

## **Proposals on the introduction of a Freedom of Information Act (FOI) or Right to Information Act (RTI) by working group #1**

### **Strengths / opportunities**

- **Freedom of expression** is already enshrined in the Mauritian **Constitution** as a fundamental right.<sup>1</sup>
- Successive governments have promised to introduce a Freedom of Information Act but this has never materialised. However, it is the first time that a government has published an official announcement by the **cabinet of ministers**, going beyond political party manifesto or PM and president's addresses:

*Cabinet has taken note that the Freedom of Information Bill, as announced in the Government Programme 2015-2019, is being prepared. The main objective of the Bill will be to promote transparency and accountability in public administration.*<sup>2</sup>

This represents a tremendous opportunity to move forward and all stakeholders should lobby collectively towards its realisation with extensive consultation and participation.

- There is already much information which is published online by **government agencies** though they are not always presented in a user-friendly way and updated in a timely manner.
- There is already a **Data Protection Act and a Data Commissioner**. The office<sup>3</sup> could be consolidated and asked to collaborate on the FOI.
- There are structures such as **Citizens Advice Bureaus**<sup>4</sup> but they need to be disconnected from the political and used as a real nexus for information to citizens.
- There is some media regulation through the **Independent Broadcasting Authority**<sup>5</sup> but it needs to be disconnected from the political and reclaimed as a really independent body.
- Mauritius has a system of representative democracy with **MPs** who are supposed to represent their constituencies and they do put forward questions to governing parties on behalf of citizens but this is limited. This role should be reinforced and citizens should have better access to their MPs for requests for information.

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<sup>1</sup>[http://mauritiusassembly.govmu.org/English/constitution/Pages/Constitution.aspx#CHAPTERITHESTATEANDTHE CONSTITUTION](http://mauritiusassembly.govmu.org/English/constitution/Pages/Constitution.aspx#CHAPTERITHESTATEANDTHECONSTITUTION)

<sup>2</sup> <http://pmo.govmu.org/English/News/Pages/Cabinet-Decisions---22-January-2016.aspx>

<sup>3</sup> <http://dataprotection.govmu.org/English/Pages/default.aspx>

<sup>4</sup> <http://ndu.govmu.org/English/Citizens%20Advice%20Bureau/Pages/default.aspx>

<sup>5</sup> <http://www.iba.mu/>

## Issues/challenges and potential solutions

- **Timeline for the law:** One main issue is that promises are often made but rarely fulfilled. For FOI to really happen, there should be a clearly identified timeline for the different stages, for example:
  - Consultation with all stakeholder groups
  - Presentation of Bill, voting of Act and enactment in Government Gazette
  - Setting up of process and training of civil servants
  - Setting up of independent appellate mechanism (for requests that are denied)
  - Deployment (including regular monitoring and adoption of corrective measures)
  - etc.
- **Review of conflicting laws:** There are laws, regulations and practices which can potentially hinder the application of FOI in Mauritius, for instance:
  - The Official Secrets Act<sup>6</sup>
  - The human resource management manual of the civil service<sup>7</sup> which prohibits civil servants from giving out information
  - Sections of the Criminal Code relating to the dissemination of information such as the ones relating to publication of false news, defamation and sedition as well as laws relating to contempt of court and public gathering, etc.

These need to be reviewed in order to harmonise with the application of a proposed FOI Act.

- **Protection of private information:** Currently, there is little protection for citizens whereby the latter would be made aware of any data relating to their own selves held by either government agencies or private entities. All individuals should be allowed access and knowledge of such data as in France (CNIL - Commission Nationale de l'Informatique et des Libertés<sup>8</sup>) in order to avoid any abuse of personal information.
- **Delays to process requests:** Very often, response to requests from the public take a very long time for many reasons (e.g. delaying tactics, inefficiency, etc.). The FOI law should specify reasonable timelines/delays to process requests from the public as well as to provide the information requested.
- **Preference for electronic data:** Regarding payments for requests made, it is understood that there would be a fee for filing the request and a fee for the printout (to cover costs and to encourage sensible and responsible use of the service).

One possible solution would be to reduce the costs associated with the printout by primarily providing the data in electronic format. This would also reduce ecological impact and

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6 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/O/OFFICIAL%20SECRETS%20ACT.pdf>

7 [http://civilservice.govmu.org/English/Documents/HRMM\\_08042011.pdf](http://civilservice.govmu.org/English/Documents/HRMM_08042011.pdf)

8 <https://www.cnil.fr/>

facilitate further use by the citizen.

- **Assistance for fees:** However, it is also understood that the imposition of a fee may deter underprivileged citizens from exercising their right to access information. It is thus proposed that a public fund be set up to assist in payment of the fees for processing and printout in case the citizens are under-equipped for data in electronic formats. This would go towards enhancing equality of justice for all.
- **Appeals against rejections:** Some agencies may abuse of clauses for protection of access to data which may be of public interest. In order to ensure this is not the case, there should be an independent appellate mechanism to examine the validity of requests which have been rejected, as is the case in South Africa. However, in a small country like Mauritius, it may be very difficult to identify really independent people to examine appeals. It is proposed that the entity should encompass representatives of multiple stakeholder groups and interests to compound possible lack of independence.
- **Avoiding manipulation and stigmatisation:** In a tiny country like Mauritius, controlled leakages and abuse of confidential information about individuals or partial information (resulting in manipulation / bias / sensationalism) may lead to stigma for individuals concerned. There is a need for regulation in the public sphere but not merely by a single entity and certainly neither solely by the State or by media companies. The preferred model is that of independent co-regulation of the media. There should in fact be sanctions for inaccurate information which may be published and which can cause stigma.
- **Literacy and awareness for grassroots:** Very often, elite groups are the ones which benefit the most from systems which are supposed to benefit all. In order to ensure that there is equality in access to information, there should also be solid literacy and awareness actions for grassroots levels, right from school and at all customer care offices in the public service.
- **Eliminating language as a barrier:** Another deterrent to use of facilities given by FOI may be language. But ordinary citizens do not necessarily have a good command of English or French. The use of the Creole language, our mother tongue, should also be admitted for filing requests with proper assistance and while taking care to avoid stigmatisation.
- **An inclusive working group:** We strongly believe that it is important that the working group which will be set up to lobby for the FOI should encompass all stakeholder groups with a collective agreement and a positive mindset in order to be able to move forward. The media should be taken onboard as well as more grassroots level organisations. There should be no backbiting or competitive attitude as FOI is not for a few but for the benefit of all citizens

**Rapporteur:** Christina Chan-Meetoo