATI regulations that contained the detailing of the law should not act as a hindrance for people to make requests for information from public entities. The Act had come into force and furnishing of information did not have to wait for the regulations. Moreover, according to the Act, public entities are required to put in place systems and procedures for complying with the ATI Act within a period of one year. They had no choice but to start furnishing information to requestors in accordance with the law after the completion of the one year preparatory period. The ATI Act also stipulates a deadline of three years within which all entities covered by the law are required to ensure that their records are digitized and crucial information posted on their websites. Although few public entities had complied with these requirements, there was optimism that with the Commission on Administrative Justice (CAJ)- the independent statutory oversight body having new commissioners would guide the implementation process and ensure that all public and private entities complied with the requirements laid down by the Act.

#### **1.5 Sharing Experiences on Seeking Information Using the ATI Act**

##### **Walter Mwanja, Midrift Human Rights Network**

The next session was designed to introduce the participants to the procedure of making ATI requests and also to hear from them about their experience so far of using the ATI law. Mr. Walter Mwanja of Midrift Human Rights Network opened the session by going through the procedures of making a request and then gave some examples of types of information one might seek. For example, the number of applicants seeking health clearance in a particular county and the criteria in which healthcare clearances are given could be one such category. He also mentioned that information is not easily accessible to a person if he or she does not live in Nairobi. There are transport and time constraints that pose an obstacle for obtaining information. The Act requires that information should be readily available to everyone in Kenya whether they live in Nairobi or Lamu or elsewhere. Mr. Mwanja then expressed a concern about the mode of making a request. He wanted to know whether making a request in person or through email, both modes had the same level of legal authority and formality. Mr. Mwanja then pointed out the challenges faced by those who try to access information by using the ATI Act. He also said that people are generally discouraged regarding the usage of the ATI law due to the pervading culture of secrecy across all levels of the

bureaucracy, the lack of regulations, and the general lack of effective implementation and absence of timely response from public entities when they receive an information request.

He then invited other participants to share their experience of using the ATI Act for seeking information from entities covered by the law. The participants mentioned about the various public and private entities from where they sought information. Some of the public and private entities they were seeking information from included:

- The National Land Commission
- County Government of Nakuru
- Gazette News Officer
- Ministry of Health

The participants mentioned that they had asked for information regarding compensation schemes for victims of violence, budget implementation reports, details of specific crimes that had been reported in their area, schemes supporting health workers etc. They pointed that the rate of success in obtaining information from the public entities was very low.

Some of the concerns and difficulties that were raised by the participants were:

- Receiving no response at all from the entity despite the ATI Act stipulating a time limit for a positive or negative response.
- Receiving a response but then not receiving the information as promised.
- Delayed supply of information.
- Public entities publishing false and misleading information on their websites.
- Information being denied saying it is highly classified without any reasonable explanation for such denial.
- Sources of information e.g. (the police) refusing to speak to reporters.
- Lack of knowledge about whom to make the request to.

One of the participant pointed out that there is need for accessible and affordable legal aid for dissatisfied information requestors. He argued that there is a need for capacity building of ATI activists so that they may represent their case in Court when a public entity denies the requested information. The participant added that engaging professional legal counsel was not affordable for ordinary citizens if the information supplied is misleading or is not provided at all. ATI being a constitutionally guaranteed fundamental right, citizens had the option of going to courts for its enforcement apart from the dispute resolution process that the law provided through the CAJ. He said that CSOs must also be made capable to provide such legal aid to ordinary citizens when information is denied to them in a wrongful manner.

Another participant pointed out that since there is no agreed format or pro-forma for seeking information, it should not become a reason for public entities to refuse access to information. He further pointed out that there is lack of goodwill in many public bodies which has led to such impunity and resistance to the sharing of information.

It was observed by one of the participants that many entities acknowledge receipt of an ATI request but sometimes never provide the complete information e also mentioned that sending ATI requests through e-mail had a risk that it would not even be acknowledged as received. Mr. Nayak pointed out that the best practice to send ATI requests is through recorded surface mail. In India many citizens send information requests through registered post along with an acknowledgement card that must be returned to the sender by the recipient. This creates a paper trail for the despatch and receipt of an information request whose existence cannot be easily denied by the public entity.

The participants were then urged by the resource persons to use the tool of ATI to challenge the normalization of corruption and impunity for wrongdoing in Kenya. There was a suggestion that forming a platform to exchange ATI-related information and experiences would greatly contribute to bringing the ATI users together as a community to help each other with advice and assistance when necessary.

### **Esther Ahulu, Senior Programme Officer, ATI Programme, CHRI, Ghana**

Ms. Esther Ahulu shared the Ghanaian experience with their right to information bill which has not been enacted by Parliament yet. Although the bill has not been passed in Ghana Ms. Ahulu pointed out the importance of RTI in the daily lives of citizens and the imperative of ensuring transparency and accountability within the government.

Ms. Ahulu spoke about the importance of empowering citizens to use the existing provisions in Kenya because some countries, like her own, are not as fortunate to have their Constitutions lay down such enabling and empowering provisions. Second, she urged the participants to be fully aware of their rights in order to use them to their fullest capacity. She also gave suggestions on using the media as a tool to promote advocacy on the issue and for verifying information. This way there is a little misuse of information. In Ghana, the government keeps on making excuses for not passing the right to information law, she said. This has been going on for more than a decade now, she said.. Ms. Ahulu closed her remarks by encouraging Kenyans to increase capacity building and test the access to information act to its full extent.

### **Session 2: Drafting information requests**

This session was designed to help improve the skills of participants to draft concise and precise information requests under the ATI law. They were divided into four smaller groups and each group chose a topic involving a subject of public interest. Through internal discussions each group was asked to:

- a) identify the key issue or problem about which that they would select to file an ATI request ;
- b) identify the kinds of information related to the issue that they would like to request through the ATI Act and identify the public entity that holds the information in order to target it with formal requests;
- c) draft the information request to seek the information so identified; and
- d) explain how the participants would use the information if the public entity provided access to it.

The participants selected topics for ATI interventions in the group discussions, then drafted their ATI requests and came back to present them to the plenary. The resource persons and participants discussed the quality and content of each draft information request in details and provided suggestions for making them sharper, more concise and manageable.

### **GROUP 1:**

Group 1 filed an ATI request on the funds spent on the refurbishment of Nakuru county Assembly chambers during the financial year 2017-18. The ATI queries that were framed by the members of Group 1 were designed to elicit the following information:

- Status of the project

- Cost incurred in the project
- Name of the contractor
- Expected date of completion
- Bill of Quantities (a detailed statement of work, prices, dimensions, and other details, for the erection of a building by contract),
- Details of public participation during the conceptualization of the project.

The group was advised that some of the information may be already available on the websites of the public entity concerned. If some of the information is already it would help to cross-verify the data received through ATI and to point out discrepancies if any to the government. The Group was also advised that it was always better to use only the designation of the information access officer while addressing the request instead of the name of the incumbent. This would obviate the possibility of the ATI request coming back unanswered simply because the named officer was no longer holding that post. In India, Mr. Nayak of CHRI pointed out that RTI applications addressed to a public information officer by name are returned unanswered if such officer has been transferred out or has retired from the job. Addressing the ATI request to an officer by designation only would ensure that whosoever is the incumbent, would be duty bound to send a reply to the request.

## **GROUP 2:**

Group 2 filed an ATI request to obtain information about the allocation of HIV/AIDS Awareness activity Funds for Turkana road in Nakuru town. Participants pointed that it was government policy to set aside some of the project funds for HIV/AIDs awareness activities while sanctioning any developmental project. The ATI queries that were framed by of the members of Group 2 were as follows:

- The budget allocated for the road and the HIV/AIDs awareness campaign
- The activities conducted under the scheme
- Who is responsible and how the activity is being conducted
- The level of community involvement in the activity.

Mr. Nayak, CHRI appreciated the precision with which the queries had been framed. However if the participants want to seek detailed information it is always better to have some background research of the domain with respect to which the queries are raised. So keeping track of news reports etc. would help framing better queries on the subject. He also suggested that using the words like “steps to ensure public participation” rather than “the level of community involvement in the activity” would have a better chance of obtaining the required information He pointed that after drafting an ATI request it was necessary to put oneself in the shoes of the information access officer and read it to ascertain whether it was clear enough and explained exactly what kind of information was being requested. Then the language must be edited where necessary to make it more precise and concise. He advised that participants should make use of the already available information for conducting background research to enrich their ATI requests. He told the participants to look up government maintained websites etc. to find out if the information is already available and also to find out which is the public entity which is supposed to hold the information. This would help them to seek and receive information which they can put to their use fulfilling the specific need for which the information was sought in the first place.

## **GROUP 3:**

Group 3 filed an ATI request to obtain information regarding recruitment of Early Childhood Development and Education teachers (ECDE) teachers in Nakuru County. The ATI queries framed by the members of Group 3 were designed to obtain the following information:

- Terms of Reference (TOR) for the appointment of the teachers.
- Budget allocated for the purpose
- Details of advertisements published for these posts
- Applications received
- Shortlisted candidates

Mr. Nayak pointed out regarding the queries in the ATI application that most of the information that has been sought in the ATI application is likely to be already available in the public domain. He advised the participants to focus ATI queries on those areas where there is gap in information. This helps in gathering the precise information for the precise purpose. He added that the gaps in information can be identified if the information available in the public domain is looked into and analyzed before filing of an ATI request.

#### **GROUP 4:**

Group 4 filed an ATI request to obtain information regarding the use of funds for the construction of a bridge in Nakuru County. The ATI queries framed by the members of Group 3 were designed to obtain the following information:

- Bill of Quantities (a detailed statement of work, prices, dimensions, and other details, for the erection of a building by contract),
- Funds disbursement schedule of the project
- Cost of project and the work plan of the project.

Mr. Nayak pointed out that prior to making such an information request, it would be useful to apprise oneself about the procedures involved in carrying out such infrastructure projects. Often the procurement procedures etc. are published as a separate document for guidance or are included in the General Financial Rules applicable to all public authorities as was the case in India. The ATI request could then be drafted in a manner to detect any deviation from these laid down procedures. Often such deviations are the cause and effect of corruption, he said. Reading such rules would also help a requestor identify precisely the kinds of official records or documents that will contain the requisite information. Seeking copies of such documents would make it easier for the information access officer also to process such requests.

Overall, the participants agreed that the session was useful and relevant and it has motivated them file ATI requests more frequently to get in the habit of accessing information through ATI requests. Although due to paucity of time detailed evaluation forms could not be filled up the participants have shared their thoughts on the workshop.

One of the participants felt that such workshops are opportunities where people working in different areas but interested in the common theme of ATI meet and exchange ideas. These kind of workshops have a multiplier effect as each participant learning from here will spread the knowledge further. He felt that more such workshops should be conducted.

Another participant felt that a one day workshop was not enough for the participants to learn and process so much information. Although the workshop was immensely helpful, having a longer workshop would yield better results, he felt.

Some of the participants said that the workshop was a good learning experience. They felt that having their own social media group for sharing experiences with each other of filing ATI requests would make this a sustainable effort.

The participants felt that more sensitization sessions on the ATI Act at universities and academic institutions on ATI in local languages would help spread awareness and use of the ATI Act in a big way. They were also encouraged to hold such smaller workshops locally at their own initiative.

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**ANNEXURE 1**



**Workshop on the use and implementation of the  
Access to Information Act 2016**

**for**

**Civil Society Representatives in Kenya**

**with support from**

**Commonwealth Foundation**

**November 16**

**Ole Ken Hotel, Nakuru**

**Agenda**

**Objectives:**

- to identify key issues involved in using and implementation of the ATI Act in Kenya;
- to better understand the procedures for seeking information under the ATI Act;
- to explore the value of the access to information (ATI) as a tool for ensuring greater transparency and accountability;
- to use ATI for the purpose of evidence building to ensure greater transparency and accountability of public entities.

<b>Time</b>	<b>Topic</b>	<b>Resource Person/ Moderator</b>
8:00-8:30am	Arrival and registration	
<b>Session 1: Introduction and experience sharing</b>		
8:30-9:00am	Introduction – Katiba Institute (KI)  Remarks from:  Christine Kuria, Programmes and Operations Manager, Katiba Institute (KI)  Joseph Omondi, Executive Director, Midrift Human Rights Network  Venkatesh Nayak, Programme Coordinator, Commonwealth Human Rights Initiative (CHRI)	KI  Midrift  CHRI
9:00-9:15am	Situating the ATI Act in the context of governance and developmental processes in Kenya	Prof. Yash Pal Ghai
9:15-10:15am	Viewing audio-visual clipping on ATI and open discussion	CHRI

	Overview of the state of implementation and the use of the ATI Act in Kenya  Perspectives by Katiba Institute	KI
10:15 – 10:45am	Sharing of experiences by participants who might have already used the ATI Act for seeking information	Midrift and KI
10:45-11:00am	Coffee/Tea Break	
<b>Session 2: How to get information – Understanding ATI procedures</b>		
11:00-11:45am	Presentation on the ATI procedures	KI
11:45-12:30pm	Q&A	
12:30-1:00pm	Identification of issues for drafting ATI requests	CHRI
1:00-1:45pm	Lunch	
<b>Session 3: Drafting information requests</b>		
1:45-2:30pm	Drafting information requests under the ATI Act (Group work)	KI
2:30 – 3:45pm	Presentation of the draft ATI requests and discussions in plenary	
3:45-4:15pm	Presentation on the Indian experience of the use of ATI by civil society and media sector	CHRI
4:15-4:45pm	Conclusion and way forward	CHRI and KI
4:45pm-	Tea and departure	