

BILL ON ACCESS TO SOURCES OF INFORMATION

PREAMBLE

Under Article 74, paragraph 1, of the Constitution of the Republic, all citizens have the right to information, which, in accordance with paragraph 4 of the same constitutional article, should be regulated by law.

The freedom of the press, which is regulated by Law no. 18/91, of 10 August, includes, among other matters, access to sources of information, as stated in Article 74, paragraph 3, of the Constitution.

One notes, however, that Law no. 18/91 of 10 August, on the one hand, mentions only access by journalists to official sources of information and, on the other, defines accessible sources only by exclusion, and not in a positive manner. It is thus omiss as to the duties of the parties concerned, and as to the guarantee of the exercise of the right in the event of conflict.

However, in the terms envisaged under the Constitution, the right to information, which includes the faculty of being informed and of divulging information, belongs to all citizens of the Republic of Mozambique.

In these terms, in order to overcome the gaps mentioned above, and to define the mechanisms for access to official sources of information, as well as to establish the rights and duties of the parties involved, under Article 135, paragraph 1, of the Constitution, the Assembly of the Republic hereby determines:

CHAPTER 1 **General provisions**

Article 1 **(General principle)**

The constitutionally enshrined right to information presupposes the free access of citizens to the sources of information.

Article 2 **(Object)**

1. Official sources of information are the object of this present law.
2. Private sources shall be equivalent to official ones whenever the public good may be at stake.

Article 3 **(Sources)**

1. For the purposes of the present diploma, sources may be documental or oral, and, whatever their nature, capable of responding satisfactorily to the desired request.
2. Written sources may consist of any authentic document.

3. Anonymous texts are not covered by this present law.

Article 4
(Objective)

The objective of the present law is to regulate the access by citizens to official sources of information or the equivalent.

Article 5
(Obligation)

The bodies and institutions of the Public Administration, public companies, and private entities, whenever the public good is at stake, are obliged to provide written or oral information, as well as the pertinent explanations, whenever this is requested of them.

The present law does not cover matters the publication of which is forbidden by other legal diplomas, such as those that involve state secrets, those that are sub judice, and those that involve the intimacy of private life.

Article 6
(Duty to inform)

1. The duty to inform shall lie directly with the topmost official of the entity to which the request is directed, but he/ she may delegate this responsibility in a habitual or case-by- case way.

2. Those who fail to comply with the duty mentioned in the previous paragraph may be held responsible in the terms envisaged in law.

CHAPTER II
Exercise of the right

Article 7
(Request for information)

1. The petitioner who wishes to gain access to any information shall specify his/her request, properly identifying him/herself.

2. The information shall be given to the petitioner or to whoever he/she indicates.

Article 8
(Access)

Access to the documents held by the entities mentioned in article 5 includes:

- a) Consultation free of charge, on the respective premises;
- b) Obtaining a copy, or reproduction by any technical means, of the document desired, through payment of a fee;
- c) Other forms that confirm the existence of the document or information desired.

Article 9
(Reply)

1. The reply to the request shall be given within 10 days.
2. At the end of this period, if there is no satisfactory reply, or a refusal, the petitioner may present a complaint to the Supreme Mass Media Council.
3. In the event that the Supreme Mass Media Council deems the refusal or imprecise reply unjustified, it shall require the entity petitioned to satisfy adequately the request, giving it a period of 10 days to do so, while communicating this procedure to the petitioner.
4. Failure to satisfy the request within the deadline set in the previous paragraph shall constitute the crime of qualified disobedience, and the Supreme Mass Media Council shall institute the relevant criminal proceedings.
5. In the event that it considers the refusal or response given as justified, the Council shall inform the petitioner within ten days, giving the reasons for its decision.
6. Appeals against the decisions of the Supreme Mass Media Council may be directed to the Administrative Tribunal.

CHAPTER III

Final provisions

Article 10

(Harmonisation with other legal diplomas)

The interpretation of the present law shall be harmonised with that of other legislation in force concerning access to official sources of information.

Article 11

(Entry into effect)

The present law shall take effect on the date of its publication.

DRAFT BILL ON ACCESS TO OFFICIAL SOURCES OF INFORMATION

BASIS

In general

Under Article 74, paragraph 1, of the Constitution, all citizens have the right to information.

The right to information means the faculty of each citizen to inform and be informed of relevant national and international facts and opinions, as well as the right of each citizen to divulge information, opinions and ideas through the press, resulting from the constitutional provision cited above, and from Law no 18/91, of 10 August - the Press Law.

- The component of the right to information expressed in the right of citizens to inform and be informed presupposes access to official sources of information.

It so happens that, in the Mozambican legal order, there is no specific regulation on the matter of access to sources of information, This is a gap which needs to be filled, particularly in the case of information concerning the public good, and thus of interest to all citizens.

Law no. 18/91, of 10 August, restricts itself solely and exclusively, in article 29, to envisaging the access of journalists to official sources of information. It does not regulate the rights and duties of the parties involved. Nor does it state the legal consequences that may flow from denying the duty of providing information.

Access to sources of information is in the interests of all citizens, and not merely journalists, as envisaged in Article 3, paragraph 1 of Law no. 18/91, of 10 August, because this right is enshrined in the Constitution of the Republic, in Article 105, paragraph 1, which establishes that the right to information (understood as being for all citizens) shall be guaranteed by the Supreme Mass Media Council.

Furthermore, we find in the Mozambican legal order Decree no. 30/2001, of 15 October, which approves the operational norms for the services of the public administration. This determines, in Article 7, paragraph 1, that the principle of transparency in force in the public administration implies publicity for administrative activity.

The same Decree also envisages, in Article 8, the principle of the collaboration of the public administration with individuals, and in this context the bodies and institutions of the public administration should provide oral and written information, as well as explanations, that individuals may request of them.

While Law no. 18/91, of 10 August, errs in enshrining access only for journalists to official sources of information, and is omiss as to the regulation of the rights and duties of the parties involved, and as to the legal consequences that may flow from denying the duty of providing information,

Decree no. 30/2001, of 15 October, did not bring substantial innovations, since it concerns only publicity for the activities of the bodies of the public administration. It is well-known that there are activities of private bodies that are related to the public good.

From the above facts, it is becoming necessary to establish specific legislation on access to official sources of information, which lays down the rights and duties of the parties involved, and sets mechanisms for guaranteeing the exercise of this right, in the event of conflict.

In particular

Following the basis expressed above, a draft bill on access to official sources of information has been designed, explanation of which in detail now follows.

The draft bill consists of a preamble and three chapters.

The preamble justifies, briefly and succinctly, the need for the law.

Chapter I concerns general provisions, Chapter II deals with the exercise of the right, while Chapter III contains final provisions.

The explanation of the bill, article by article, is as follows:

Art. 1

Article 1 establishes the general principle that the right to information presupposes free access to sources of information.

The right of citizens to information is enshrined in Article 74, paragraph 1, of the Constitution.

This constitutional enshrinement made consistent one of the fundamental pillars of democracy, which demands the existence of well informed citizens, on the assumption that without information there are no free citizens.

Indeed, only well informed citizens can evaluate the policies and actions of public and private bodies, in the case of private bodies when the matters they deal with are related to the public interest.

Art. 2

Article 2 of the draft bill defines the object of the law, the official sources of information, and makes private sources equivalent to these, when the public good is at stake.

This is the case, for example, with private universities, and private hospitals and pharmacies.

Art. 3

Article 3 defines the sources of information, which may be documental or oral.

Documental sources are the written supports of information, consisting of any authentic document.

An authentic document, for the purposes of the draft bill, is one that belongs to the author to whom it is attributed.

Art. 4

Article 4 establishes the objective of the law, the access by citizens to official sources of information.

Journalists, by the very nature of their profession, must resort to sources of information to produce complete and objective information, as required under the provisions of article 28, paragraph b), of Law no. 18/91, of 10 August.

The provisions of the present draft bill include the needs of journalists, and thus no special regulation for journalists is justified.

Art. 5

Article 5 states that the bodies and institutions of the public administration, public companies and private entities are bound to the duty of providing information.

The mention of private entities essentially concerns companies, whether or not the state has a shareholding in them.

The inclusion of bodies in which the state has a holding is due to the fact that public capital has been invested in them, which justifies public knowledge of how they are managed.

As for companies in which the state does not hold shares, that is a case of making accessible matters concerning the public good.

Art. 6

There was consensual understanding that the law should establish, without any margin for doubt, who are the figures who have the obligation to provide the information requested. This is what article 6 does, by placing this burden on the topmost official of the entity petitioned, who should organise his/her institution or company in such a way that these requests obtain the appropriate reply. And because there should be a corresponding sanction to any violation of the law, this article contains a second paragraph on holding these officials responsible, remitting to the general law concerning these materials the type of responsibility resulting, in accordance with each specific case.

Art. 7

Article 7 establishes that the petitioner must identify him/herself properly, the request must be clearly formulated so that the person receiving it knows exactly what it concerns, and it must state to whom the reply should be given

Furthermore, it is understood that the request should be formalised in such a way that it can also serve as a support for later proceedings in the event, for example, of an appeal to the Supreme Mass Media Council.

Art. 8

Article 8 has three lines that define conditions of access to the documents requested. It establishes that consultation of these documents is free of charge and is carried out on the respective premises.

The entity petitioned is also obliged to provide a copy or reproduction of the document sought, if requested, on payment of a fee.

It was thought unnecessary to state the amount of the fee. A reasonable cost is understood, in line with the practice of this body in similar cases.

Line c) of this article opens the possibility that, instead of a reproduction of the entire document, the information may be provided in another form as long as it fully satisfies the request.

Art. 9

This law would be meaningless, if it did not establish rigorous deadlines for implementation. This has been done, and ten days was deemed sufficient time for each of the stages involved.

The prominence of the Supreme Mass Media Council is justified because that is the state body set up to look after and promote the right of citizens to information.

The state, in its function as the political organisation of the citizens, cannot but call to itself the tutelage of a right such as this, which is absolutely necessary for the expression of citizenship. Indeed the state has, as its roots and its purpose, the existence of free citizens, and information is the first requirement for freedom.

Thus the failure to accept the orders of the Supreme Mass Media Council implies a crime of qualified disobedience, as well as the relevant administrative procedures.

In the event of an appeal, the present law imposes no more than what is already stated in the general law.

Art. 10

This article, in the final provisions, does no more than stress the principle, according to which any and every law must be developed within the harmony demanded of any legal system. Laws should not conflict with each other, instead, they should contribute to the harmony of the whole, strengthening a solidarity of interests, in accordance with the general interest of the community.

Art. 11

As for the entry into effect, article 11 is very clear.