



Commonwealth Human Rights Initiative

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

B-117, First Floor, Sarvodaya Enclave, New Delhi – 110 017

Tel: 91-11-2686 4678, 2 685 0523 Fax: 91-11-2686 4688

E-mail: chriall@nda.vsnl.net.in

Website: www.humanrightsinitiative.org

Executive Committee

B.G. Verghese
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Maja Daruwala
Director

His Excellency President Jakaya M. Kikwete
President of the United Republic of Tanzania
P.O Box 9133
Dar es Salaam
Tanzania

5 October 2006

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Dear Sir,

Re: Offer of assistance for drafting legislation guaranteeing access to information

I am writing from the Commonwealth Human Rights Initiative (CHRI), an international non-government organisation headquartered in New Delhi. 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 press release published by the *Media Institute of Southern Africa* that your Government has announced that it is in the process of developing and consulting on legislation that will guarantee access to information.

I wanted to take this opportunity to commend your Government for taking this step forward and wish to offer the support of CHRI's RTI team to assist with the development of your national legislation, including reviewing the Government proposals or the draft Bill, with a view to ensuring they accord with best practice openness principles. CHRI has considerable experience in this area. Our RTI team has reviewed a number of right to information Bills throughout the Commonwealth, including the Cayman Islands, India, Sierra Leone, Fiji, Malawi, Mozambique, Ghana and Uganda (please see http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm for more information).

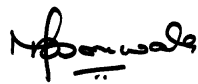
Notably, in CHRI's 2003 Report, *Open Sesame: Looking for the Right to Information in the Commonwealth*, which I have enclosed for your consideration, the RTI team captured the key principles that should underpin any effective right to information law, drawing on international and regional standards, 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 Tanzania is a member - have also endorsed minimum standards on the right to information. These various generic standards have been summarised into the five principles set out in Annex 1 attached below, which I would encourage you to consider when you finalise your own right to information Bill. I have also included a number of arguments in support of the law, which may be useful when the Bill is submitted in Parliament (see attached Annex 2).

CHRI would be very keen to input into the drafting process and grateful for an opportunity to support the efforts of your Government to develop a draft law. In this context, we would be very grateful if your Office could forward us a copy of your proposals for a draft Bill so that we can send our comments to the Government for consideration.

For your information, I am also enclosing a copy of a comparative table of Commonwealth right to information laws and our recent publication on Implementing Access to Information. If we can be of assistance with developing a model freedom of information Bill for Tanzania, 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 jeet@humanrightsinitiative.org.

Kind regards



Maja Daruwala, Director

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 OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

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.

CC:

- His Excellency, the Vice-President of the United Republic of Tanzania, H.E Dr. Ali Mohamed Shein, P.O Box 9133, Dar es Salaam, Tanzania.
- Prime Minister of the United Republic of Tanzania, Rt.Hon. Edward Ngoyai Lowassa, Private Secretary to the Prime Minister, P.O. Box 3021, Dar es Salaam, Tanzania.
- Minister of State in the President's Office for Public Service Management, Hon. Hawa Abdulrahman Ghasia, P.O Box 9133, Dar es Salaam, Tanzania.
- Minister of State in the President's Office for Good Governance, Hon. Philip Sang'ka Marmo, P.O Box 9133, Dar es Salaam, Tanzania.
- Minister for Justice and Constitutional Affairs, Hon. Dr. Mary Michael Nagu, P.O Box 9133, Dar es Salaam, Tanzania.
- Katalaina Sapolu, Legal and Constitutional Affairs Division, Commonwealth Secretariat, Marlborough House, Pall Mall, London, SW1Y 5HX, United Kingdom.
- Ms Rose Haji Mwalimu, Media Institute of Southern Africa □ Tanzania, PO Box 78172, Dar-Es Salaam.
- Ms Sampa Kangwa-Wilkie, Program Officer: Freedom of Expression, Misa Regional Secretariat, P/B 13386, Windhoek Namibia.
- Roshnee Narrandes, Open Society for Southern Africa, B.P. 008, Dakar-Fann, Senegal.
- John Barker, Africa Programme Director, Article 19, PO Box 30942, Braamfontein 2017, South Africa.

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”.⁴ 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 Rights⁵. 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.

⁴ UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

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

- *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 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.

Annex 2: 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”.⁶ 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 Rights⁷. This has placed the right to access information firmly within the body of universal human rights law.

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- *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 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.
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