

- The public would only develop a sense of ownership and understanding of the Act if it was involved in shaping it; and

- There were significant dangers in the Act being drafted by mostly lawyers. The task group at present consists mainly of lawyers and two representatives of the South African Communication Services.

The FXI said lawyers could not be expected to know about the development and information issues of South Africa. Issues such as illiteracy, poverty and lack of education and infrastructure in large parts of the country would significantly affect the exercise of people's right of access to government information.

The creative suggestions and solutions are most likely to emanate from civil society and special interest groups. An obvious example is illiterate people: if information can only be obtained on the basis of written requests, millions of South Africans will be excluded from practising their constitutional right to information.

The FXI also argued that a divergence of views was implicit in democracy – even if these complicated the drafting of the Act – and that the government should be willing to accommodate a process that would allow different views to be aired and considered. The FXI indicated it was confident that the involvement of civil society and other groups would not significantly slow down the drafting of the Act. Previous consultation processes co-ordinated by the FXI showed that complex issues could be resolved within a few months.

Lastly, the FXI argued that the government faced a golden opportunity to facilitate the drafting of legislation which could be truly African in character, and not simply a reflection of some of the better aspects of laws

from other countries. If a system could be found which allowed poor and developing communities to meaningfully exercise their rights, such an Act could be an example for the rest of the developing world to demonstrate that democracy is not only a luxury for the rich and privileged.

Although not raised in discussion within the present task group, the FXI is also concerned about the limitations of the right of access to information as contained in the interim Bill of Rights. At present there is not automatic right of access to official information. In order to obtain this information the relevant people have to show that they need the information in order to defend another right recognised in the Bill of Rights.

The FXI believes that the government is only the custodian of official information in the name of the people, and that the information belongs to the public. Furthermore, taxpayers pay for the collection and storage of this information and for the function of government. The article in the interim Bill of Rights dealing with access to information must therefore be amended in the future Constitution.

If we have a right enshrined in the Constitution (albeit imperfectly), why do we need a further law to exercise this right? The reason is mainly that constitutional rights do not really have any content unless a specific law gives them content. The only other way to give the right content and meaning is to litigate it in the Constitutional Court.

Interestingly the right of access to information is one of the most heavily litigated constitutional rights in South Africa so far. But it could take years of litigation to build up a jurisprudence to serve the information needs of the South African public adequately. In the meantime, citizens could

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