



Women and Access to Information; barriers and opportunities in Freedom of Information Act



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Abstract

This paper assesses the gendered access to information needs and how women can be fully equipped to enjoy their right to information in Zimbabwe. The author's focus on: freedom of information in general, freedom of access to official documents/information as stated in the Freedom of Information Act (known as FOI) and the gaps and opportunities for enhancing access to information for women, men, boys and girls. This paper is based on the author's review of secondary data on access to information for women in Zimbabwe which reveals that the gaps related to submitting of requests for information which require written requests only, money related challenges and the time period before one can access information. They are also opportunities on the use of language and the provision of accessing medical information which has been made part of the FOI Act. We draw upon this secondary data to explore potential connections between the continuing lack of strong support from the public institutions and legislation to account for women's limited participation and access to adequate health care in society.

Key words: Zimbabwe, human rights, right to information, women, freedom of information, access to official data.

1. Introduction

Information remains a very crucial commodity for any person or groups of persons and its use in making decisions has been noted by many scholars and researchers. While everyone needs information, women particularly need information on issues affecting their health, for their social and economic development, and as a means to contribute to sustainable economies. Access to information is intrinsically linked to the realization of United Nations Sustainable Development Goal (SDG) 5: Gender Equality and Empowerment of Women and Girls, and in turn contributes to the achievement of other SDGs. Access to information, as defined in this report, is a human rights norm which entails an enabling environment that allows individuals to access, use, and disseminate information and further develop their capabilities to apply this information meaningfully in their everyday lives. The development of their capabilities is key to their equality and empowerment, the objective of Goal 5, while the overall focus of the SDGs is on empowering the poorest and hardest

to reach. In terms of equality, empowerment, and access to information, girls and women in less developed countries are those who have the least and need the most. Girls' and women's increased access to information will not only contribute to their empowerment but will also have a beneficial impact on society as a whole.

In the struggle for the right to information and expression, the freedom to access official information has been acquiring greater salience. Though according to Walby and Larsen (2012), legislation to ensure public access to official records can be traced to centuries ago, it was only after the Second World War, after the experience of Holocaust and the authoritarian regimes and dictatorships that engendered it, that the crucial importance of the right to information was fully recognized.

In contemporary society, information has increased its power and when diligently used, can spur development of countries, grow economies, promote democracy, good governance and respect for human rights. For women, access to information would bring about great transformational change in the quest to challenge and reform patriarchy; which remains the biggest barrier for women participation in all spheres of life. However, Freedom of Information (FOI) has not been readily acceptable in Zimbabwe where the state has been largely opaque and secretive in its operations. The State in Zimbabwe has always had an inclination towards control of information available to the citizens, civil society and political actors. This saw the enactment of the Access to Information and Protection of Privacy Act (AIPPA) in 2002, a draconian piece of legislation which was used by the State to deny freedom of information (Makumbe; 2002). The same Act was also used to control the media space and determine which journalists could or could not work in the country.

The passage of Constitutional Amendment 20 of 2013 after a referendum brought about a new legal framework which recognized FOI. The Constitution in Sections 61 and 62 provides for 'freedom of expression and freedom of the media and access to information.' These two fundamental rights collectively set the constitutional framework for FOI in Zimbabwe. However, it was only in 2019, six years after passage of the Constitution, when the government drafted the FOI Bill and only in 2021 that it was passed into law. It is clear that the government only passed the legislation as a response to both internal and external pressure as well as the recognition that it is part of the modernization process (Banisar, 2004). The World Bank (2004) further postulated that FOI laws are driven by the democratic thinking that public institutions hold information not for themselves

but for the public good, hence the passage of FOI by the Government of Zimbabwe (GOZ). Furthermore, the Zimbabwe Human Rights NGO Forum (2011) also points to the accessibility of government information and openness of government on its activities as a positive sign of good governance.

However, merely having FOI laws is not enough and sometimes doesn't necessarily translate to improved access to information as some laws such as AIPPA were in fact barriers to accessing information. For a FOI law to be effective, the World Bank has provided seven guiding factors which must be considered namely:

- i Scope of coverage of disclosures
- ii Procedures of accessing information
- iii Exemptions to disclosure requirements
- iv Enforcement mechanisms
- v Specified deadlines for release of requested information
- vi Sanctions for noncompliance
- vii Proactive disclosure

The World Bank further postulate five standards which must be met by any FOI law namely (i) the right to make oral requests, (ii) an obligation for public bodies to appoint information officers to assist requesters, (iii) an obligation to provide information as soon as possible and, in any case, within a set time period, (iv) the right to specify the form of access preferred such as inspection of the document requested, an electronic copy or a photocopy, and (v) the right to written reasons for any refusal of access.

It is in this context that this paper will critically examine the FOI Act and how it promotes access to information by women, including sexual and reproductive health rights information. The paper will also look at the barriers and opportunities existing in the FOI Act for women and then give recommendations to civil society and policymakers on how to deal with the barriers while exploiting the opportunities.

2. Zimbabwean Context

Several regional and international instruments that provide for the right of access to information have been ratified by Zimbabwe, creating significant obligations for the country. For instance, Article 19 of the Universal Declaration of Human Rights, Article

19 of the International Covenant on Civil and Political Rights, and Article 9 of the African Charter on Human and People's Rights (the Charter) provide that: "Every individual shall have the right to receive information". The Declaration on Principles of Freedom of Expression in Africa, which the African Commission on Human and People's Rights adopted, further expands the right of access to information within the African continent. In Zimbabwe, the right to access information is provided for in Section 62 of the Constitution (2013, hereafter the Zimbabwean Constitution) has clauses which provide for information to be availed to citizens. Section 62(1) prescribes that every Zimbabwean citizen or permanent resident, including the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, insofar as the information is required in the interests of public accountability. Section 62(2) also highlights that every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, insofar as the information is required for the exercise or protection of a right. Through Section 62(3), every person has a right to the correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of the government at any level, and which relates to that person. Furthermore, the Zimbabwean Constitution has a clause on access restrictions as Section 62(4) highlights that legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defense, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

3. Theoretical framework

Access to information is recognized by the United Nations (UN) as a fundamental human right and Article 19 of the Universal Declaration (UN, 2015) states that "everyone has a right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information without barriers." The African Union's (AU) African Charter on Human and People's Rights acknowledges access to information as a human right through Article which

states that “every individual has the right to receive information.” What is notable from the UN and AU is the joint recognition that FOI is vital for the enjoyment of other rights, promotion of good governance, democracy and rule of law. It can be further observed that FOI is important for the advance of women’s rights and empowerment including access to SRHR information. This paper used the Model Law on Access to Information for Africa (hereinafter Model Law). The Model Law was developed by the African Commission on Human and Peoples’ Rights (ACHPR, 2013). To provide a theoretical framework to the research, the five (5) aspects set by the World Bank will be used to assess the gendered impact of the FOI Act in Zimbabwe.

4. Objectives of the research

The purpose of this study is to broadly look at how the gendered impact of the recently enacted FOI Act in Zimbabwe, with emphasis on how it affects women’s enjoyment of other rights. In addition, the study also looked at gaps and opportunities which the FOI Act presents for women, girls, boys and men. The following are the specific objectives of this study:

- i) To undertake a gendered review on the gaps and opportunities in the recently enacted FOI Act for access to information for women, boys, girls and men in Zimbabwe.
- ii) To evaluate the nexus between access to information and enjoyment of SRHR by women in Zimbabwe.
- iii) To review the link between access to information and combating Gender Based Violence (GBV) in Zimbabwe.

5. Methodology

The research paper made use of a qualitative research methodology, key informant interviews (KIIs) and a case study design. The case study focused on Zimbabwe and the recently passed FOI was used as the unit of analysis to obtain nuanced understanding of the subject matter. A total of 25 documents were reviewed for purposes of this study but not all of them had the necessary information for this study. Reviewed documents included the FOI Act, repealed AIPPA, MISA Zimbabwe position

papers, newspaper articles, PhD theses, books, monographs and website articles.

6. Findings

6.1 Freedom of Information Act and women’s access to information

At an international level, Zimbabwe is a State Party to a number of regional and international conventions and treaties that support gender equality in particular the Convention on the Elimination of All Forms of Discrimination Against Women- the CEDAW and the Optional Protocol to the African Charter on the Rights of Women in Africa. While women and girls constitute 52% of the population, they still lag behind across key sectors in the country.

Despite progressive laws and treaties in support of gender equality, the biggest challenge has been the implementation of these formal rights and their translation into tangible gains for women and girls. Gender Equality requires equal access to and enjoyment by boys and girls, women and men of socially valued goods, opportunities, resources and rewards (UNFP; 2015). Achieving gender equality requires changes in institutional practices and social relations through which gender disparities are reinforced and sustained.

The 2019 Zimbabwe Multiple Indicator Cluster Survey (MICS) shows staggering disparities in women and men’s access to media. According to the survey, while women and men in Zimbabwe had low access to various forms of mass media, men were twice more likely to have access to all three forms of mass media (radio, television and newspaper) than women. The research pointed to more men (36%) using the internet compared to women (27%) and men being almost twice more likely to possess computer skills than women, 22% and 13%, respectively.

Research by Media Monitors (2016) shows that twenty-five percent of men read a newspaper weekly compared to 14% of women. The study also shows that 57% men and 44% women listened to a radio weekly, while 43% men and 38% women watched television in the same period. Mobile phone usage was very high for both women (90%) and men (89%). Almost 9 in 10 households owned a mobile phone; while 2 in 5 owned a radio; 36% owned a television set, 15% owned a computer and a mere 2% owned a fixed telephone line. These gaps are

further widened by the urban-rural divide. The MICS found that 11% of women aged 15-49 in urban areas are exposed to newspapers on a weekly basis compared to 2% in rural areas.

ICTs do offer huge opportunities for improving the ways that communities and individuals operate by providing alternative, universal and often cheaper ways of accessing and disseminating information, and the Internet, in particular, has had a huge impact on the development of the information society. Although the Internet has been hailed as an emancipating and democratising force it is not gender-neutral and it has been suggested that the information society is becoming increasingly divided into information 'haves' and 'have nots' with women, particularly immigrant women, minority women, women with disabilities, women in poverty and older women lacking the information resources available to others (see, for example, Houdart-Blazy, 1996).

Women who are poor, with disabilities, who live in rural areas and migrant women, are the ones who face greater obstacles in their access to information on sexual and reproductive health. In some cases, the barriers are of such a magnitude that they may constitute violations of women's rights to personal integrity, privacy, and family life, and the right to be free from violence and discrimination in contravention of the obligations in the Constitution of Zimbabwe.

Sections 3(b) and 5 of the Act are aimed at building a culture of voluntary disclosure of information by public entities and statutory bodies in line with the principles of the Model Law and Sections 61 and 62 of the Constitution. Section 5 of the Act places a duty on public bodies to have a written information disclosure policy. Disappointingly however, the Act then goes silent on how this noble intention is to be realised. This is problematic as the said bodies can simply ignore and get away with it, thus perpetuating a culture of non-disclosure with impunity.

The Act requires public institutions to designate information officers who are responsible for assisting those requesting information from these bodies. This provision is progressive as it gives anyone requesting information a point person within a public body. Further, the Act in Section 7 (1), states that requests for information may only be in writing. This means that oral requests for information are not valid under the Act which is also below the Model Law standard that recognises oral requests.

This restriction will unjustifiably inhibit the blind and illiterate from being able to seek information without the assistance of



a third party. Invariably such an arrangement will also disproportionately affect women, who tend to have lower levels of literacy in most marginalised communities; especially victims of child marriages who may need to seek information but are illiterate. Overall, there is lack of any reasonable cause as to why requests should be made in written form only other than to side-line the illiterate and marginalised.

In terms of finalizing requests as soon as possible or within a given timeframe, Section 8(1) of the Act states that requests be finalised within 21 days calculated from the day the request is submitted. An entity may extend this turnaround period by an extra 14 days in terms of Section 9 (1) beyond which, lack of a response is 'deemed refusal' in terms of Section (10). This is problematic as there is lack of a mechanism in the Act that would prevent the abuse of these deemed refusals. The only recourse an applicant has to a deemed refusal is to appeal the refusal with the Zimbabwe Media Commission (ZMC) in terms of Section (35) of the Act. Appeals to the ZMC, according to Section (36) must be lodged within 30 days of the date of notification of the decision being appealed against. The Act provides the Secretary of ZMC with powers to condone the admission of late appeals, but this is at his/her discretion in terms of Section 36 (2a (1)) and appeals must be finalised within 30 days. This whole process presents problems as, ideally, appeals should have been directed to the High Court which has a mandate for the protection of fundamental rights. Delays in this process may render some of the information irrelevant by the time the process concludes; which presents

a serious barrier to the enjoyment of the right to access information as set out in Section 62 of the Constitution.

Section (17) of the Act provides for fees that may be charged when seeking information and this is another claw back clause of the FOI. Ultimately the danger is that this will be a barrier to accessing information especially for women who are generally less economically empowered than their male counterparts. While fees for such activities with making copies of requested documents may be sensible, the charging of search fees and inspection fees is not justifiable and is open to abuse in a way that actually prevents people from seeking information. Precedents with the Zimbabwe Electoral Commission (ZEC) show that issues of fees can be manipulated to make it virtually impossible for ordinary citizens and civil society to access information.

On the other hand, they are some opportunities which the Act presents as noted with the provision of information officers in all public entities. If these are not used for gatekeeping, they are a useful means of access for citizens and civil society to information held by public entities. While the provision of a time frame in Section 8(1) is not watertight, it is an opportunity to ensure that citizens requesting information can follow up and hold the duty bearers to account. Section (16) of the Act, which provides that a request for information can be made in any of the official languages, is also an opportunity especially for access to information especially for minority groups as is Section (40) which provides for developing regulations. The Commission has power to gazette regulations and this is an opportunity for citizens and civil society to lobby and advocate for regulations which address some of the barriers such as penalties for public entities which fail to develop a written policy on access to information.

6.2 Gaps for women access to information

As noted from the foregoing subsection, there are many gaps in the FOI Act which was recently passed by the GoZ. A closer look at some of these would show that they are more adverse for women and therefore require organized lobby and advocacy to address the gaps. The first serious barrier for women under the FOI Act is in Section 7 (1) which requires that information can only be requested through written submissions. As already noted above, this is against the standards of the Model Law which requires that requests can be made through oral submissions. This affects women especially those in marginalized communities who may not have been able to attend school due

to societal malpractices such as child marriages. When such women seek information, they will not be able to read and write and therefore will not be able to access information. They are also blind women or those physically disabled who will not be able to write requests for information yet they must enjoy the same rights as all other citizens. The issue of fees in Section (17) is another worrisome barrier for women to access information under the FOI Act. Women are economically more disempowered than men and this means that it is poor women who would be disproportionately disadvantaged by this provision. In recent years, girls and women worldwide have made substantial progress toward increased access to information and achieved varying degrees of improvement to their desire, skills, and knowledge to utilize information. Yet, they still face a wide range of obstacles that prevent their access and effective use. These barriers are most prevalent in the continued pervasiveness of sociocultural obstacles. Some are general to all forms of information seeking while others are specific to the access and use of ICTs. All these barriers have to be taken into account as girls and women seek to effectively utilize information. The language of the FOI has also been criticized not to be gender neutral. It presupposes women and men have equal opportunities and capacity to access information. Owing to gender barriers and inequalities women have difficulty in accessing specific platforms where information is shared including social media.

6.2.1 Sociocultural obstacles

Perhaps the most widespread obstacles, most prevalent in but not limited to less developed countries, are social and cultural issues. These obstacles, often embedded in customary law, span a broad range from outright patriarchy to paternalism and gender stereotypes that limit girls' and women's access to and use of information. They appear at the societal level as well as in the family and can include physical violence against women and denial of the right to use technology, the prevention of women from leaving home without permission to seek information, families favoring the education of boys and giving boys preferential use of ICTs, and many other barriers. These obstacles are so numerous and with such variation between cultures that it is difficult to list them all. Among some of the aspects of patriarchy and paternalism that affect girls' and women's access to information are male attitudes that women need their permission to leave the house to seek it. In Guatemala, Liberia, and Bangladesh, Neuman showed that the majority of men shared that belief and that women feared reprisal from both their families and authorities by seeking information.

Women seeking information also suffered from negative attitudes of men in public office, leaving them afraid to ask for it (2016). The control also extended to women attending literacy classes.

“The problem is that some men don't believe that the women are going to the seminars . . . they think they are going somewhere different” (Jones, 2009, 127). 5.2.2 Gender biases and stereotypes Gender biases toward women studying or using information technology abound. Throughout the world, there are problems in attracting young women to science and technology studies. Often (predominantly male) math and science teachers, particularly but not exclusively in less developed countries, hold outmoded views that girls can't think or work scientifically and that science is too mechanical and technical for girls, thus discouraging female students. Girls are frequently encouraged to take any job or get married rather than seek higher education. Other gender stereotypes can get in the way of schoolgirls and information access. In Uganda, girls did not get access to the limited number of machines installed in school computer labs because of the sociocultural norm that “girls do not run.” As a result, boys ran and got to the computers first and refused to give them up to girls. In addition, earlier curfew hours for girls at boarding schools further constrained their use (Gadio, 2001). Many girls and women either cannot use the internet or get the last opportunity to access it when it is available in the home, and girls are given less exposure to it than boys in school. In India in the well-known “hole in the wall” experiment, the aggressiveness of boys pushing away girls prevented the girls from using the computers (Mitra & Rana, 2001).

6.3 Opportunities for enhancing women's access to information They are however opportunities for women to access information under the FOI Act. Section (16) provides that the language of access shall be any of the 16 official languages recognized in Zimbabwe. This is an important opportunity for minorities and women from marginalized communities to submit requests for information in a language which they are comfortable with. Section (40) of the Act is also an important opportunity for lobbying and advocacy for women so that the Commission puts in place regulations which can cover some of the gaps affecting women. This is particularly important to address the issue of fees and written policies for accessing information which the Act has left open ended.

6.3.1 Access to information and access to SRHR

Section (15) is also an important opportunity as it relates to health records; this means that women can request medical

information from public entities. This access is crucial especially in terms of women accessing information related to SRHR issues such as contraceptives, maternal health, cancer screening, sexually transmitted infections and HIV/AIDS.

6.3.2 Role of access to information to mitigating GBV

GBV remains a serious challenge and access to information about offenders is very important for women to be able to protect themselves. This becomes more important; for example, when a couple engages or cohabits or intends to get married access to information on whether one of them has not been convicted of GBV becomes important. The FOI Act, in theory, seems to allow a couple to approach the relevant public entity and inquire if their spouse or partner has not been previously convicted for GBV. This is an important step as women statistically tend to be highly likely to be abused by repeated offenders.

6.3.3 Language

The law also provides for the provision of information in a language requested by the applicant. This enables women to access, read and understand information for an effective and meaningful decision-making process.

7 Recommendations

In conclusion; this paper makes the following recommendations;

- Information on reproductive health rights including information on HIV and AIDS and other STI's should be available for women living with disabilities in formats that they can understand e.g., tablets, condoms should be marked with Braille for the blind.
- Media production houses must have a stipulated quota of women related issues to cover, over a period, or an issue to ensure past imbalances are addressed. The Zimbabwe Media commission should play the monitoring role on this issue.

- Campaign for the removal, eradication, or reduction in the religious, cultural, and social practices that exclude women from gaining ATI should be vigorously pursued. This would make it easier for more women to understand that they need the information, and the current practices forming barriers to women's ATI would be greatly reduced if not totally eradicated.
- The requirement of search and inspection fees should be revisited through regulations so that women from poor and marginalised backgrounds can be able to access information.
- The requirement that requests for information must be in written is discriminatory to those who are illiterate especially women survivors of child marriages, minorities and migrants who live in farms and mining communities
- The appeal mechanism must be revisited as it provides the ZMC with too much power on matters of fundamental rights which should ordinarily be adjudicated by the Courts.

8. References

ACHPR (African Commission on Human and Peoples' Rights). 2013. "Model Law on Access to Information for Africa." http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

Banisar, D. 2006. "Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws." www.freedominfo.org/documents/global_survey2006.pdf

Government of Zimbabwe (2021) Freedom of Information Act. Harare: Government Printers

Government of Zimbabwe (2013) Constitution of Zimbabwe Amendment 20 of 2013. Harare: Government Printers.

<https://www.unicef.org/zimbabwe/reports/zimbabwe-2019-mics-survey-findings-report>

MISA (Media Institute of Southern Africa) Zimbabwe. 2015. State of the Media Report 2015. Harare: MISA.

MISA (Media Institute of Southern Africa). 2004. Access to Information and Protection of Privacy Act: Two Years On. Harare: MISA.

MISA Zimbabwe. Shocking Freedom of Information Bill Gazetted. <https://zimbabwe.misa.org/2019/07/05/shocking-freedom-of-information-bill-gazetted/>

UNICEF (2019) Zimbabwe Multiple Indicator Cluster Survey (MICS)

<https://www.unicef.org/zimbabwe/reports/zimbabwe-2019-mics-survey-findings-report>

Walby K and Larsen M (2012) Access to information and freedom of information requests: neglected means of data production in the social sciences. *Qualitative Inquiry* 18: 31-42.



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