

23 June 2020

ACTION Coalition statement on the Access to Information (ATI) Bill before the National Assembly

The ACTION Coalition welcomes the Access to Information (ATI) Bill that has been tabled in the National Assembly by Minister of Information and Communication Technology, Hon. Peya Mushelenga, in June 2020.

On the whole, the ACTION Coalition considers the ATI Bill to be a strong one, that for the most part captures the essence and contains the necessary substance of a modern, workable access to information framework.

However, there are a limited number of important concerns with specific sections of the Bill that we feel need to be addressed with the aim of making the eventual law and regulatory framework even stronger.

These concerns are the following:

1. The blanket exemption for “proceedings and decisions of Cabinet and its committees” in the Access to Information Bill is too broad and not an international norm. We recommend the removal of clause 2(2)(a)(i) which exempts Cabinet entirely from the Act. Substitute it with a new provision exempting information about Cabinet deliberations until a period of 10 years have passed (i.e. two presidential terms of office) – but do not provide any exemption for Cabinet decisions and resolutions, or for factual information submitted to Cabinet or its committees. In addition, all Cabinet materials (like other government documents) should be subject to the public interest override in clause 64.
2. Blanket confidentiality of judicial functions and nomination, selection and appointment of judicial officers (clause 2) goes too far. We propose the removal of clauses 2(2)(a)(ii) and (iii) and substituting them with more narrowly-worded provisions which exempt from the Act only material relating to the deliberations of judicial officers and judicial selection bodies – without shielding from the public other information about the operations and the decisions of courts and tribunals, or information about the nominations, qualifications and appointment of judicial officers.
3. The rationale for exemptions of some non-profit public entities under clause 29 is unclear. We propose either the complete removal of clause 29 or clear criteria for the exclusion of certain “public entities” from the coverage of the Bill, if there is a rational motivation for any such exclusion.

4. The definition of “personal information” in clause 1 may be too broad while at the same time excluding some issues that should be covered - and the procedure for dealing with situations involving third party personal information in clause 38 seems too cumbersome. We propose: (1) Re-consider the definition of “personal information”; (2) To streamline the access process, the law should enumerate more specific exemptions to the protection of personal information to give guidance to the exercise of discretion by information officers; (3) The law should not equate inability to locate the third party in question, or a lack of response by the third party, with consent to the release of the information.
5. The wording of the public interest override (clause 64) is too narrow. We propose changing the “and” in clause 64 to “or” in order to broaden its scope.
6. The ATI law should be inapplicable if disclosure is reasonably regulated by another law. Clause 3(3) should be reworded or omitted since some other laws may have rules about access to information which are appropriate to their context – without necessarily being more or less “favourable” to access. The general rule provided in clause 3(3) as it stands is too general to fit every situation.
7. The Selection Committee for the appointment of the Information Commissioner described in clause 6(2) consists of five persons. We propose that the Media Ombudsman (who could be defined in the law) should be an additional member of the Selection Committee, which would also provide a better government-civil society balance. We further propose that interviews of short-listed candidates for Information Commissioner should take place in public.
8. Clause 12 contains a broad definition of “private entity”. We propose that the appropriateness of the current definition be discussed with the Namibian Chamber of Commerce and Industry and the Namibian Employers Federation, to ensure that it will be practically workable.
9. Given these concerns, the ACTION Coalition urges Members of Parliament to refer the bill to a committee for fine-tuning, but we are not proposing going back to the drawing board.
10. Furthermore, we feel some of these concerns would benefit from wider public input, and we would welcome the opportunity to make a submission or presentation before any parliamentary committee on the issues outlined in this statement.

This statement is accompanied by a detailed analysis document of the issues highlighted in this statement, which was produced for the ACTION Coalition by Dianne Hubbard of the Legal Assistance Centre (LAC). Included herewith is also a copy of the draft Access to Information Bill.

ISSUED BY:

The ACTION Coalition

Email: info@action-namibia.org

Tel: 061-230560

www.action-namibia.org