

Embassy of Sweden in Dar es Salaam presents:

Sharing Experiences of the Right to Information

Dar es Salaam

11 December 2008

People's Access to Information and the Constitution of the Federal Republic of Tanzania

Key Provisions

Article 18(1) of the Constitution includes the right to seek, receive and impart information as part of the right to freedom of opinion and expression. Article 18(2) guarantees every citizen the right to be informed at all times of various events in the country and in the world at large which are important to the lives and activities of people also of issues of importance to society. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
	Preamble:
1	<p>The Preamble...</p> <p><i>"WHEREAS WE, the people of the United Republic of Tanzania, have firmly and solemnly resolved to build our country a society founded on the principles of freedom, justice, fraternity and concord</i></p> <p><i>AND WHEREAS those principles can only be realised in a democratic society in which the Executive is accountable to a Legislature composed of elected members and representative of the people, and also a Judiciary which is independent and dispenses justice without fear or favour, thereby ensuring that all human rights are preserved and protected and that the duties of every person are faithfully discharged:</i></p> <p><i>NOW, THEREFORE, THIS CONSTITUTION IS ENACTED BY THE CONSTITUENT ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA, on behalf of the People, or the purpose of building such a society and ensuring that Tanzania is governed by a Government that adheres to the principles of democracy and socialism."</i></p>
	<p><u>Chapter 1: The United Republic, Political Parties, the People and the Policy of Socialism and Self-Reliance</u></p> <p><u>Part II: Fundamental Objectives and Directive Principles of State Policy</u></p> <p>Article 7(2) [only applies to Part II – Part III are therefore enforceable in Court]</p> <p><i>"(2) The provisions of this Part of this Chapter are not enforceable by any court. No court shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter."</i></p>
2	<p><u>The Government and the People</u></p> <p>Article 8(1)...</p> <p><i>"(1) The United Republic of Tanzania is a state which adheres to the principles of democracy and social justice and accordingly –</i></p> <p><i>(a) sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority...</i></p>

	<p>...</p> <p>(c) the Government shall be accountable to the people; and</p> <p>(d) the people shall participate in the affairs of their Government in accordance with the provisions of this Constitution.”</p>
3	<p><u>The pursuit of Ujamaa and Self-Reliance</u></p> <p>Articles 9(1)(f) and (k)...</p> <p>“The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasises the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring-</p> <p>...</p> <p>(f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights...</p> <p>...</p> <p>(k) that the country is governed according to the principles of democracy and socialism.”</p>
4	<p><u>The pursuit of Ujamaa [a.k.a. “Familyhood”] and Self-Reliance</u></p> <p>Articles 9(1)(f) and (k)...</p> <p>“The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasises the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring-</p> <p>...</p> <p>(f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights...</p> <p>...</p> <p>(k) that the country is governed according to the principles of democracy and socialism.”</p>
<p><u>Chapter 1: The United Republic, Political Parties, the People and the Policy of Socialism and Self-Reliance</u></p> <p><u>Part III: Basic Rights and Duties</u></p>	
5	<p><u>Freedom of Expression</u></p> <p>Article 18(1)... [The Office of the Clerk of the National Assembly, the “chief executive in the National Assembly”, is created under Article 87 and accordingly any information requests to the National Assembly would likely be directed to this office.]</p> <p>“(1) Without prejudice to expression the laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right of freedom from interference with his communications.”</p>
6	<p><u>Freedom of Expression</u></p> <p>Article 18(2)...</p> <p>“(2) Every citizen has the right to be informed at all times of various events in the country and [in] the world at large which are of importance to the lives and activities of the</p>

	<i>people and also of issues of importance to society.”</i>
7	<p><u>Freedom to participate in public affairs</u></p> <p>Article 21(1)...</p> <p><i>“(1) Subject to the provisions of Article 5 [on electoral rights], 39 [on qualifications for election as President] and 67 [on qualifications for membership in Parliament] of this Constitution and of the laws of the land in connection with the conditions for electing and being elected or for appointing and being appointed to take part in matters related to governance of the country, every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law.”</i></p>
8	<p><u>Freedom to participate in public affairs</u></p> <p>Article 21(2)...</p> <p><i>“(2) Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.”</i></p>
9	<p><u>Limitations upon, and enforcement and preservation of basic rights, freedoms and duties</u></p> <p>Article 30(2)(d)...</p> <p><i>“(2) It is hereby declared that the provision contained in this Part of this Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purposes of–</i></p> <p>...</p> <p><i>(d) ...prohibiting the disclosure of confidential information ...”</i></p>
10	<p><u>Power to proclaim state of emergency</u></p> <p>Article 32(3)...</p> <p><i>“(3) In the event a state of emergency is proclaimed in relation to the whole of the United Republic, or to the whole Of Mainland Tanzania or the whole of Tanzania Zanzibar, the President shall forthwith transmit a copy of the proclamation to the Speaker of the National Assembly who, after consultation with the Leader of Government Business in the National Assembly shall convene a meeting of the National Assembly within not more than fourteen days, to consider the situation and decide, whether to pass or not to pass a resolution, which has to be supported by the votes of not less than two thirds of all members, in support Of the Proclamation of a state of emergency issued by the President.”</i></p>
<p><u>Chapter 2: The Executive of the United Republic</u></p> <p><u>Part I: The President</u></p>	
11	<p><u>Power to declare war</u></p> <p>Article 44(2)...</p> <p><i>“(2) After making the declaration, the President shall transmit a copy of such declaration to the Speaker of the National Assembly who, after consultation with the Leader of Government Business in the National Assembly, shall within fourteen days from the date of the declaration, convene a meeting of the National Assembly to deliberate on the prevailing situation and to consider whether or not to pass a resolution in support of the declaration of war made by the President.”</i></p>
12	<p><u>Impeachment by the National Assembly</u></p> <p>Article 46A contemplates the impeachment of the President and establishes a protocol to be carried out should the occasion arise (these provisions apply equally to the Vice-President by virtue of subarticle 50(5)). This protocol involves the establishment of a “Special Committee of Inquiry” required to</p>

	<p>inquire into and analyse the charges preferred against the President, including affording the President the opportunity to be heard in his defence in accordance with the procedure prescribed by the Standing Orders of the National Assembly” [Article 46A(6)]. The combination of subarticles 46A(8) and (9) then requires that the report prepared by the Special Committee be tabled in Parliament, discussed, and that the President be afforded an additional opportunity to be heard.</p> <p><i>“(8) After the Speaker receives the report of the Special Committee of Inquiry, the report shall be tabled before the -National Assembly in accordance with the procedure prescribed by the Standing Orders of the National Assembly.</i></p> <p><i>(9) After the report of the Special Committee of Inquiry is submitted pursuant to subarticle (8) the National Assembly shall discuss the report and shall afford the President the opportunity to be heard...”</i></p>
<p align="center"><u>Chapter 2: The Executive of the United Republic</u> <u>Part III: Prime Minister, Cabinet and the Government</u></p>	
13	<p><u>Secretary to the Cabinet</u></p> <p>Due to the ambiguity created in Article 60(c) it appears that, coupled with the unbridled freedom to seek and impart information in the language of Article 18, a citizen of Tanzania has a strong claim to Cabinet records.</p> <p><i>“60. There shall be a Secretary to the Cabinet who shall be the chief executive officer in the office of the Cabinet, and he shall discharge the following functions, in compliance with the general or specific directions issued to him by the President, that is to say:</i></p> <p>...</p> <p><i>(b) to record minutes and maintain a record of Cabinet meetings; [and]</i></p> <p><i>(c) to notify and explain the decisions of the Cabinet to every person or public institution concerned with any such decision...”</i></p>
<p align="center"><u>Chapter 3: The Legislature of the United Republic</u> <u>Part II: Members, Constituencies and Election of Members</u></p>	
14	<p><u>Members to submit statement of property</u></p> <p>Article 70 provides for the submission of a statement of property from each Member of the Parliament (which, by virtue of Article 62(1), includes the President and Members of the National Assembly). This Article does not clearly state that this statement shall be made publicly available though Article 70(3) contemplates the creation legislation preventing this from happening.</p> <p><i>“(3) Parliament may enact legislation for the purposes of making provisions designed for the protection of the statement of property submitted by a Member of Parliament in accordance with the provisions of this Article and to ensure that persons unauthorized or not concerned do not get the opportunity to see the statement of property or to know its contents.”</i></p>
<p align="center"><u>Chapter 3: The Legislature of the United Republic</u> <u>Part III: Procedure, Powers and Privileges of Parliament</u></p>	
15	<p><u>Speaker and his functions</u></p> <p>Article 84(5) provides for the submission of a statement of property from the Speaker of the National Assembly. This provision, by virtue of Article 84(6), is similarly subject to Article 70(3).</p> <p><i>“(5) The Speaker shall be required to submit to the President two copies of a formal statement regarding his property and that of his spouse. The Speaker shall submit such statement in a special form prescribed for that purpose in accordance with a law enacted by Parliament, and</i></p>

	<p><i>shall submit such statement from time to time as shall be directed by that law.</i></p> <p><i>(6) The provisions of subarticles (2) and (3) of Article 70 shall apply, mutatis mutandis, to any statement regarding property submitted by the Speaker in accordance with the provisions of this Article.”</i></p>
<p><u>Chapter 6: The Permanent Commission of Enquiry and the Public Leaders’ Ethics Secretariat</u></p> <p><u>Part II: Public Leaders Ethics Secretariat</u></p>	
16	<p><u>Speaker and his functions</u></p> <p>Article 132(4) and (5)(b)...</p> <p><i>“(4) Parliament shall enact a law stipulating basic rules of ethics for public leaders which shall be complied with by all persons holding public office which shall be specified by Parliament.</i></p> <p><i>(5) Basic rules of ethics for public leaders shall-</i></p> <p>...</p> <p><i>(b) require persons holding certain’ public offices to make a formal declaration from time to time concerning their income, assets and liabilities;</i></p> <p><i>(c) prohibit conduct and behaviour which tend to portray that a leader is dishonest, practices favouritism or lacks integrity, or which tends to promote or encourage corrupt practices in public affairs or jeopardizes public interest or welfare;</i></p> <p>...</p> <p><i>(f) prescribe any other provisions as are appropriate or necessary for the purpose of promoting and maintaining honesty, transparency, impartiality and integrity in the conduct of public affairs and for die protection of public funds and any other public property.”</i></p>
<p><u>Chapter 7: Provisions regarding the Finances of the United Republic</u></p>	
17	<p><u>Joint Finance Commission</u></p> <p>Article 134 provides for the creation of a Joint Finance Commission. The functions of the Commission are identified under Article 134(2) and include analyzing and scrutinizing management of fiscal affairs. While the Commission is to be appointed by the President the law is not specific as whom the Commission shall report.</p> <p><i>“(2) The functions of the Commission shall be-</i></p> <p><i>(a) to analyze the revenue and expenditure arising from, or relating to the management of affairs concerning Union Matters, and to make recommendations to the two, Governments concerning the contribution by, and the allocation to, each of the Governments;</i></p> <p><i>(b) to keep under constant scrutiny the fiscal system of the United Republic and also the relations between the two Governments in, relation to financial matters...”</i></p>
18	<p><u>Procedure for authorization of expenditure in advance of appropriation</u></p> <p>Article 137(2)... (in the event of shortfall a supplementary Bill is contemplated and provided for under Article 137(3)).</p> <p><i>“(2) After the National Assembly has approved the estimates of expenditure (apart from the expenditure charged on the Consolidated Fund by this Constitution or by any other law) a Bill to be known as an Appropriation Bill shall be introduced into the National Assembly for the purpose of authorizing the issue from the Consolidated Fund of the sums necessary to meet the expenditure for the various activities of the Government involved in those estimates.</i></p> <p><i>(3) Where in any financial year it is found that-</i></p> <p><i>(a) the amount of money appropriated by the Appropriation Act for a certain purpose is insufficient or it has been necessary to incur expenditure in respect Of an activity for which no amount has been appropriated under the Act; or</i></p>

	<p><i>(b) money has been expended for a certain purpose in excess of the amount appropriated for it by the Appropriation Act or that money has been expended for a purpose for which no amount was appropriated under the Act,</i></p> <p><i>there shall be presented before the National Assembly a supplementary estimate or, as the case may be, a statement of excess, and after the National Assembly has approved the supplementary estimate or the statement of excess there shall be introduced into the National Assembly a supplementary Appropriation Bill for the purpose of authorizing the issue of funds from the Consolidated Fund of the Government of the United Republic, and such moneys shall be used to meet the cost of the activities involved in the supplementary estimates or statement of excess."</i></p>
19	<p><u>Contingencies Fund and Vermont</u></p> <p>Article 140(2)....</p> <p><i>"(2) Where money has been borrowed from the Contingencies Fund, or money specifically appropriated for a certain purpose is applied to meet the costs of all urgent and unforeseen need, then there shall be presented before the National Assembly supplementary estimates, and after the National Assembly has approved the supplementary estimates, a supplementary Appropriation, Bill which shall be introduced into the National) Assembly for the purpose of authorizing such additional expenditure shall ensure that any moneys borrowed from the Contingencies Fund shall be reimbursed from the moneys the expenditure of which shall be authorized by that Bill."</i></p>
20	<p><u>Controller and Auditor General of the United Republic</u></p> <p>Article 143(4)...[ensure that the use of any moneys proposed to be paid out of the Consolidated Fund has been authorized; at least once every year to audit and give an audit report in respect of the accounts of the Government of the United Republic, the accounts managed by all officers of the Government of the United Republic and the accounts of all courts of the United Republic and the accounts managed by the Clerk of the National Assembly].</p> <p><i>"(4) The Controller and Auditor-General shall submit to the President every report he makes pursuant to the provisions of subarticle (2) of this Article. Upon receipt of such report the President shall direct the persons concerned to submit that report before the first sitting of the National Assembly which shall be held after the President has received the report and it shall have to be submitted to such sitting before the expiration of seven days from the day the sitting of the National Assembly began. If the President does not take steps of submitting such report to the National Assembly, then the Controller and Auditor-General shall submit the report to the Speaker of the National Assembly (or the Deputy Speaker if the office of the Speaker is vacant then, or if for any reason the Speaker is unable to perform the functions of his office) who shall submit the report to the National Assembly."</i></p>
<p><u>Chapter 8: Local Government Authorities</u></p>	
21	<p><u>Functions of Local Government authorities</u></p> <p>Article 146(1)....</p> <p><i>"(1) The purpose of having local government authorities is to transfer authority to the people. Local government authorities shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country."</i></p>
22	<p><u>Functions of Local Government authorities</u></p> <p>Article 146(2)....</p> <p><i>"(2) Without prejudice to the generality of subarticle (1), of this Article, a local government authority in conformity with the provisions of the law establishing it, shall have the following functions:</i></p> <p>...</p>

	<i>(c) to consolidate democracy within its area and to apply it to accelerate the development of the people.”</i>

Compiled by James M Ferguson and Venkatesh Nayak for Commonwealth Human Rights Initiative.