FINAL REPORT/ACTION PLAN
Workshop on Access to Information, Media and Accountability in Tanzania, March 6th to 7th 2008,
Moevenpick Hotel, Dar es Salaam

OVERVIEW: The Access to Information, Media and Accountability Workshop in Dar es Salaam, Tanzania (supported by CommGAP[1]) brought together media professionals, CSO representatives and government officials in an open exchange on the dual challenges of: a) media legislation; and b) creating an environment for freedom of information as elements of improving governance in Tanzania. Both local and foreign experts presented papers on ways of improving proposed media and FOI legislation; ensuring effective implementation of the legislation once enacted and building a strong CSO coalition to buttress the campaign for the enactment and implementation of the draft bills. The workshop concluded that although the Freedom of Information bill was well drafted, there were concerns on whether it would be enacted as is or if it would be changed both by the cabinet and in the national assembly. Grave concerns were expressed about the content of the media bill and the participants felt that additional consultations and further work were needed. Specific recommendations at the end of the workshop included the need to: a) broaden and strengthen the coalition beyond the current composition of human rights and media NGOs; b) develop links with parliament; c) fund raise to meet both coalition expenses and also costs of organizing meetings for MPs and public hearings and seminars; d) make individual visits to officials; and e) involve professional bodies and grassroots organizations. The workshop emphasized the need to build the skills, reach and capacities of the CSO coalition.

A. BACKGROUND

i. Background and Objectives of the Workshop

Over the last decade the Tanzanian media has grown both in depth and reach. But its overall performance has been thwarted by a weak regulatory environment; lack of access to information; inadequate internal capacities and a multiplicity of pressures from owners and audiences alike. The long-term performance, capacity and effectiveness of the Tanzanian media to discharge its oversight responsibility will depend on the existence of a supportive institutional and legal framework incorporating such issues as appropriate media regulation; ownership structure and editorial independence; competition and judicial attitudes to libel as well as the policy and the legal framework for access to information. Most of these issues were directly or indirectly addressed at a two-day World-Bank Institute (WBI), African Capacity Building Foundation, (ACBF) and Media Institute of Southern Africa Tanzania chapter (MISA-TAN), workshop held at the Moevenpick Hotel in Dar es Salaam.

Attended by over 40 participants representing academia, government, media and civil society, the workshop was convened with the overall objective of "strengthening good governance capacity in Tanzania through an improved access to information and strong media laws." Specific sub-objectives included:
1. Highlighting the role of freedom of information (FOI) laws in shaping accountable and transparent governance in Tanzania.
2. Assessing the strengths and weaknesses of proposed legislation on media and access to information.
3. Identifying the key implementation issues that will need to be addressed when the laws are enacted.
4. Devising an action plan to support the passage of media and FOI laws.

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[1] More information on CommGAP can be found here: http://go.worldbank.org/CQQNDNJW40

5. Providing local oversight and watchdog institutions with guidance on funding opportunities.

ii. Workshop Structure

The workshop used a combination of methods: a**)** Knowledge sharing through expert presentations; b) plenary questions and discussions to enable participants to determine the applicability of comparative insights to their situation and c) at the end of the workshop, structured group work to give participants an opportunity to distill the lessons of two days of presentations into a participatory review of the proposed draft bills. The workshop was divided into seven sessions: one context setting session comprising opening addresses by the sponsoring organizations and a keynote address by Andrea Figari, FOI Program Manager for Transparency International; four expert presentation sessions; one group work session of two different groups; a site visit to the Tanzania Global Distance Learning Centre to give participants guidelines on applying for grants from World Bank-funded Facility for Ethics, Accountability and Transparency (FEAT) and a last session of mapping the next steps on the two bills and the coalition.

iii. Official Opening

The opening session was addressed by Denyse Morin, on behalf of the World Bank's Country Director in Tanzania Mr. John McIntire, Ayub Rioba, Chair of MISA-Tanzania and Rutendo Kambarami on behalf of the ACBF. The key message from this session was the recognition that civil society organizations and the Tanzanian government agree about the need for a freedom of information law and for legislation to govern. This agreement is buttressed by the existence of a coalition of CSOs whose efforts led to the 2003 media policy and by President Jakaya Kikwete's commitment to FOI in 2006. But the speakers also noted that while good laws are important, they are not enough. Speakers underlined the need for a supportive information environment and for effective implementation. Though freedom of information is a good thing in itself, its instrumental value was also highlighted. A good FOI environment can support Tanzania's strategy for growth and poverty reduction by improving effective voice. However, such voice cannot be effective without a strong media, fully capacitated in terms of skills training; capacity, ethical performance and comparative learning through exchange programs across Africa.

iv. The Keynote Address

The keynote address was delivered by Andrea Figari, the FOI Program Manager for Transparency International. The speech drew on the links between the right to information and governance and more especially on the anti-corruption dimensions of governance. It pointed out the need to focus on implementation challenges and especially on the value of making connections between ordinary people's lives and FOI. In particular, the keynote speaker noted that implementation of FOI will inevitably run up against deeply entrenched cultures of secrecy and against poor justifications for otherwise legitimate concerns relating to the protection of vital interests such as security and sources. Security information has become particularly problematic in the aftermath of 9/11.

In terms of content, Ms. Figari noted that the draft legislation could draw from international and regional agreements. Tanzania has ratified many of these including, in particular, the Africa Union Convention against Corruption in 2005. The address identified specific post-enactment challenges. One challenge is the complexity of the process. Many things need to change to achieve effective implementation of the law. Secondly, implementation of FOI requires funding. One respondent to the keynote speech pointed out it was relatively easy to draw upon international conventions because the language of the Tanzania Constitution, especially article 9(f), permits application of the Universal Declaration of Human Rights and by implication associated instruments.

B.   THE WORKING SESSIONS

i.   Legal Context of Media and Freedom of Information

The workshop's first session focused on the legal context of media and freedom of information in Tanzania. There were two presentations: one by Prof. Sengondo Mvungi a professor of law at the University of Dar es Salaam and Mr. Kassim Mpenda, Director of Information services in the Ministry of Information, Culture and Sports. The discussant was Prof. Palamagamba Kabudi and the session chair was Reginald Mengi, chair of the Media Owners Association.

Prof. Sengondo outlined the key elements of the newly drafted media bill and highlighted the question of funding for the newly created Media Council as one of the critical challenges. He noted the inclusive nature of the pre-drafting process which drew from a series of symposia held across Tanzania. In the absence of appropriate models to draw upon, the draft legislation had to be cut from whole cloth. For this reason, Prof. Sengondo noted, there were still many provisions that require further development.

Once enacted, the bill will cover public, private and community media. The bill makes a distinction between publicly-owned media such as the BBC, and state-owned media whose business is often to promote the agenda of the party in power. The bill contains: i) a simplified licensing and registration process; ii) the process of accreditation of journalists; iii) provisions for protection of journalists. In particular the draft legislation criminalizes attacks on media and decriminalizes certain offences such as incitement, terrorism and imprisonment for treason and sedition. It also seeks to strengthen accountability by establishing a council of media education and specifying a number of mandatory ethical precepts. Once enacted it will amend up to 30 laws and repeal two laws.

As regards the freedom of information law, Prof. Sengondo told the workshop that this bill was more complete and based on strong legal foundations. He noted that the draft bill is anchored on Article 18 of the Constitution of Tanzania. Consistent with international best practices, the draft bill proposes to impose the duty on public and private bodies to give information and publish registers of information held by such bodies, to establish an independent office of the Information Commissioner which will work together with a statutory stakeholders' forum which has a right to make a parallel report to parliament.

Speaking in his official capacity as Director of Information Services, Mr. Mpenda told the workshop that the government was committed to the FOI bill in principle, but raised six questions which he said the government wanted clarity on. The six questions related to:
1. Coverage: What types of information should the bill cover? What criteria should be used to decide this question? Health? Safety? Environment?
2. Requests: Who has the right to make requests for information? Citizens? Any person? Only residents?
3. Timelines: How soon should an agency respond to a request for information? On what criteria is this decision to be made?
4. Fees: Should information be given to requesters for free? If there's to be a payment, how much should it be? On what criteria is the payment to be determined?
5. Budget: how should government prioritize resources by deciding among pressing social needs such a health and education and the implementation of both the media bill and the FOI bill? Are these laws as important social objectives as other matters with more immediate welfare effects?
6. Exemptions: What should not be disclosed? How is this to be determined? How are public security, personal privacy and state sovereignty to be protected in an open information environment?

The discussant and the ensuing plenary session revisited some of the questions raised in the various presentations. One concern was that if the exemptions are not drawn appropriately, judges will have the power to set the limits of the permissible, a matter of considerable concern if the judges are not trustworthy. On the media bill there were animated discussions on the scope of offences to be decriminalized. Some participants thought that some of the laws proposed to be repealed served an

important function. Though this question was not definitively settled in terms specifying what laws should be repealed, there was at least consensus that media in Tanzania currently operated in a legally restrictive environment.

The question of public media vis-à-vis government media proved somewhat vexing. A consistent message was the need for clarity on what the bill was trying to deal with. Is the problem state ownership or state control? If state control is the issue, the reform question is what should be done to secure media independence. The argument was that state control can be exercised with or without state ownership. A number of issues were identified for further discussion. These were: a) hate speech especially as it related to issues of faith, ethnicity and race; and b) the use of pictorial illustrations and especially the need to delineate vindictive vs. legitimate illustrations and c) censorship, both editorial and official.

ii. Building an enabling environment
This session built on the earlier session and revealed that while good laws are necessary, access to information and an effective media require a supportive environment. The speakers in this session were Prof. Kalamagamba Kabudi of the University of Dar es Salaam and Esther Omzuruike of the Africa Capacity Building Foundation. Prof. Kabudi noted that a good information environment rests on the democratic legitimacy of the government. He told the workshop that in this regard the constitutional, legal and policy framework is critical. He highlighted a number of crucial elements that support an enabling information and media environment. These elements include:
1. Appropriate regulatory instruments: Are there codes of conduct regulating conflicts of interest in government and the media? He noted that in this regard the existing laws in Tanzania are weak especially in terms of the scope of prohibitions and the rigor of required disclosures.
2. Budget process: A key question here is how open or closed the budget process is, especially as it relates to its capacity to receive inputs from and be influenced by the public.
3. Procurement: How open and effectively implemented are procurement laws?
4. Political financing laws: Prof. Kabudi noted that the nature of politics and how it is financed influences the ethical character and performance of the government.
5. Judiciary: Though the judiciary can play a decisive role in improving the environment, the presenter also emphasized the need to be aware of institutional and personal limitations as well as how the deployment of the power of appointment can erode judicial independence and performance.
6. Bureaucratic and political culture: Is the culture of the administration pervasively secretive? Are there any openness requirements imposed on the public service?
7. Media and Civil Society: Though media and civil society can play an important oversight role, their work is hamstrung by restrictions such as high defamation awards and the pernicious role of owners by interfering in the editorial decisions of the media.

The plenary discussions noted that the decriminalization of the media-related offences in the penal code would be important in improving the enabling environment. It was also pointed out that supreme audit institutions such as the office of controller and the auditor general working alongside empowered oversight committees in the National Assembly can play a crucial role in creating an effective enabling environment.

iii. The role of the media in promoting access to information
This session focused on the role that the Tanzania media can play in building an information culture. The session had a panel of four: i) Sakina Datoo, Chair of the Editors Forum, ii) Vicky Ntetema, BBC Bureau Chief in Tanzania, iii) Jenerali Ulimwengu, Chair of the New Habari Corporation and iv) William Bird, Director of the Media Monitoring Project in South Africa.

The presentations situated the media in Tanzania in the context of plural politics and the consequential mushrooming of media outlets that came with it. However, presenters also noted that the growing pluralisation of outlets has not meant a corresponding growth in effectiveness. It was noted that Tanzania's emergent media faces a number of challenges which affect its ability to deepen public access to information. The most pressing of these challenges are: a) capacity constraints in terms of both skills and resources; b) fragmentation of media outlets to the point of being ineffectual; and c) low investment by media houses in investigative journalism. Even with these constraints however, the Tanzania media has played a critical role in improving transparency and governance.

The session identified a number of conditions that would improve media effectiveness in enhancing access to information. These conditions included: a) the protection of sources; b) the protection of whistleblowers; c) a stronger and emboldened parliament; and d) effective Civil Society Organizations. It was noted that while many groups in Tanzania were developing collaborative networks that would improve the overall environment, the anti-corruption bureau was missing from such networks.

Among the constraints that currently sap the effectiveness of the media, the following were identified as critical: a) bad laws – especially as relates to defamation, criminal libel and sedition; b) government attitude towards the regulation of the media; c) self-censorship stemming from fear of official reprisals; d) corruption and cheque-book journalism; and e) enforcement of professional standards related to balance and fairness, accuracy and clarity.
The presenters also noted that whereas institutional and legal factors were central to performance of the media, its overall performance also depends on personal commitment, values and cultural factors. On the cultural score it was noted that the people of Tanzania were usually very unwilling to talk on record. The session also revisited the question of public broadcasters, using the BBC as a case study. Speakers mentioned that while a public broadcaster can help promote fair competition, it would also have the flexibility, resources and potential tools to do capacity-building for other media.

Underlying the question of the role of media is an assumption that the media itself is fair, balanced and well-meaning. The session noted that such an assumption was unwarranted. Whether the media performs well and is effective depends on effective CSO monitoring of coverage. Using actual examples from press cuttings, the South African Media Monitoring Project gave an overview of the ways in which CSO monitoring can improve media performance. Two conclusions emerged from this presentation: a) the need for the monitoring framework to be principled -- in the case of South Africa, the framework is based on international human rights standards and incorporates both gender issues and children rights; and b) there are considerable benefits from media monitoring including better campaigns, enhanced media literacy, skills development and training and overall improvements in good governance.

iv. Implementation: Comparative Lessons
The fourth session had three panelists: i) David Banisar of Privacy International in Britain; ii) Mr. Edet Ojo of The Media Rights Agenda in Nigeria and iii) Ms. Rutendo Kambarami of the African Capacity Building Foundation in Zimbabwe. The session took place in two segments which included lessons from around the world and lessons and experiences from Africa.

Lessons from around the world: David Banisar began his presentation by noting that the adoption of a Freedom of Information law is a necessary but not sufficient condition for effective access to information. Other laws need to be in place to govern such things as management of archives, regulation of the classification and disclosure of state secrets and control of corruption. In addition, Banisar underlined the critical role of CSOs in the implementation of a right to information law. According to him, a weak law can be strengthened by a strong civil society. Conversely, the effectiveness of a strong law can be sapped by a weak civil society, as in South Africa. Mr. Banisar then responded to the six questions posed by Mr. Mpenda in first session.

i. Coverage of RTI: International standards for access to information usually allow any person to make a request, not just citizens or residents.
ii. Application: Best practice is that the law covers all government bodies as well private companies contracted to perform public functions. Exceptionally, as in South Africa, the law may impose a duty of disclosure on a private company if the information held by the company is needed for the exercise of rights.
iii. Timelines: Information requests should be responded to promptly because information delayed is usually information denied.
iv. Fees: No fees should be charged for accessing information. As Banisar noted, "Charging people for exercise of rights is abhorrent."
v. Budget: Implementing a right to information law is not inexpensive. However, it is crucial to look at the bigger picture. The deterrence value of a right to information law in terms of reducing corruption and maladministration is many times the value of what it costs to enact and implement the law in the first place.
vi. Exceptions: Though exceptions are legitimate, it is important that these be narrowly drawn so that they are not easy to abuse. Banisar noted the frequent abuse of privacy exceptions by politicians and warned against the risk of making a law replete with exceptions such as that of the United Kingdom.

Lessons from the African Continent: Reviewing the experiences from Africa, Edet Ojo concluded that the overall legal and institutional environment is unfriendly to Freedom of Expression and the Right to Information. He noted the existence of a variety of repressive laws, including: a) criminal libel and defamation; b) sedition; c) incitement; d) insult laws; e) secrecy; and f) licensing requirements. But Mr. Ojo also noted that there are support networks and institutions at the regional and continental level such as NAFEO, the Special Rapporteur on Freedom of Expression from the African Commission for Peoples and Human Rights and the Regional Freedom of Information Centre for West Africa. He advised the members of the Tanzanian coalition to learn globally but act locally, underlining the fact that international frameworks need to be placed into a local context.

In terms of practical support, Mr. Ojo said that Tanzanian organizations can get support from regional networks in drafting and reviewing draft FOI Laws, and developing context-specific advocacy, implementation, monitoring and litigation strategies. However, he also chided Tanzanian organizations for a perceived insularity. He noted that although MISA-TAN is, Tanzania is not represented in continental CSO initiatives on Freedom of Expression and Freedom of Information.

Highlighting some of the work undertaken by the African Capacity Building Foundation on the continent, Ms Kambarami underlined the importance of capacity building programs for media and for regulatory institutions, law enforcement, judiciary and parliament.

v. Breakaway Groups
The fifth session divided the workshop participants into two groups: one to review the media services bill and another to review the freedom of information bill**.**

Media Services Bill: The group discussed various aspects of the bill and made a wide range of comments and observations regarding the proposed legislation. The most critical of these comments were that: i) the draft legislation makes it too easy for government to deny licenses and that it was best to scrap the licensing provision altogether as it is inconsistent with international human rights law; ii) the terms used in the legislation needed to be defined clearly; iii) the draft bill, though not linked to the FOI legislation, has provisions that make it harder to access certain types of information, such as cabinet matters; iv) the bill merges issues of broadcasting regulation with those of print media regulation, two usually unlinked issues; v) there is need for greater clarity as to the functions and powers of the various institutions created

by the draft legislation; vi) there are ambiguities about a number of implementation issues such as: who will develop the Code of Ethics for Journalists? What are the relationship and overlaps between the Media Council, the Information Commission and the Press Council? Who has powers of accreditation? The group concluded that further discussion and expert analysis were needed before the bill goes to cabinet.

Freedom of Information Bill: Though the freedom of information bill meets international "standards" for such legislation, the group was concerned about implementation questions. Among the crucial issues raised by the group discussion were a) how to build the capacity of CSOs for implementation?; b) how to strengthen parliamentary oversight for the implementation of the legislation once it is enacted, especially as it relates to budget and funding issues. What are the reporting arrangements and accountability of the Information Commission to parliament?; c) who takes responsibility for raising awareness and educating the public, the media, public officials such as communication officers as well as members of parliament?; d) how is the management of archives handled?; and e) how to conduct monitoring and evaluating of the implementation of the law and identify areas for additional legislative improvements? The group noted the need to invest in building the implementation system and to involve CSOs in developing timelines for the implementation of the law once it is enacted.

vi. Next Steps - Moving Forward

In concluding the workshop, the participants distilled the action points into four thematic areas and proposed several measures under each theme:

1. Broaden coalition membership to improve representation: The participants noted that the current composition of the coalition is limited to human rights and media NGOs. Though this coalition has so far made commendable progress, participants noted that eventual success depends on broadening the coalition and reaching out to grassroots groups. Many felt that the current coalition should cultivate direct links with parliament, an important site for the next phase in the enactment of the proposed bills, in addition to links with non-media NGOs which will also be beneficiaries of access to information legislation.

2. Immediate outreach activities on freedom of information and media services legislation: As the coalition develops a strategy to reach out to other groups and develop a presence in arenas such as parliament, participants recommended the coalition take the following steps: a) initiate immediate fundraising in order to meet operating expenses and organize meetings for MPs; b) hold public hearings and seminars to strengthen support for the proposed legislation and raise public awareness on citizens' right to information; c) make individual visits to relevant public officials; and d) launch campaigns to develop links with professional bodies and grassroots organizations.

3. Strengthening the skills and capacities of the coalition and media: In addition to outreach activities, the coalition needs to address internal capacity issues including strengthening appropriate skills and improving comparative learning and relations with continental and regional NGOs and other bodies. Capacity building for Tanzanian media is also recommended in order to strengthen their skills in reporting on governance issues and serving as a government watchdog.

4. Continuous engagement between the coalition and the government: The workshop highlighted a number of legislative challenges surrounding the two bills. First was the possibility that even a good draft such as the FOI bill may be changed and watered down when it is redrafted by government. Secondly, the media bill still needs further work. This called for continued engagement by the coalition until final drafts are approved by cabinet and introduced in the National Assembly.

5. Develop a Time-bound Action Plan: The participants resolved that a time-bound action plan based on the conclusions of the workshop would be developed to map out the program of activities for the coalition.

vii. Capacity building session: At the Global Distance Learning Centre

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The final session was held at the Global Distance Learning Centre where participants (consisting of government officials as well as representatives from oversight and watchdog institutions) were given advice about how to access financing from the World Bank-funded Facility for Ethics, Accountability and Transparency (FEAT). The session was introduced by two short presentations, one from the National Foundation for Democracy and Human Rights in Uganda and the other from the Association of Leaders of Local Civic Groups in Poland. Both presentations addressed how an organization can utilize a small grant to conduct an effective project related to accountability and transparency. A more detailed presentation from the Ethics Secretariat (administrator of the FEAT) then followed. Participants were then able to ask the speakers a wide range of programmatic and operational questions.

Report prepared by Wachira Maina.