



Commonwealth Human Rights Initiative

NGO in Special consultative Status with the Economic and Social Council of the United Nations

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Nitin Desai

27 October 2006

Dear Sir,

Re: Participation in consultation on *Freedom of Information Bill 2006*

I am writing from the Commonwealth Human Rights Initiative (CHRI), an international non-government organisation headquartered in New Delhi. CHRI's Right to Information Programme works to promote the right to information, in particular by assisting governments to develop strong right to information legislation and to support implementation of new access laws.

I recently read that the Government of St. Christopher and Nevis has drafted a Freedom of Information Bill (FOI Bill) that is scheduled for its first reading in the National Assembly today. I wanted to take this opportunity to commend the Government for taking this step forward. A strong and effective freedom of information regime will have enormous benefits for the people of your country, contributing to more meaningful democracy, equitable economic growth and effective development.

CHRI is very encouraged that the Government has announced that the FOI Bill will be subject to open and wide public consultation as this sets a very positive precedent for other governments in the region working on FOI legislation. CHRI would very much like to participate in the consultation on the Bill. CHRI has considerable experience in reviewing FOI Bills to ensure that they accord with international best practice openness principles. Our Right to Information team has reviewed a number of FOI Bills throughout the Commonwealth, including in the Caribbean regime, including the Cayman Islands and Belize, and drafting instructions from Bermuda, (please see http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm for more information).

CHRI would be very grateful if your Office could forward our Right to Information Programme team a copy of the FOI Bill and any related documents so that we can send our comments to the Government and any relevant parliamentary committee for consideration. Please note that in addition to our technical expertise with legislative drafting, CHRI is also available to provide assistance with developing FOI implementation plans and assisting with government training activities and public education programmes.

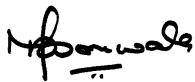
For your information, I am also enclosing a copy of two of our key right to information publications:

- CHRI's 2003 Report, *Open Sesame: Looking for the Right to Information in the Commonwealth*. Chapter 2 of this report captures the key principles that should underpin any effective right to information law, drawing on international and regional standards, evolving State practice, and the general principles of law recognised by the community of nations. Chapter 3 discusses key implementation issues.
- *Implementing Access to Information: A practical guide for operationalising freedom of information laws*. This very recent publication discusses the practical issues that governments may need to address when implementing a freedom of information law and suggest a variety of strategies for tackling the challenges of implementation.

I do hope that you will forward a copy of the FOI Bill to CHRI at your earliest convenience. Please note that our team will be sure to respond promptly with comments, within any deadline set by the Government of Parliament.

If CHRI can be of any more assistance, please do not hesitate to contact me on (0)9810 199 745 or (011) 2685 0523 or via email at majadhun@vsnl.com. Alternatively, please contact Ms Cecelia Burgman, Programme Officer, Right to Information Programme at cecilia@humanrightsinitiative.org.

Kind regards



Maja Daruwala, Director

CC:

- Hon. Delano Frank Bart, Ministry of Legal Affairs and Secretariat
- Ms. Linda Adams, Permanent Secretary, Ministry of Legal Affairs and Secretariat
- Mrs. Astona Browne, Permanent Secretary, Ministry of Justice, Pelican Mall, Basseterre, St. Kitts.

Annex 1: Arguments in support of the right to information

When presenting any Bill in Parliament, you may wish to draw on some common arguments as to why the right to information is so crucial to democracy, development and human rights. In fact, more than fifty years ago, in 1946 the United Nations General Assembly recognised that "Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated"¹ Soon after, the right to information was given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media and regardless of frontiers*" (emphasis added). Over time, the right to information has been reflected in a number of regional human rights instruments, including the African Charter on Human and People's Rights². This has placed the right to access information firmly within the body of universal human rights law.

In addition to the overarching significance of the right to information as a fundamental human right which must be protected and promoted by the state, the following arguments in support of the right should also be recalled when advocating the right to parliamentarians and other key stakeholders:

- *It strengthens democracy.* The right to access information gives practical meaning to the principles of participatory democracy. The underlying foundation of the democratic tradition rests on the premise of an informed constituency that is able to thoughtfully choose its representatives on the basis of the strength of their record and that is able to hold their government accountable for the policies and decisions it promulgates. The right to information has a crucial role in ensuring that citizens are better informed about the people they are electing and their activities while in government. Democracy is enhanced when people meaningfully engage with their institutions of governance and form their judgments on the basis of facts and evidence, rather than just empty promises and meaningless political slogans.
- *It supports participatory development.* Much of the failure of development strategies to date is attributable to the fact that, for years, they were designed and implemented in a closed environment - between governments and donors and without the involvement of *people*. If governments are obligated to provide information, people can be empowered to more meaningfully determine their own development destinies. They can assess for themselves why development strategies have gone askew and press for changes to put development back on track.
- *It is a proven anti-corruption tool.* In 2004, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. In contrast, of the

¹ UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

² See OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), 27 June 1981, Art. 9(1).

ten countries perceived to be the worst in terms of corruption, only one had a functioning access to information regime. The right to information increases transparency by opening up public and private decision-making processes to scrutiny.

- *It supports economic development.* The right to information provides crucial support to the market-friendly, good governance principles of transparency and accountability. Markets, like governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of 'perfect information' and 'perfect competition'. In turn, this results in stronger growth, not least because it encourages greater investor confidence. Economic equity is also conditional upon freely accessible information because a *right* to information ensures that information itself does not become just another commodity that is corralled and cornered by the few for their sole benefit.
- *It helps to reduce conflict.* Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. Importantly, enhancing people's trust in their government goes some way to minimising the likelihood of conflict. Openness and information-sharing contribute to national stability by establishing a two-way dialogue between citizens and the state, reducing distance between government and people and thereby combating feelings of alienation. Systems that enable people to be part of, and personally scrutinise, decision-making processes reduce citizens' feelings of powerlessness and weakens perceptions of exclusion from opportunity or unfair advantage of one group over another.

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