

Chapter 9

A Critique of Legal Framework Facilitating Access to Government Information in Tanzania

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ABSTRACT

This chapter provides a critical analysis of the legal framework for access to information particularly information held by government in Tanzania. The analysis intends to establish whether the existing Right To Information (RTI) legal framework and ICT development in Tanzania facilitates universal and requisite access to government information. In order to do that, the chapter utilises a literature review to understand contemporary trends in both theory and practice. In addition, journal articles, books, reports, case law, and pieces of legislation focusing on RTI are visited to obtain deeper insights in the topic under scrutiny. The findings indicate that, despite Tanzania's efforts to embrace democracy virtues, good governance, and technology, the country lacks adequate legal framework to facilitate universal access to government information and ensure that the Right To Information (RTI) is observed in all the socio-economic contexts. To rectify this problem, there is need to enact the RTI law with clear focus of encouraging access to government information. Although two bills (the Media Service Bill [MSB] and the 2011 RTI) are currently being debated, it is not clear yet when they will become law and subsequently practiced.

INTRODUCTION

Any democratic state that observes the constitution, the Rule of Law, transparency, accountability, good governance, and human rights should be in the forefront to guarantee not only freedom

to receive, and disseminate information but also to provide legal framework to facilitate access to government information. Although it appears that access to information rights is recognised in Tanzania's governmental discourse, it is surprising that the country lacks legal framework to guarantee

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Freedom of Information (henceforth, FOI) despite the constitution asserting that such a right already exists. Outcries from the public, FOI activists, and media stakeholders yielded MSB and RTI 2011, which up to now have not yet been tabled before the parliament. The government and the parliament seem to have not given priority to the FOI law. It is surprising that the government has established the e-Government Agency (EGA) based on FOI law although the FOI law is non-existent.

This state of affairs in Tanzania denies citizens the right to effectively access government information. The impact of such legal loophole is that the citizens cannot demand and access government information as they wish because there is no tool to protect them in case of any eventuality. Further, government offices might feel compelled to give out documents (information). This infringes on democratic principles. In addition, Information and Communication Technologies (ICTs) present a set of tools/platforms that can be used to facilitate FOI. In recognizing this, Tanzania has developed its own National ICT Broadband Backbone (NICTBB). Moreover, its mobile telecom market is booming and this presents a myriad of opportunities for citizens and businesses to ubiquitously access government information. However, in the absence of FoI law, ICTs cannot facilitate citizens' exercise of the right to information.

This chapter employs a qualitative research approach which involves desk and library based research. Relevant articles, books, and monographs were reviewed, analysed, and evaluated to draw findings that were used to draw the recommendations and chart the future of legal framework for FOI and access to government information in Tanzania.

This chapter is organised as follows: the first part presents the theoretical framework discussed from careful scan of the literature. Next, the background section that intends to highlight the implementation of the right to information in the Tanzanian context is presented. The third part is a critical analysis of the RTI legal framework in

Tanzania. The fourth part outlines recommendations on how to reform the legal framework for RTI and access to government information in Tanzania. These recommendations are arrived at after analysing the e-Government development trajectory in both the developing and developed world contexts. The final part outlines some areas for future studies.

Conceptual and Theoretical Framework

Conceptual and theoretical framework relates to an approach adopted in a particular study, i.e. what method(s) and why? This chapter adopts the literature review approach upon which study's conceptual and theoretical framework is built. Rocco and Plackhotnik (2009) have rightly suggested that theoretical and conceptual framework is actually a basic approach or theory on which a study is hinged. It is further posited that "the method (e.g. qualitative) must be connected to the literature or concepts supporting the significance of the study, relate to study purpose, and situate the study in terms of previous works" (Rocco and Plackhotnik, 2009, p.120).

There are a number of pillars upon which Access to government information is built. First, access to government information is regarded as a fundamental right or human right (European Convention on Human Rights; African Charter on People and Human Rights; Universal Declaration of Human Rights). Second, Access to government information is a reflection of democracy, transparency and public accountability (Open Government, 2011). Therefore, a government that preaches and practices requisite democracy needs to ensure that its citizens and businesses freely access government information.

The chapter scans international democratic standards and practices to understand what framework needs to be employed in the case of Tanzania to design FOI models. The central questions in this chapter are what is access to information? What is

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