



Commonwealth Human Rights Initiative

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

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8 January 2007

Maja Daruwala
Director

Dear Sir,

Members

R. V Pillai
Anu Aga
K. S. Dhillon
B. K. Chandrashekar
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Harivansh
Bhagwan Das
Poonam Muttreja
Sanjoy Hazarika
Nitin Desai
Ruma Pal

Re: Urgent appeal to the Government to ensure accountability and transparency in the proposed Bill concerning intelligence and security.

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

I recently read in a news item published by The Media Institute of Southern Africa (MISA) Bulletin dated 20 December 2006 that the Government has proposed a new Bill to establish a number of institutions aimed at strengthening national security.

It is our understanding from the news report that the Bill fails to provide any clear oversight mechanisms – something that is necessary in any democratic society. An independent oversight mechanism, with sufficient resources and powers to undertake its functions effectively, is required to ensure that any bodies established under the Bill do not abuse their powers and that they can be held accountable to the people for the decisions they make. An oversight mechanism is ideally required for every body providing a public function, but is absolutely necessary when dealing with institutions established to protect national security, as the breadth of their power potentially allows them to jeopardise civil freedoms in the name of national security.

Despite the fact that there may be a need for such institutions to be established in a meeting hosted by the Botswana Council of Non-Governmental Organisations (BOCONGO), Minister Phandu Skelemani was reported to caution that although Botswana does need to catch up with the changing times on national security, the efforts of strengthening such laws should not undermine safeguarding basic human rights and freedoms particularly of expression and association.

Many jurisdictions around the world have established such bodies that will ensure proper checks and balances are in place for their security institutions. For example, the United Kingdom, the *Prevention of Terrorism Act 2005* provides for extensive parliamentary review including: regular reporting to Parliament by the Home Secretary about his exercise of the control order powers, independent review of the operation of the Act and production of an annual report, and an independent reviewer who comments on the implications for the operation of the Act of any proposal made by the Home Secretary'. I wanted to take this opportunity to endorse MISA's appeal that you consider the inclusion of such an accountability and oversight mechanism in the Bill.

FCRA Registration No. 231 650671; Registration No. S-24565 under Societies
Registration Act; Registration No. DIT (E)/2000-2006/C-390/94/1226 U/S 80-G

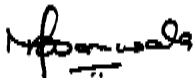
Supported by: Commonwealth Journalists Association, Commonwealth Lawyers Association,
Commonwealth Legal Education Association, Commonwealth Parliamentary Association,
Commonwealth Press Union, Commonwealth Broadcasting Association.

These mechanisms are particularly important given Botswana does not have access to information legislation which would enable the citizens themselves to play a role in keeping all national institutions accountable. As such, I also wanted to urge you to kindly reconsider our previous offer of the support of CHRI's RTI team to assist with any move by your Government to develop a national Freedom of Information (FOI) legislation including drafting a Bill that accords with best practice openness principles. Our RTI team has reviewed a number of draft right to information Bills throughout the Commonwealth, including most recently, Kenya, India, Malawi, Mozambique, Sierra Leone and Uganda (please view our website at http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm for more).

CHRI's 2003 Report, *Open Sesame: Looking for the Right to Information in the Commonwealth*, which I have enclosed for your consideration, captured 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. Article 19, an NGO which specifically works on right to information, has also developed "Principles on Freedom of Information Legislation" which were endorsed by the United Nations Special Rapporteur in 2000.¹ The African Union² and the Commonwealth³ - both of which Botswana is a member - have also endorsed minimum standards on the right to information.

CHRI would be very keen to input into any efforts by your Government to develop a FOI draft law. For your information, I am also attaching herewith our previous correspondence. If we can be of assistance with developing a model right to information Bill for Botswana, 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 Reshmi Mitra, Programme Officer, Right to Information Programme at reshmi@humanrightsinitiative.org.

Yours sincerely



Maja Daruwala

Cc

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Mr. O.A. Sesinyi, Department of Information and Broadcasting, P/Bag 0060, Gaborone Botswana.
Ombudsman Mosireletsii Public Protector, Private Bag BR 374, Office of the Ombudsman.
Mrs. Poppy Monyatsi, Directorate of Corruption and Economic Crimes, P/Bag 00344 Gaborone.
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Ms. Caroline Lubwika, Information and Research Officer, MISA Botswana, Plot 398, Kgasa Cls, Ext.4, Gaborone.

¹ Hussain, A. (2000) Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted in accordance with Commission resolution 1999/36, Doc.E/CN.4/2000/63, 5 April. See also Ligabo, A., Haraszti, M. & Bertoni, E. (2004) *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*.

² See African Commission on Human and Peoples' Rights, (2001), *Resolution on Freedom of Expression*, 7 May.

³ See (1999) Commonwealth Freedom of Information Principles, in *Promoting Open Government Commonwealth Principles And Guidelines On The Right To Know*, Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, Marlborough House, London, 30-31 March 1999.