



CHRI

Our Rights Our Information

Empowering people
to demand rights through knowledge



Working for the practical realisation of human rights in the countries of the Commonwealth



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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Our Rights Our Information

Empowering people
to demand rights through knowledge

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Commonwealth Human Rights Initiative

Foreword

The right to information has long been recognised as a 'Fundamental Right' of a free citizenry. It is from this right that other basic human rights can flow. No society can claim to be truly free unless it has both the instruments and the practice of providing its people with access to information. No government that claims to be democratic can deny its people the ability to participate in governance or itself refuse to be transparent to its people. Whether called the 'freedom of information' as it is in most countries or the 'right to information' as more recent access laws are referred to, it is the duty of governments to guarantee this right by implementing access to information laws.

Although, the exercise of the freedom of information has now matured in several societies, it is relatively nascent in most developing countries. These countries moreover are in many cases those which are only now emerging from the incubus of a colonial hierarchy, structured to exploit the skills of its people at the least cost to the colonial masters and the economic ruin of the colonised populace. In such a system transparency was of no account and accountability encouraged only to itself, never to the public. Unfortunately despite long years of independence many countries have continued to hold information away from people and even penalise the slightest breach through such insidious laws like 'Official Secrets Acts' of colonial vintage. These laws were predicated on the view that the public was the enemy and a subject and had no right to seek information or explanation from the overlord government. This thinking has no place or legitimacy in today's democratic egalitarian world and since the 1990s over 40 countries have joined in the trend toward greater openness and replaced secrecy with transparency as the fundamental norm defining governance.

The Commonwealth Human Rights Initiative's (CHRI) publication, *"Our Rights, Our Information-Empowering People to Demand Rights through Knowledge"* show cases how the right has been used by ordinary people to change systems, redress grievances and realise other rights. It places these experiences in the historical context of the evolution of this right from an esoteric freedom of a highly enlightened society aloof from the humdrum of the prosaic world, to its recognition through the International Covenant on Civil and Political Rights, as a fundamental right for all. It highlights with detailed discussions the bearing the right to information will have not only on social development through promoting gender equality but also on economic development while protecting the essential requirements of humankind like the need for food and water.

This book will form an essential reference work for all those seeking to mould such a right in their societies – both where the right has not yet been enacted into law and where such an empowering legislation is already in operation.

India, where CHRI is headquartered, passed in 2005, what has come to be known as the most radical legislation since its Constitution. Its effect on the popular consciousness has been electric. So deeply embedded and popular has the law become in just three years that any attempt to amend it, roll it back, or to make information access more difficult have been defeated by a fierce public defence of the law. CHRI has been at the forefront of ensuring the law's defence as well as its dissemination far and wide. It has taken its advocacy into South Asia, Africa and the Pacific. Out of the belief that this is the singular legal right that can improve governance, speed up development and ameliorate poverty, CHRI has published *'Our Rights, Our Information'* as witness to the value of this right to diverse people and nations. It will surely help chart a roadmap to further strengthen the basis of the exercise of this right by all.

A handwritten signature in black ink, appearing to read 'Wajahat Habibullah', is displayed on a light blue rectangular background.

- Wajahat Habibullah
Chief Information Commissioner
Central Information Commission
India

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Jamaica



Sweden



United Kingdom



Canada



Iran



New Zealand



Thailand



United States of America



Greece



Ireland



Slovakia



Uganda

(Map: Courtesy of the University of Texas Libraries, The University of Texas at Austin.)



Introduction

Information: A Right to Realise All Rights

The right to information is a unique human right. Not only has its status as a fundamental right been recognised throughout international and regional human rights law, for example in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,¹ but countless stories from around the globe testify to the power of the right to information as a tool in the hands of everyday people. Information is power. Information provides people with the knowledge to demand political, economic and social rights from their governments – from the right to food to the right to be free from torture.

Although we live in the age of information, where knowledge can be accessed and shared at the click of a button, and span the globe in an instant, a lack of information continues to frustrate people's ability to make choices, participate in governance and hold governments accountable for their actions. This unfortunate fact is especially true for the poor and marginalised who need information the most. In particular, the lack of easily accessible information continues to prevent people from being aware of their human rights and demand that governments turn them into practical realities.

Every country's government needs information to function. Governments need information on a wide variety of issues – from statistics on health and employment, social security entitlements of individuals, occurrences of crimes, to tenders and contracts that they are awarding, to the levels of production and consumption and the extent of savings and investment in the economy and changes in the prices of basic commodities. The list goes on and on.

This information is a public good that we own collectively. It does not just belong to the government – it belongs to everybody. In democracies, the government exists only to represent and act on behalf of the people. The information it gathers is done for the public's benefit, with the public's funds, for public purposes. The collection, use, storage and retrieval of information are all carried out for the sake of the wider public good. People have a right to have access to that information; to seek it and also to receive it.

The right to information is referred to in various ways across the world – some talk of "freedom of information" others talk of "access to information", or "the right to know", but all these terms have the same meaning – people have a human right to seek and receive government-held information. This right places an obligation on governments to store and organise information in a way that makes it easily accessible to the public, to provide information proactively and to respond positively to requests for information. They should withhold information only when it is in the best public interest to do so.²

In order to work effectively, the right to information should ideally be realised through the enactment of a domestic law. Sweden was the first country to legally guarantee its people their right to access information when it enacted a law in 1766 recognising the right of the press to seek, obtain and publish information held by government.³ Since then, over 70 countries from all regions of the world have either enacted right to information laws or put in place systems to provide people with access to government-held information.

Putting in place systems that provide the public with access to information is one of the most positive steps a government can take to achieve a variety of economic, social and political goals such as equitable economic development, poverty alleviation and the reduction of corruption.

It may seem incredible that one mechanism can result in so many different and far-reaching benefits. However, the many benefits of the right to information stem from the fact that a guaranteed legal assurance of access to information (except for a narrow band of information which it may be in the best interests of the public not to disclose) is at the centre of democratic reform as it transfers some of the government's knowledge and power back to the people, enabling them to participate in their own governance in unprecedented ways. An effective access regime can fundamentally change the way that a government interacts with its citizens.

It is easy for states to ratify international human rights instruments or create constitutions that promise their people an array of rights and remedies. However, the practical realisation of human rights requires effective policies, laws and practical mechanisms that ensure access to information. Only access to timely and accurate information can empower the citizens of a country with the knowledge they need to scrutinise the policies that affect their human rights and the leverage to challenge the status quo. Armed with information, civil society is empowered to demand that legal obligations are translated into practical realities for themselves and their communities.

In 1597, Francis Bacon said: "knowledge is power".⁴ We hope that the case studies contained in this book will provide the reader with new knowledge about how the right to information can empower members of society to stand up and demand the practical realisation of the human rights which governments have promised to deliver. The collection of case studies illustrates the unique nature of the right to information as an empowerment tool that everyday people can use to demand access to the full range of their human rights.

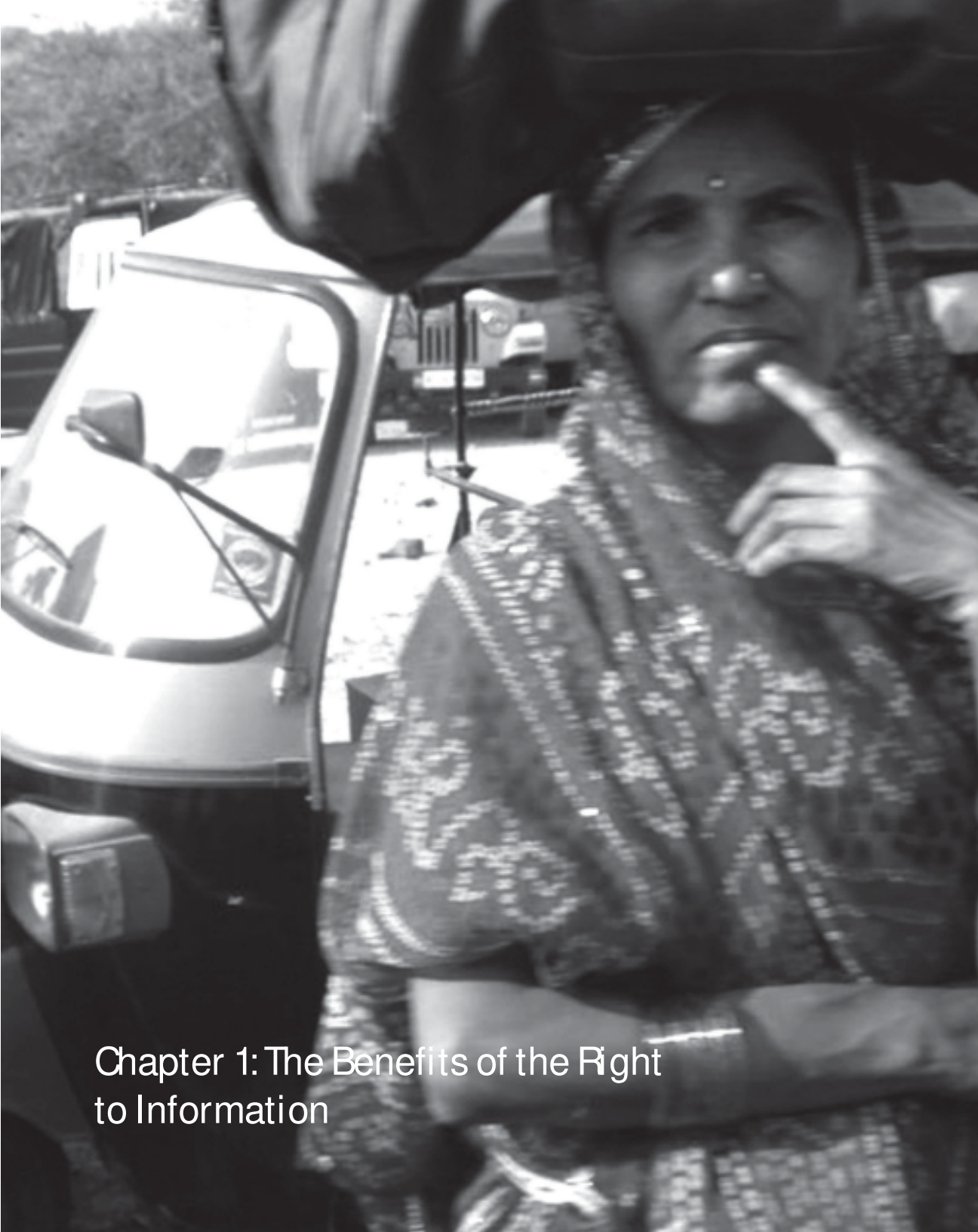
Chapter one looks at the many social, political and economic benefits of the right to information. It illustrates the essential role information can play in refocusing government priorities toward the needs of the people by enabling them to develop and express informed opinions and play an active role in influencing the policies that affect their lives.

Chapter two sets down the international and regional human rights instruments that form the legal framework for the protection of the right to information. It looks not only at the specific protections of the right to information, for example in Article 19 of the International Covenant of Civil and Political Rights, but also at the way the right to information is being given increasing recognition in more recent human rights treaties, such as the International Convention on the Rights of the Child.

Chapter three examines the ways in which the right to information can be practically implemented at the national level. From the constitutional protection of the right to information to the enactment of a right to information law, it explores the ways states can give effect to their obligations to protect their citizens' right to know.

Chapter four forms the core of the book: it is a compilation of case studies from around the world that illustrate how people have used their right to information to demand the protection and realisation of other human rights, from the right to health to the right to freedom of religion. It also provides some case studies that show the other side of the story, where the lack of information has contributed to an ongoing violation of that right as well as other human rights.

This book aims to be a public resource that can be read merely for interest or used to enrich advocacy strategies on a variety of democratic, human rights and social justice issues.



Chapter 1: The Benefits of the Right
to Information

Empowering People to Demand their Human Rights

International human rights law has developed in order to protect the interests and basic needs of individuals against attack or abuse by the state. Through international instruments such as the International Covenant on Civil and Political Rights (ICCPR¹) and the International Covenant on Economic, Social and Cultural Rights (ICESCR²), states agree to respect fundamental rights which have their roots in the universal principles of human dignity and equality. In becoming parties to these treaties, states commit to refrain from violating these rights and take active steps to ensure that their laws, policies and programmes promote respect for and the enjoyment of human rights. Many treaties also require state parties to submit to the oversight of an independent monitoring body. In the case of the ICCPR, this is the Human Rights Committee and for the ICESCR it is the Committee on Economic and Social Rights. These bodies are authorised to receive and comment on annual implementation reports provided by the states and in some cases to investigate allegations of serious and systematic human rights abuse.

The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task, your task...is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed.

— Kofi Annan, former Secretary-General, United Nations³

External monitoring such as this is essential to ensure that states are serious about their commitments and are not merely paying lip service to the human rights of their citizens. However, if monitoring is to be truly effective, it is of crucial importance that the people whom human rights instruments are designed to protect – the citizens of a state – are also empowered to take an active role in scrutinising the government's compliance with its international human rights obligations.

One of the main challenges to the implementation of international human rights standards is that many governments often fail to actively promote awareness of basic entitlements amongst their citizens and refuse to give information proactively or when it is requested. Even when individuals do come to know about their rights through the media or civil society awareness campaigns, they often feel completely powerless to effect any real change in their circumstances. The right to information has a dual benefit in this respect. First, it lays the foundation for a legal right to know about a whole range of government policies, decisions and activities. Second, it empowers people to position themselves at the centre of the political dialogue. It is for this reason that the United Nations

General Assembly recognised in 1946 that: “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.”⁴

Democracy Underpins Human Rights

The ideals of democracy and human rights are very closely intertwined; both emanate from the fundamental belief in the equality of all human beings who therefore have the right to make an equal contribution to their own governance and be equally protected under the law. The Commonwealth Harare Declaration of 1991⁵ recognised this when Commonwealth leaders stated their belief in: “the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual’s inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives”.⁶

Information Underpins Democracy

However, in order for democracy to work effectively, safeguards must be put in place to protect against systems and laws that serve to keep the public isolated from official decision-making, and in particular those that keep them in the dark about government policies and activities. Democracy is founded on the principle of representative government and it is therefore essential that politicians and government authorities communicate openly with citizens so that they are fully aware of the public issues they are supposed to be representing. All too often, governments are wary of the consequences of divulging “confidential” information to citizens and prefer to operate in secrecy.

Experience shows, it is usually the most secretive of governments that also engage in the most systematic human rights violations. For this reason, the creation of a transparent and frank dialogue in the form of free flowing and accurate information is vital to ensure that citizens remain informed about what their rights are, what the government is doing to ensure they are fully realised, the areas in which it is falling short, and what mechanisms of redress they can access when their rights are violated.

This principle is recognised not only in Article 19 of the ICCPR but also in other international instruments.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

— Article 19, *The International Covenant on Civil and Political Rights*⁷

From the rights of women (CEDAW),⁸ to the rights of the child (the CRC),⁹ to the right to sustainable development and a safe and clean environment (the Rio Declaration),¹⁰ the right to information is recognised as a crucial “complementary” right which enables the practical realisation of all other human rights. In other words, access to information about rights is recognised in international law as an indivisible and indispensable component of those very guarantees.

Canada: Information Helps People to Protect Themselves

The Canadian courts have recognised how important access to information is in enabling people to realise their fundamental right to security.

When a woman was sexually attacked in 1986, she successfully sued the Canadian police for withholding information about a sexual offender in her area.¹¹ Rather than sharing their inside information that the offender was likely to attack again, the police chose to keep it secret in order to increase their chances of catching him committing another crime.

The court ruled that by withholding this information, the police had violated Section 7 (the right to life, liberty and security of person) and Section 15 (the right to equal protection before the law) of the Canadian Charter of Rights and Freedoms,¹² and that the Canadian authorities have a positive duty to inform citizens about serious threats to their safety.¹³

Making Elections Fairer

One of the most fundamental ways in which the right to information can be seen to underpin democratic systems is at election time. The foundation of the democratic tradition rests on the premise of an informed constituency that is able to thoughtfully choose its representatives on the basis of the strength of their record of public service. Personal profile is another crucial factor that determines the acceptability of a candidate for many voters. When accurate information on a candidate’s profile and past performance is withheld from public scrutiny, there is a real danger, especially in developing countries, that voters will rely on hearsay or potentially irrelevant affiliations of politicians such as religion, caste, language or ethnicity.

India: Voters' Right to Know the Background of Electoral Candidates

With more than 700 million voters, elections in India are a costly affair. Although there are statutory limits on campaign expenditures for elections to Parliament and the state legislatures, studies conducted during the 1990s showed that candidates of major political parties spent at least ten times the limit. They got away with this excess spending using a loophole in the election laws claiming that the additional expenditure was incurred by their parties and supporters who are not subject to any limit. The media frequently reported instances of use of money and muscle power to bribe or intimidate voters in almost every general and by-election. A committee set up by the Ministry of Home Affairs to study the criminalisation of politics drew attention to the increasing trend of political parties fielding candidates with criminal backgrounds.

In a 2002 public interest litigation case filed by the Association for Democratic Reforms (ADR), the Supreme Court of India ruled that every voter has a fundamental right to know the background of candidates contesting elections to Parliament and legislatures in the states so that he or she may make an informed choice at the ballot box. The court directed the Election Commission of India to collect on affidavit and publicise the following information: details of movable and immovable assets owned by the candidate and his or her spouse and dependents; details of any criminal case (pending or resolved) that is at least six months old at the time of filing nomination papers for the election; educational qualifications; and any unpaid dues relating to the use of public utilities.

All political parties rallied together and got the Union Government to pass an Ordinance that effectively nullified the court's order. However in 2003, the court struck down the Ordinance on the ground that it violated the voter's fundamental right to information. Since then it has become the norm for all electoral candidates to submit affidavits containing their financial and criminal antecedents while filing nominations. The Election Commission publicises this information on its website.¹⁴ Subsequently, the Commonwealth Human Rights Initiative and ADR have catalysed election watch groups around the country to analyse these affidavits and inform voters through the print and electronic media about the background of candidates contesting elections.¹⁵

Inspired by this success story, civil society groups in Bangladesh were able to push their Apex Court to secure similar levels of transparency about candidates contesting elections in their country. Hopefully, these directives will be implemented in the next round of elections to Parliament.

The right to information is a key tool for enabling citizens to participate in the political processes of their country. Information provides the public with the means of equipping themselves with knowledge about what the government is doing and how it is choosing to respond to changes in the evolving political landscape. Armed with this knowledge people are able to scrutinise official policies and suggest alternatives they feel could be more effective. In this manner, access to information can be the key to moving from a formal to a responsive and consultative democracy.¹⁶

Information Helps Fight Corruption

The World Bank has identified corruption as one of the greatest obstacles to economic and social development and claims that tackling corruption is crucial to poverty reduction.¹⁷ More than US\$1 trillion a year is siphoned off worldwide through bribery alone – this refers only to large-scale global transactions and does not include embezzlement or small-scale bribery.¹⁸ The corrupt practices of government officials eat deeply into public funds that could be used to benefit the poorer segments of society.

In October 2003, the UN General Assembly adopted the United Nations Convention Against Corruption (UNCAC), a comprehensive treaty which details various measures that state parties to the Convention should take in order to combat corrupt practices. The Convention explicitly recognises the central role that transparency and the right to information can take in ensuring government accountability by enabling the public to participate in the exposure of corruption. Article 13 requires states to ensure that: “the public has effective access to information” and to undertake: “public information activities that contribute to non-tolerance of corruption, as well as public education programmes”.¹⁹

Evidence suggests that there is a strong correlation between a country having a law guaranteeing access to information to the people and their perception of the levels of corruption in government. Of the ten countries identified by Transparency International’s 2007 Corruption Perceptions Index²⁰ as having the highest levels of corruption, not one had a functioning access to information regime. Of the ten countries perceived to have the

lowest levels of corruption, nine had functioning right to information laws.²¹

When individuals are able to demand access to official accounts and financial documents it becomes possible for them to identify the discrepancies between what a government has claimed to have spent on public works and projects and what it has spent in reality. Money that has gone missing or is unaccounted for has all too often ended up in the pockets of corrupt officials. In India, where the national Right to Information Act commenced in 2005,²³ there are numerous examples where people have used the Act in ways that have exposed corruption in public service delivery and led to significant improvements in their ability to access basic human rights such as food and health care.²⁴

Corruption aggravates poverty. Surveys of the very poor in developing countries point to corruption as having a significant and detrimental impact on their lives. For a poor household, the bribe randomly extorted by a police officer may mean that the family cannot afford school fees for their children, or that the family cannot afford to buy goods to maintain its small business and source of income.

— Transparency International Policy Paper: Poverty, Aid and Corruption²²

Feeding the Poor with the Right to Information

In India, people surviving on less than US\$1 a day are issued ration cards that entitle them to buy food grains, sugar, cooking oil and kerosene fuel from designated fair price shops at highly subsidised prices. This is known as the Targeted Public Distribution System (TPDS). However, even with a ration card, many poor families have found that accessing their entitlements is extremely difficult: often ration shops are closed or shopkeepers claim they have no stock.

In 2005, with the help of Parivartan, a local NGO, some of New Delhi's poorest residents rallied together to demand access to TPDS records using the Delhi Right to Information Act – a state law that preceded the national Right to Information Act.²⁵

When the records were scrutinised, huge discrepancies in terms of actual figures were discovered – between what the shopkeepers claimed to have distributed to the poor, and what they had actually distributed. It became apparent that over 80% of the grain was being siphoned off and black marketed for personal profit. Ration card holders had no choice but to buy the same stock from regular grocery shops at a much higher price.

As a result of this discovery, a complete overhaul of the TPDS was ordered by the Delhi government and systems were put in place to ensure that the poor would be able to gain better access to the food supplies they were entitled to.²⁶

Poverty Reduction and the Millennium Development Goals

Professor Amartya Sen's²⁷ famous claim that no famine has ever occurred in a democratic country with a free press, regular elections and multi-party politics,²⁸ emphasises the strong correlation between representative and accountable government, the availability of information, and the realisation of socio-economic rights. By putting in place an effective access to information regime, states help to provide communities with the knowledge they need in order to participate in the making of decisions that affect their own lives. Information empowers people to demand that the government fulfil its obligations to provide its impoverished citizens such basics as food, shelter, clean water, health care and education and ensure equitable distribution of the resources that are available.

Tragedies of Ethiopian Famines Compounded by Lack of Information

With a population of over 70 million people, Ethiopia has been plagued by famine and civil unrest throughout most of the 20th century.²⁹ Although in recent years great progress has been made in securing a stable, parliamentary republic, the country is still far from the full realisation of many of the human rights obligations to which it has committed itself. Ethiopia's Constitution protects the right of its people to seek, receive and impart information as an element of the right to freedom of expression. However, the actual status of people's right to information is questionable, and government secrecy has taken its toll on the people.³⁰

According to the Nobel prize winning economist, Professor Amartya Sen, a drought has never deteriorated into becoming a famine in a country with a functioning democracy. He argues that a free press and the practice of democracy contribute greatly to bringing out information into the public domain which can have an enormous impact on policies for famine prevention.³¹ This correlation could prove promising for the future of Ethiopia, but it may also point to one reason why Ethiopia's people have suffered through so many disastrous famines in its history.

During the years 1984-85, Ethiopia experienced its worst famine to date, during which nearly one million people died of starvation and disease.³² Many contributing factors have been cited as causes of this tragedy including a severe drought exacerbated by civil unrest, insurgency, and delayed international aid. At this time, there was very little flow of information from the government to the people, which may have worsened the impact of the crisis.³³

Amartya Sen's findings are based on the premise that with a flow of information (usually facilitated by a free media) people become aware of government actions,³⁴ and they can then hold their government accountable if they do not agree with its policies. In times of drought it is important for people to know how much money the government is spending on response measures, how it is being spent, how much food is available, where it is being distributed and how people can get their share. If the administration is not broadly and equitably distributing the food stocks that are available, the people should know the details of its distribution policy and demand a more just distribution.

Improving the flow of information can also improve the international response to such a crisis. International donors are less likely to provide aid to governments that operate in secrecy as donors want to see where their aid is going and how it is being utilised. In the case of Ethiopia, international donors were slow to provide aid during the 1984-85 famine because they feared Ethiopia's government would spend the aid on weapons instead of using it to feed its starving millions.³⁵

Although Ethiopia has taken great strides in terms of the establishment of democracy and reviving economic development, if the government continues to stifle the flow of information, preventable humanitarian tragedies in Ethiopia may occur again.

Consultation and Participation

Poverty reduction strategies are doomed to fail when they are not designed in consultation with the people whom they are intended to benefit. It is these people who should be the primary players in the conceptualisation, design, delivery and evaluation of development schemes intended for them. Beneficiaries are best placed to assess what kinds of developmental projects would have the greatest impact on their communities – be it the digging of wells, the construction of schools, or functional healthcare

facilities complete with doctors, nurses and stocks of essential medicines. Unfortunately, poor communities usually suffer from a dual poverty: they not only lack the basic resources necessary to lift themselves out of poverty but also suffer from a scarcity of information about the poverty reduction programmes and welfare schemes run by government.

The right to information can help to ensure that poorer communities can avail of opportunities for extricating themselves and their communities out of poverty. Rural communities for example, are often particularly excluded from government decision-making due to their geographical isolation, lack of access to information and poor literacy levels. This situation is only made worse when public officers are under no obligation to consult widely while making policy decisions that are likely to affect the lives of others. Setting a legal obligation on governments to voluntarily disseminate information can provide people with vital knowledge such as the best agricultural practices and market strategies so that they can consider participating in the economy more actively. If they do choose to do so, such information ensures that they are in a more competitive position from which to participate. The case study illustrated on page 22 provides an excellent example of how women in a rural community in Uganda have used their ability to access information to reap economic and human rights benefits for their local communities.

Empowering Countries to Achieve the Millennium Development Goals

At the UN Millennium Summit in 2000, world leaders agreed to the Millennium Development Goals (MDGs): a set of eight goals for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women.³⁶ The principle of equitable economic development underpins each of the MDGs and is implied in Goal One which requires states to reduce by half the proportion of people living on less than a dollar a day, and the proportion of people who suffer from hunger by 2015.

In order for countries to reach these targets and begin to lessen the ever increasing gap between rich and poor, it is essential that the poorest members of society are empowered to have their say in the design and implementation of development projects in their

communities. Information can enable citizens to monitor the effectiveness of their government's strategies for reaching the MDGs and this public awareness in turn spurs the government to action.

Maternal Health

Goal Five, for example, relates to the improvement of maternal health. Countries are required to reduce maternal mortality ratio by 75% by the year 2015 using a visible decrease in mortality rates and an increase in the number of child-births assisted by skilled health care professionals as progress indicators.³⁷ In countries with an information access law people can obtain a copy of their government's plan to achieve this goal. For example, they can ask for details of budgetary allocations made for promoting health care facilities and can monitor public spending on the construction, maintenance and improvement of these facilities. They can physically verify the availability of medicines and the status of health care equipment in publicly-funded health care centres against the data contained in the administrative records. Where people can demonstrate that the government's plan is not functioning as well as it should, they can demand that the plan is revised to better achieve its objectives.

Equitable Economic Growth

The enactment of a right to information law should not be an isolated action but part of an ongoing movement toward a more open, transparent and accountable public policy environment. Such an environment has the potential to make a country more attractive to both domestic and foreign investment. For investors to feel secure about the funds they are contributing to a country's economy, they require access to timely information, such as the industrial and investment policies; the operation of regulatory authorities and financial institutions; the criteria used to choose successful bidders in procurement processes, provide licenses and give credit; expatriation policies; and dispute redress mechanisms. In this way, the encouragement of a culture of transparent governance can be a significant step towards achieving a more open dialogue between a country's government, its people, and domestic and foreign investors. Economic growth is more likely to be sustainable and distributed in an equitable fashion in a transparent environment.

Easy Access to Information Equips Women Farmers to Improve Work Conditions in Uganda

Access to information has been used to improve the lives of women farmers in four northern Ugandan provinces.³⁸ A study conducted in 2003 revealed that although 75% of the local population was engaged in subsistence farming, only 3% were recorded as participating in commercial farming. The study highlighted that the lack of information on vital issues such as how farmers can improve their seed and crop varieties and identify sources and control diseases, are major causes in the provinces' lack of commercial productivity.³⁹ This has tended to result in poor wages and an unfair disadvantage for the predominantly female farmers in the agricultural industry.

The non-governmental organisation Women of Uganda Network (WOUGNET) recognised the importance of freely available information for achieving just and favourable conditions of work and established the "Enhancing Access to Agricultural Information Using Information and Communication Technologies" (ICT) Programme.⁴⁰ Under the Programme, a rural facility known as the Kubere Information Centre was established to provide the farming community (with a strong focus on women as the primary farmers within the region) with basic training on the use of traditional and modern communication methods, such as radios, mobile phones and the internet – all of which can be used to share and disseminate information.

The Information Centre uses many innovative avenues for communicating information on agriculture. They conduct community meetings, host radio programmes and post notices on public notice boards, translating all communication into the local language. The Centre's strategic location within the market-place of Apac district has also meant that it has become a central meeting point for all the area's farmers who can gain access to vital farming information.⁴¹

Another focus of the ICT Programme is to strengthen communication between the farmers themselves, providing for more effective sharing of resources and expertise. It also functions as an intermediary

for putting forward pertinent questions the farmers have raised. The Centre forwards questions raised by the community to agricultural experts, such as Ugandan agricultural officials and development institutions, which then respond with any information they may have.⁴²

The Kubere Information Centre has been instrumental in equipping the women farmers of northern Uganda with the knowledge and skills they need to improve their conditions of work and their ability to compete fairly in the market economy. The Centre has not only been successful in creating strong links within the farming community but also in strengthening relationships between the community and external players such as agricultural officials and like-minded organisations, who assist the community in providing the reliable, good quality agricultural information that is vital to their success.

The success of Apac district illustrates the power of freely available information even when the legislative framework is yet to be enforced.⁴³

Supporting a Free and Independent Media

In a functional democracy, the media is an essential watchdog for the public, scrutinising government actions and policies in order to expose mismanagement and corruption and demand accountability. The media is often the main source of public information, informing and shaping public opinion and contributing to public debates about important issues. This is a two-way process: the coverage of current events by the media also serves to inform government's understanding of public opinion, which in turn feeds into policy-making.

Unfortunately, some governments can become uncomfortable with the power and influence that the media wields and may retaliate by taking control of newspapers, radio and television stations and placing tight restrictions on the media's ability to gather and report news. Governments can also abuse the power of the media by making them put a spin on issues or events or by censoring information that presents them in an unfavourable light.

In situations where the media is prevented from accessing reliable information, reporters may have to rely on hearsay, planned leaks or

snippets of unsubstantiated news and press releases from the very officials whose actions they are seeking to investigate. Many journalists' codes of ethics refer to the principles of truthfulness, accuracy, objectivity, impartiality, fairness and public accountability⁴⁴ and policies that restrict legitimate access to information prevent them from adhering to these standards and doing their jobs effectively.

Some governments continue to stifle their media with archaic laws that allow journalists to be sued for criminal defamation or factual inaccuracies.⁴⁵ This practice is against the foundational principles from which a healthy democracy draws its sustenance namely, the freedom of speech and expression and freedom of the press. A legally entrenched right to information enables journalists to seek and obtain accurate information from governments in a legitimate manner and to use that information to undertake more thorough investigations of the recorded facts, and report on their findings.

United Kingdom: Journalists Fight to Protect their Right to Information

The power of the right to information can be illustrated by a recent example when the UK government drafted a Bill which would have seriously limited the quality and amount of information that journalists and campaigning organisations could access under the Freedom of Information Act, 2000.⁴⁶ The media retaliated with a petition to the Prime Minister signed by over 1250 journalists who opposed the amendments. On handing over the petition to the government, the General Secretary of the National Union of Journalists stated: "The Act has been enormously useful to journalists wanting to dig deeper into the institutions running our democracy and has helped them reveal uncomfortable truths which the public has a right to know about. Now we are seeing a backlash from the powers that be, who have found the reach of the Act has shone light into areas they would prefer to remain in the dark."⁴⁷ Thanks to media and civil society pressure, the Bill was eventually dropped from consideration.

Conflict Prevention and Post-Conflict Reconciliation

The power of information is nowhere more recognised than by the very

people who have the power to manipulate it. The tendency of governments to engage in policies of secrecy can foster feelings of deep suspicion and exclusion amongst members of the population and these can be particularly strong with ethnic, religious, cultural or linguistic minorities.

Communities who perceive themselves as being discriminated against are often prevented from accessing factual information about what the government is, or is not doing to respond to their particular needs and better their situations. Lack of accurate information, which is often well within the power of governments to provide, often perpetuates stereotypes and distrust between communities and such feelings may be the catalysts for political revolt or civil conflict. Providing access to accurate, timely, information can help to counter rumours with facts, lay the groundwork for more constructive interaction between estranged communities, and increase social cohesion.

Many governments have recognised the power that the manipulation of information can have over the preconceptions and stereotypes held by their citizens and have at times exploited this as a means of achieving their own political ends. During, and in the build-up to, periods of internal conflict, both the state and its opponents sometimes manipulate information in order to exacerbate myths of difference and the supremacy of one group over another. By controlling what information is made public through the media, authorities are able to spread false information about certain groups and censor all information which contradicts their biased propaganda. With access to only limited sources of information, it then becomes more difficult for people to challenge the arguments that are set before them as real.

Rwanda: Manipulating Information to Fuel Conflict

False information can be dangerous in the wrong hands. During, and prior, to the 1994 Rwandan genocide, authorities realised that by manipulating information they could ignite feelings of resentment between ethnic communities. In 2003, the International Criminal Tribunal for Rwanda convicted three media executives from Radio Tele Libre Mille Collines (RTCM) for their role in the media campaign to incite racial hatred against the Tutsis.⁴⁸ With the endorsement of public officials such as Colonel Tharcisse Renzaho, the station spread

messages of hate about people of Tutsi ethnicity, encouraging all Hutus to assist in their elimination.

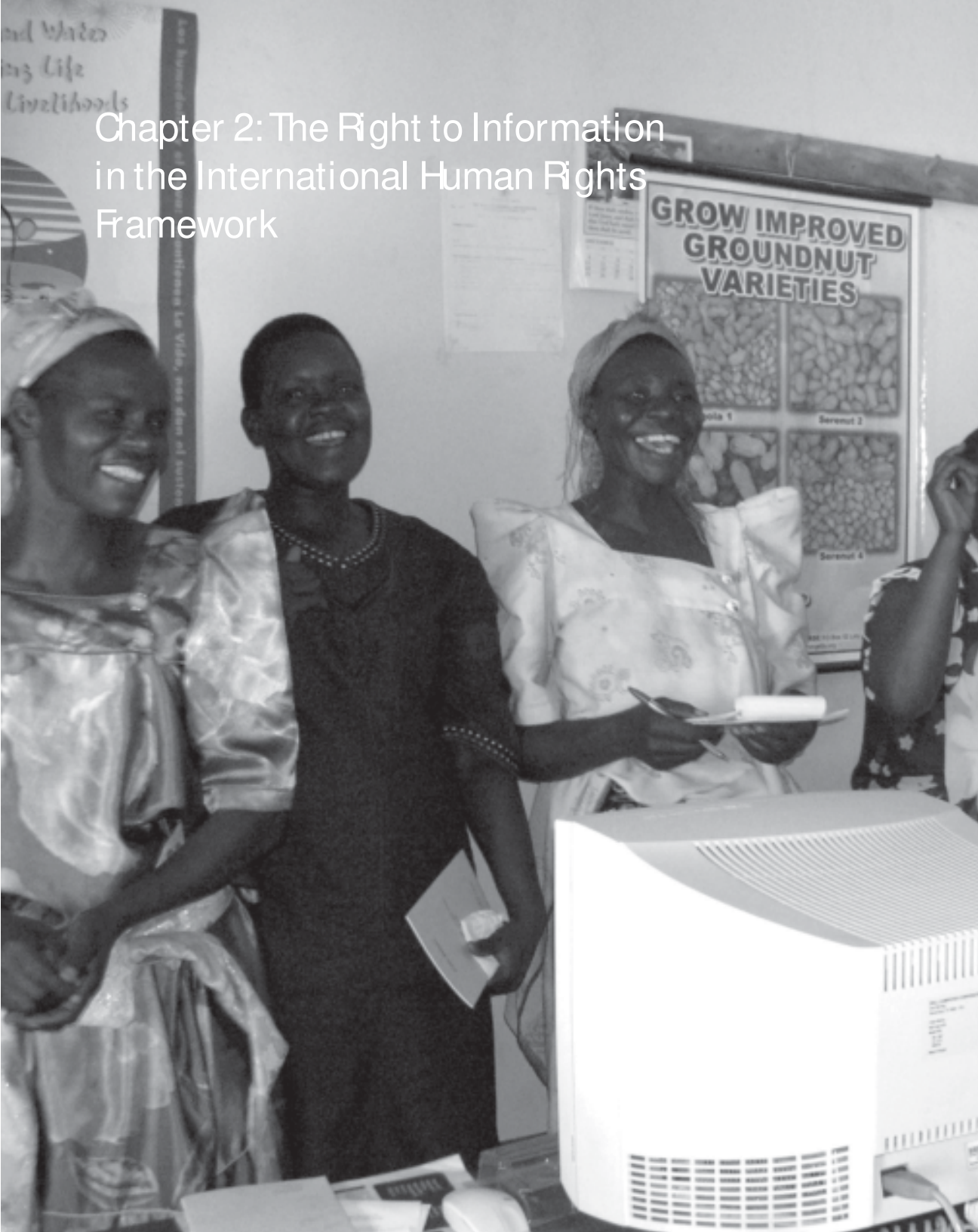
Roughly a week before the genocide commenced the radio station broadcast the following message: “You cockroaches must know you’re made of flesh. We won’t let you kill. We will kill you.” The radio continued to broadcast messages to incite hatred and fuel tension throughout the genocide and even went as far as to broadcast lists of Tutsis to be hunted down and killed along with their suspected whereabouts. Colonel Tharcisse Renzaho also used the station to instruct the military, police and civilians to help identify and kill Tutsis.⁴⁹

The Commander of the UN Peacekeeping Operation in Rwanda, General Romeo Dallaire, recognised how powerful a role the media had played in manipulating public information and shaping the horrors of the genocide when he remarked: “Simply jamming [the] broadcasts and replacing them with messages of peace and reconciliation would have had a significant impact on the course of events.”⁵⁰

Official silence can breed suspicion but by respecting peoples’ right to information the government can promote confidence in its public policies and make people believe their views are respected and taken seriously. Systems that enable citizens to be part of, and personally scrutinise decision-making processes can reduce public feelings of powerlessness and challenge perceptions of exclusion from opportunity or unfair advantage of one group over another. Proactive disclosure of factual information about various ethnic or racial communities can help to dispel myths of difference that are so often the impetus for hate crimes and civil strife. The right to information can help to reduce and prevent inter-group tensions that could otherwise have escalated into acts of violence.

Providing people with access to factual information can also be an extremely effective mechanism in quelling ongoing feelings of resentment between groups in post-conflict situations. Truth and Reconciliation Commissions such as those established in post-apartheid South Africa⁵¹ and Chile, following years of discriminatory rule and military dictatorship respectively, have been instrumental in dispelling feelings of resentment and distrust not only amongst citizens but also between the people and their new government. By collating and publicising information on past human rights atrocities that may have been covered up or denied by past regimes, TRCs give public recognition to the suffering that people have experienced and provide a safe space for them to give their testimonies and voice their concerns.

Chapter 2: The Right to Information in the International Human Rights Framework



Protecting the Right to Information

Freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.

— *United Nations' General Assembly, 1946*¹

Being able to access information is so important to each individual's life that it has consistently been recognised as a fundamental human right. In 1946, within a year of its inception, the United Nations recognised that people have a human right to access information from their government. They realised that this right is at the core of all human rights because it enables citizens to know their entitlements and when their rights are being violated, and demand that their government fulfils its duties under domestic and international law to protect and secure those rights.

International Standards

The United Nations:²

The right to access information is firmly set in the body of international human rights law. It is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR), and made legally binding on States Parties to the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.³

In 1993, the United Nations Commission on Human Rights appointed a Special Rapporteur on Freedom of Opinion and Expression who declared that Article 19 of the ICCPR imposes: "a positive obligation on states to ensure access to information, particularly with regard to information held by government in all types of storage and retrieval systems".⁴ In 1998, the Commission welcomed this view⁵ and in 2000, the Special Rapporteur endorsed a set of international principles on freedom of information⁶ of which the Commission has taken note.⁷

UN Principles on Freedom of Information (2000)

- **Maximum disclosure:** Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which they are stored.
- **Obligation to publish:** Public bodies should publish and widely disseminate documents of significant public interest, for example, on how they function and the content of decisions or policies affecting the public.
- **Promotion of open government:** At a minimum, the law should make provisions for public education and the dissemination of information regarding the right, and include mechanisms to address the problem of a culture of secrecy within government.
- **Limited scope of exceptions:** A refusal to disclose information may not be based on attempts to protect government from embarrassment or the exposure of wrongdoing. The law should include a complete list of the legitimate grounds which may justify non-disclosure and exceptions should be narrowly drawn to avoid including material which does not harm a legitimate interest.
- **Processes to facilitate access:** All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information; the law should provide strict time limits for processing requests and require that any refusal be accompanied by substantive written reasons.
- **Costs:** Fees for gaining access should not be so high as to deter potential requesters and negate the intent of the law.
- **Open meetings:** The law should establish a presumption that all meetings of governing bodies are open to the public.
- **Disclosure takes precedence:** The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. The exemptions included in the law should be comprehensive and other laws should not be permitted to extend them.
- **Protection for whistle-blowers:** Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing.⁸

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.

— Dr Abid Hussain, UN Special Rapporteur on Freedom of Speech and Expression, 1999¹²

In 2004, a Joint Declaration on International Mechanisms for Promoting Freedom of Expression was released by the United Nation's Special Rapporteur on Freedom of Speech and Expression, the Organization of American States and the Organisation for Security and Cooperation in Europe.⁹ This Declaration affirmed that access to information is a "fundamental human right" for all citizens and stated that governments should respect this right by enacting laws that allow people to access as much information from them as possible – this is the principle of "maximum disclosure".¹⁰ The Declaration also recognised how important access to information is for supporting people's participation in government, promoting government accountability and preventing corruption.¹¹

The African Union:¹³

Article 9(1) of the African (Banjul) Charter on Human and Peoples' Rights explicitly recognises the right of people to seek and receive information: "Every individual shall have the right to receive information."¹⁴ In 2002, the African Commission on Human and Peoples' Rights reinforced the view that: "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information".¹⁵

The African Union's Declaration of Principles on Freedom of Expression in Africa also recognises that everyone has a right to access information held not only by public bodies, but also by private bodies when this information is necessary for the exercise or protection of a human right. Though not binding, the Declaration has considerable persuasive force as it represents the will of a sizeable section of the African population.

Declaration of Principles on Freedom of Expression in Africa: Part IV (2002)

- Everyone has the right to access information held by public bodies.
- Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right.
- Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts.
- Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest.
- No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment.
- Secrecy laws shall be amended as necessary to comply with freedom of information principles.¹⁶

The African Union's Convention on Preventing and Combating Corruption further recognises the role that access to information can play in facilitating social, political and cultural stability.¹⁷ For this reason, Article 9 requires that every State adopt: "legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences".¹⁸

The Organization of American States:¹⁹

The American Convention on Human Rights includes the: "freedom to seek, receive and impart information and ideas" as part of the right to freedom of thought and expression.²⁰

**A society that is not well informed
is not a society that is truly free.**

— *Inter-American Court of Human Rights, 1985*²¹

The Inter-American Declaration of Principles on Freedom of Expression adopted in 2000 specifically recognises that: "access to information held by the state is a fundamental right of every individual."²² States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations to the right that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."²³

In October 2006, the Inter-American Court of Human Rights made history, being the first international tribunal to recognise the human right to access information. In the judgment of *Claude Reyes et al. v Chile*,²⁴ the court held that Chile had violated Article 13 of the American Convention on Human Rights, and ordered Chile to establish an effective legal mechanism that guarantees the right of all persons to request and receive information held by government bodies.

Making History: The OAS' Groundbreaking Judgement – The Right to Information is a Human Right for All

The Inter-American Court of Human Rights decision in Claude Reyes et al. v Chile

In the 1990s, a US logging company called Trillium was to undertake a mass logging project in the Rio Condor Valley in Chile which would deforest 285,000 hectares of native forest.

An environmental non-government organisation called Terram was concerned that the Chilean government may have failed to carry out the environmental checks that are required by law in order to make sure that they have considered the damage the deforestation will have on Chile's delicate ecosystem.²⁵ Terram asked the government for a copy of the assessment reports that should have been prepared before the project was approved.

Although Chile was required to compile this information in accordance with its Foreign Investment Statute,²⁶ Terram was still waiting for the information eight years later.²⁷ The government simply refused to provide any substantial information on the assessments they had conducted. The only information that was ever provided was the total value of Trillium's investment in the logging project.²⁸

Frustrated by the government's silence, Terram staff appealed to the Chilean courts, claiming that their right to information had been violated and demanding that the government answer a simple question: had it carried out the proper environmental checks before giving the Trillium Corporation permission to cut swathes of native forest and destroy irreplaceable ecosystems?²⁹

All courts rejected the claim, including the Supreme Court which stated that their request for information was “manifestly ill-founded”³⁰ and not of high public importance.

Terram staff continued to pursue the issue, taking the case to the Inter-American Court of Human Rights with the claim that Chile had violated Article 13 of the American Convention on Human Rights – the right to freedom of thought and expression. The court held that Chile had indeed violated Article 13 of the Convention, and in doing so it was the first international tribunal to recognise that the public’s right to freedom of expression necessarily includes the right to: “seek, receive and impart information”.³¹ The court concluded that the government has a positive obligation to provide information which is in the public interest. Release of the information on environmental checks undertaken was clearly in the public interest as it concerned a forestry project that had sparked considerable public debate about its potential environmental impact.³² In this case, the government had failed to provide mechanisms to guarantee the right of access to public information and the court ordered Chile to establish a legal mechanism that guarantees the right of all persons to request and receive information held by public authorities.³³

While the case was progressing, there were a number of interesting developments. In August 2005, the Chilean Constitution was amended to state that acts and decisions of a state body are for public use and that: “Only a law with a special quorum can establish their secrecy of confidentiality.”³⁴ The Inter-American Court of Human Rights commented that this provision falls short of fulfilling people’s right to access information and that domestic legislation was also required. During the case, Trillium withdrew from the project.

The Council of Europe and European Union:³⁵

The Council of Europe formally recognised the people’s right to access information as early as 1950. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.³⁶

This commitment has been developed and interpreted over the years by the European Court of Human Rights. This was included as Article 11(1) of the Charter of Fundamental Rights of the European Union which has become legally binding on all members of the European Union except Poland and the United Kingdom after the signing of the Treaty of Lisbon.³⁷

The European Union has also shown its commitment to the right to information by implementing regulations that provide mechanisms through which people can access information from the institutions of the European Union.³⁸

In March 2008, the Council of Europe's Steering Committee on Human Rights (CDDH) adopted the Convention on Access to Official Documents at Strasbourg. The Convention has been criticized as it falls short of many national laws on access to information and of the new international standard set by the Inter-American Human Rights Court.³⁹

The Aarhus Convention:

The UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, is a unique treaty which recognises the link between the environment, human rights and the right to information.⁴⁰ Popularly known as the Aarhus Convention, named after the Danish city where it was adopted by European countries in June 1998, it places an obligation on State Parties to proactively disclose and respond to public requests for environmental information, which is defined broadly to include data held in aural and visual forms. Forty European and Central Asian countries that ratified this Convention have put in place legislative and administrative mechanisms to provide environment-related information to people.

Asia and the Pacific:⁴¹

Neither Asia nor the Pacific have an over-arching regional body that sets or monitors human rights standards in the regions. However, this does not mean that there is no recognition of the people's right to information – it just comes from different fora. Rather than being recognised in human rights related treaties, the Asian and Pacific countries have generally recognised the importance of the right to information in other agreements.

One human rights charter in the region that does include the right to information is the revised Arab Charter on Human Rights which was adopted

at the Summit Meeting of Heads of State of the Members of the League of Arab States at their meeting in Tunisia in May 2004. The Charter includes a specific right to information provision in Article 32(1) which states: “The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.”⁴² Although the Charter has been signed by a number of countries, it has not received the required number of ratifications to come into force.

The Association of South East Asian Nations’ (ASEAN) 1967 Bangkok Declaration states in its aims and purposes that it adheres to the principles of the United Nations Charter, including Article 19 of the Universal Declaration of Human Rights which includes the right to information.⁴³

The Asia Development Bank – Organisation for Economic Cooperation and Development (ADB–OECD) Anti-Corruption Initiative’s Action Plan, sets out member states’ commitment to freedom of information in order to: “ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals...”⁴⁴

The Pacific Plan, endorsed by leaders of 16 Pacific Island nations, has a good governance pillar which includes the requirement that states develop freedom of information mechanisms.⁴⁵ Recognising the importance of sharing information, the Pacific Islands Forum Secretariat is in the process of developing its own internal disclosure policy which will provide people access to the information it holds.

The “right to information” has been recognised as being of vital importance to human rights and good governance, and has been accepted as a priority at many levels. Encapsulated in the Pacific Plan, our Leaders themselves have called for, among other things, “a region respected for its governance, sustainable management of its resources, full observance of democratic values and its defence and promotion of human rights; partnerships with neighbours and beyond... to improve our understanding and communications and ensure a sustainable existence for all.”

— Greg Urwin, Secretary-General of the Pacific Island Forum Secretariat⁴⁶

The Commonwealth:

In 1980 the Barbados Communiqué issued at the end of the Commonwealth Law Ministers Meeting stated: “Ministers expressed the view that public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.” In 1999, the Commonwealth produced the Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and

Development. This Report contained a strong set of principles and guidelines as well as key statements regarding the value of the right to information:

Freedom of information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness.⁴⁷

On the basis of the Report, the Commonwealth Freedom of Information principles were drafted. Unfortunately, the final principles endorsed by the Commonwealth Law Ministers at their Meeting in 1999 were neither as comprehensive nor as progressive as the principles and guidelines submitted by the Expert Group. The principles were noted by the Commonwealth Heads of Government later that year when they recognised the importance of public access to official information, both in promoting transparent and accountable governance and in encouraging the full participation of citizens in the democratic process.

Commonwealth Freedom of Information Principles

1. Member countries should be encouraged to regard freedom of information as a legal and enforceable right.
2. There should be a presumption in favour of disclosure and governments should promote a culture of openness.
3. The right of access to information may be subject to limited exemptions but these should be narrowly drawn.
4. Government should maintain and preserve records.
5. In principle, decisions to refuse access to records and information should be subject to independent review.

The Right To Information as the “Touchstone for All Freedoms”

The right to information is not only a right in and of itself, but it has been recognised as a right that underpins other human rights. As the United Nations described it: “right to information is the touchstone for all freedoms”. Traditionally, the right to information was envisaged as a civil and political right, hence its protection under Article 19 of the ICCPR. However, the right is gaining increasing international recognition as being necessary for the practical realisation of all social, economic and cultural rights as well as for rights afforded to particular groups of people such as women and children.

Economic, Social and Cultural Rights:

Although the ICESCR does not explicitly mention the right to information, its monitoring body, the Committee on Social and Economic Rights, has made a number of “general comments” about the practical implementation of rights included in the Convention. It has drawn attention to the importance of information accessibility and transparent governance. For example, General Comment #14 on the right to the highest attainable standard of health states that: “The right to health in all its forms and at all levels contains the following interrelated and essential elements... information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues.”⁴⁸

Paragraph 44(d) elaborates by saying that States Parties have the obligation: “To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.”⁴⁹ The Committee has made a similar connection between the right to information and the right to water (General Comment #15),⁵⁰ the right to education (General Comment #13)⁵¹ and the right to food (General Comment #12).⁵² Access to these basic entitlements is understood to include information accessibility so that they may participate from the policy planning stage itself, through the implementation of specific measures, for the realisation of these rights and to monitor and evaluate their impact.

“Third Generation” or Group Rights:

Emerging human rights treaties concerned with the protection of particular groups of people have also recognised the importance of the right to information. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights

of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁵³ all place an obligation on States Parties to guarantee them their right to access information from governments.

Information is Essential for Women and Children

Convention on the Elimination of All Forms of Discrimination Against Women⁵⁴

Article 10 (Education):

"States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure... access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning".

Article 16 (Marriage and Reproductive Health):

"States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure...the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

Convention on the Rights of the Child⁵⁵

Article 13:

"The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

Other international agreements, which are not explicitly concerned with the protection of human rights, have also recognised the importance of information accessibility in order to protect the best interests of the public. For example, the Rio Declaration on Environment and Development affirms that each individual shall have access to information concerning

hazardous materials and activities and that States have a corresponding duty to make this information widely available.⁵⁶ In 2002, at the World Summit on Sustainable Development, participating countries recognised the crucial link between good governance and the attainment of the goals set out in the Rio Declaration. They called upon the international community to promote public participation in the formulation and implementation of sustainable development policies.⁵⁷ In order to enable people's participation in development-related decision-making processes, countries have an obligation to provide information about legislations, regulations, activities, policies and programmes promoting sustainable development.

Access to information is also a central element of the UN Convention Against Corruption (2003), with Article 13 recognising the importance of information to facilitate public participation in the fight against corruption.⁵⁸

In summation, there is no dearth of commitment by the international community to providing people with access to information about their policies and actions. Countries – both developed and developing – have recorded their commitment to transparency in both binding human rights instruments and declaratory statements. What has been slow in coming is the political will to translate this commitment into action by entrenching transparency in governance throughout the world. To date, only a third of the world's 193 nations have instituted information access laws.



Chapter 3: The Right to Information at the National Level

How do Governments Recognise the Right to Information?

International legal standards, declarations and endorsements have little practical value unless the right to information is also recognised at a national level by governments themselves. Domestic measures are also necessary to ensure that people are actually able to access information held by government.

Although many people think that a government will only give people access to information once a law is enacted, there are in fact many ways for a government to share information with the people.

Giving out information proactively:

The first way a government can ensure that people have access to information, even in the absence of a right to information law, is to adopt a policy of publishing information proactively. For example, in the Solomon Islands, the government has shown an increased commitment to transparent governance by providing information to the people on its actions and policies. This means that people do not have to put in formal requests seeking information and then wait for long periods to receive a response. Instead, they can use the facilities set up by the government to obtain information according to their own needs or interest.

Solomon Islands – People First Network

In an effort to build the trust and confidence of the Solomon Islanders in their government, a special project called 'PFNet' (People First Network) was established in 2005 by the non-governmental organisation Rural Development Volunteer Association (RDVA) in association with the Solomon Island's Ministry of Rural Development.¹ The objective of the PFNet project is to: "support peace-building and poverty reduction through improved access to information and increased capacity for communications in rural areas".² In order to do this, PFNet established a network of rural community email stations located across the islands in accessible public areas such as local schools and provincial health clinics. The second aspect of the project was the establishment of an Internet café in the capital, Honiara.³ In addition, PFNet compiles a local and international news briefing which is emailed to the computer stations and is freely available to the public.

However, providing the public with the physical tools to access information is only one aspect of respecting their right to information – the public must also be provided with the means to use the tools that they are supplied with. The PFNet project recognised that people need practical assistance to make use of unfamiliar information technology and therefore provided two people per email station to assist them. These operators transcribe and relay information to any individual who requires assistance so that access is not inhibited by illiteracy.⁴

The outcomes of PFNet have been extremely positive. The project has been accredited with aiding peace-building efforts and increasing political and social stability in the Solomon Islands through keeping people informed and guarding against the spread of false information.⁵

Encouraged by the positive outcomes of PFNet the Solomon Islands opened its first official government website in 2006 to: “enhance its information and communication technologies in order to enhance its services to the people and to promote transparent and effective government”.⁶ The website proactively provides the public with press releases, policy papers, draft bills and official documents.⁷

By increasingly making information available through proactive disclosure and enabling information sharing, the Solomon Island’s government is working toward greater transparency and building the public’s confidence.

Laws that give access to certain types of information:

Some countries have laws that provide for accessing information about a particular subject matter. For example, environmental protection laws often require governments to publish environmental impact assessments and other related information. The Canadian Environmental Protection Act requires corporations who release large amounts of certain chemicals to publicly report details regarding their dumping of environmentally hazardous waste.⁸ The City of Toronto is now going to extend this requirement by enacting a Community-Right-to-Know bylaw that will require smaller businesses to publish information on the hazardous substances they are using and releasing into the environment.⁹ The

manager of the Public Health Department's Environmental Protection Office said that such a law will encourage polluters to: "pay more attention to what they're using and emitting and that this will hopefully stimulate greater interest in pollution prevention".¹⁰ A local environmentalist noted that disclosure of such information would provide local residents with the information they need to actively press individual businesses to clean up their act.¹¹ In fact, the Toronto Environmental Alliance attributes the Massachusetts Toxic Reduction Act (another community right-to-know law) with a 40% decrease in the use of toxic chemicals.¹²

Many countries have laws regulating private corporations which require them to publish annual reports, balance sheets and statements of accounts and expenditure. Consumer protection laws often require organisations to publish a variety of information relating to the quality, health and safety standards of their products. In several countries, legislation regulating the preparation and maintenance of property title records require the concerned departments to allow the public to inspect these records and make copies of relevant documents available to any person on demand.¹³

Constitutional protection of the right to information:

Many countries have a constitutionally enshrined protection for the right to freedom of speech and the freedom of expression. Some courts have interpreted these clauses as including the right to access information. In India, more than 25 years before the Right to Information Act came into effect in 2005, the Supreme Court ruled that access to information was an integral part of every citizen's fundamental right to freedom of speech and expression.¹⁴ Interestingly, India's Supreme Court has also held that the right to information is a necessary element of the right to life guaranteed to every human being.¹⁵

Other countries have gone a step further and enshrined a specific right to access information in their constitutions. Article 61 of the Constitution of Hungary for example, protects: "the right to freely express his opinion, and furthermore to access and distribute information of public interest".¹⁶ The Constitutional Court of Hungary ruled that not only does this Article mean that freedom of information is a fundamental right, but it also struck down secrecy laws which infringe on the right to information.¹⁷

Some constitutions actually require that the government enact a law to provide practical mechanisms for individuals to access information from

public bodies. For example, Article 32 of South Africa's Constitution provides every citizen with the right to access information, and Clause 32(2) goes on to require that: "national legislation must be enacted to give effect to this right..."¹⁸ As a result, the Promotion of Access to Information Act was passed by South Africa's legislature in 2000.¹⁹ Uganda and Papua New Guinea's constitutions also contain similar requirements for legislation that protect the right to information. Uganda has enacted the Access to Information Act in 2005. However, Papua New Guinea has yet to deliver on its constitutional promise.

Right to information laws:

Over 70 countries around the world have enacted laws to protect the people's right to access all kinds of information.²⁰ A specific law of this nature provides clarity to both the community and the government as to what kinds of information they may access, what kinds of information may be withheld from them legitimately and what remedies are available to people who have been unreasonably denied information. This has proven to be the best mechanism to provide protection to the right to information in practical terms. Where no such law exists, and where official secrecy is mandated at times, citizens will be required to appeal to the courts when they need information from the government. This is an expensive and time-consuming procedure that does not provide citizens with an easily accessible means of gaining the information they require.

Why is a Law the Best Way to Give Access to Information?

Legislation providing for the right to information ensures that there is a legally enforceable, clear, and uniform mechanism for people to request and obtain information from the government. Laws that provide for the right to information have been found to increase public bodies' responsiveness to peoples' requests for information. A study by the Open Society Justice Initiative found that:

Requests for information made as part of the study yielded information more often in countries with freedom of information laws than in countries without, indicating that freedom of information laws have had a significant, positive impact in the countries studied. Specifically, the study shows that in the countries with dedicated freedom of information laws, requests for information made to government entities yielded responses nearly three times as often.²¹

What should a Law Protecting the Right to Information Contain?

The previous chapter outlined the variety of international standards that relate to the right to information and highlighted the fact that a clearly defined international consensus on the basic elements of a law protecting the right to information is still developing. However, international best practice, combined with trends that exist within the various regional and international standards, point to the existence of some commonly accepted principles that an effective right to information law should be based on.

Maximum disclosure:

The law should recognise that every member of the public has a *human right* to receive information and that government has a corresponding *obligation* to disclose information. It must be premised on a clear commitment to disclosing the maximum amount of information held by public bodies, and drafted with a presumption in favour of the people's right to access *all* information. In a democracy, information is collected, held and used in the larger public interest using taxpayer funds. As the basis of all government actions and decisions should be to protect the larger public interest, people have a right to know what public bodies do in their name.

This principle should run throughout the many provisions of a law. For example, access rights should extend to all people, and not just be limited to the citizens of a country. The law should provide people with a right to access information held in a variety of formats – not just documents or records – therefore including information like models, plans, samples of materials used in public works, and electronically held data. Further, a law should provide access to information held by private bodies that carry out public functions or are funded by public money or enjoy state-protected monopoly status for any commercial activity. Purely private bodies should also be required to disclose all information that is necessary for people to exercise any legal or human right. However, any access to information law must necessarily balance various rights, protect the individual's right to privacy and provide private bodies with adequate protection for their legitimate commercial interests. Another aspect of the principle of maximum disclosure is that governments should not only have a duty to disclose information upon request, but should also be required to proactively publish and disseminate key

documents. For example, information on a government's structure and norms, the documents it holds, its finances, any opportunities for consultation and the content of decisions or policies affecting the public should all be published regularly.

Minimum exemptions:

All right to information laws recognise that there will be circumstances in which the government might not disclose information to the public. In line with the principle of maximum disclosure, these exceptional circumstances (commonly known as exemptions to disclosure) should be narrowly drawn up within the law and kept to an absolute minimum. They should all be written with one purpose in mind – that information should only be withheld when doing so is necessary to protect the larger public interest. The law should not allow room for withholding information on the basis of protecting the government from embarrassment, exposing wrongdoing or because the government considers that the public will not be able to understand the information.

In order to ensure this is the case, all exemptions should be subject to a blanket “public interest override,” whereby each request for information which appears at first to fall under an exemption, should be subjected to further scrutiny to see whether disclosure might actually be in the public interest. Consistent with these principles, it is *not* good practice to exempt broad categories of information (for example all Cabinet documents), or provide blanket exemptions for specific offices, departments (for example, the President or the Department of Defence), or exemptions for all information held by certain bodies (for example, the Armed Forces or Intelligence Services).

Simple access procedures:

A key test of the effectiveness of a right to information law is the ease, affordability and promptness with which people seeking information are able to obtain it. There is little point of having a right to information law if information remains inaccessible to most of the community. This means that the law should establish clear and uncomplicated procedures that ensure quick responses from public bodies. Application forms should be simple and ensure that illiterate, disabled or poor people are not prevented from using the law. As far as possible, fees must not be charged for providing information; where fees are imposed they must not be so high as to deter potential requesters. Best practice requires that fees should be limited only to cover the cost of actually reproducing the requested

information from the records. Applicants should not be charged for the time spent by government employees processing the request or searching for and compiling the data – the operations of the public body are already funded by taxpayers' money. The law should also provide strict and enforceable time limits for processing information requests.

Independent appeals mechanisms:

In order to ensure that all public bodies comply with the law, there needs to be a mechanism that will ensure proper enforcement of its provisions. That is why an independent and impartial body must be given the mandate to review refusals to release information and compel disclosure where refusals are not based on reasonable grounds.

In practice, this requires that any refusal to disclose information is accompanied by a substantive written explanation by the government (so that the applicant has sufficient information upon which to base the appeal) and includes information regarding the procedure for filing an appeal. Any such appeal mechanism should include a cheap, timely, non-judicial option and final recourse to the courts should be permitted if necessary.

The independent and impartial appeal body should also act as a general oversight body and be given the power to impose penalties on culpable officers, and to award compensation to requesters who suffer losses due to unreasonable refusals. Without legally permissible sanctions, such as fines for unreasonable delay or imprisonment for wilful destruction of documents, the law becomes weak as there will be no deterrent for public servants who fail to comply with their duties under the law.

Promotion of open governance through training and public education:

Many laws around the world now empower a specific body, such as an existing National Human Rights Commission, Ombudsman, or a newly-created Information Commission, to act as the independent and impartial oversight body that is also charged with promoting and supporting the implementation of the law. These bodies are often empowered to develop codes of practice or guidelines for implementing the law and to make recommendations for improving it.

Such bodies should be responsible for ensuring that the government conducts programmes to educate the public about their rights and train

officials responsible for handling information requests and other procedures under the law.

Monitoring implementation:

The more progressive right to information laws passed in recent decades include a provision for monitoring implementation. The law should require the minister responsible for the Act and/or the independent body referred to above, to report to parliament on the actions taken to implement the law and other information that enables an analysis of the effectiveness of the law. Some governments, such as those of Jamaica and Trinidad and Tobago, have also created special units to monitor compliance with the law, identify obstacles to accessing information, provide guidelines and training, disseminate judgements clarifying parameters of the law, make recommendations for reform and create literature for public education campaigns. The Cayman Islands government has recently done this, appointing a Freedom of Information Coordinator even before their law was approved by the legislature.²²

The Importance of Monitoring Implementation

Even if a country has an access law which abides by all the above best practice principles, it is important that the community plays an active role in holding its government to its word by ensuring that the law is fully implemented, and then properly administered over time.

By its very nature the right to information shifts some of the government's power and knowledge to the people. Because of this there may be resistance to enacting and fully implementing a law. It is essential that the community continues to demand that its government embraces the principles of openness, transparency and accountability.

There have been situations in which civil society has not even been informed that a law has been enacted at all. In St. Vincent and the Grenadines for example, the Freedom of Information Act came into effect in 2003 but little was done to educate the people about their rights under the law. Antigua and Barbuda passed their Freedom of Information Act²³ in 2004 but the government appears to be moving very slowly after appointing an Information Commissioner.

The participation of the members of the community has been found to be integral to the success of an access law. In the Open Society Justice Initiative study it was found that:

The countries that produced the highest response rates to requests for information during the study were those where civil society movements have been active in promoting the adoption and subsequent implementation of national freedom of information laws. These include Armenia, Bulgaria, Mexico, Peru, and Romania. In these countries, NGOs have submitted numerous requests for information from the government, undertaken strategic litigation in response to refusals by the government to release requested information, and engaged in media advocacy on access to information cases involving corruption and governance issues.²⁴

Proper and effective implementation requires a serious commitment by government, which will usually happen if people demand it.

Guarding Access Laws from Dilution

The important role played by civil society and the media in preventing the dilution of strong information access laws cannot be overemphasised, and this role becomes increasingly crucial as time goes on. In the United Kingdom for example, amendments to the Freedom of Information Act were introduced in Parliament without much publicity in 2007.²⁵ These changes would have meant that the public were no longer able to access certain information held by Members of Parliament. If it was not for the actions of a vigilant media and civil society movement these amendments could have been passed, severely undermining the effectiveness of the law within only two years of its full commencement.



Chapter 4: Our Rights, Our Information: Case Studies

The Rights of the Child

Disclosures Force Government to Improve Care Standards for Jamaica's Children

The proportion of children and young people living in poverty in Jamaica is one of the highest in the world; nearly half the people living below the poverty line (14.8% of the total population) are less than 19 years old.¹ These demographic truths have compelled the government to set up many children's homes for the purpose of providing care and protection to children in need. Yet, in the past Jamaica's vulnerable children have not always been sufficiently protected and have at times been subjected to abuse, neglect and inadequate care from their guardians at these state-run homes.

In 2002, the Jamaican government enacted its Access to Information Act² (ATI Act). This new law provided the opportunity for the public to seek and receive information about the situation of state-run homes and the well-being of the children placed in their care. Many civil society groups began to make formal requests for information to welfare oversight bodies such as the Child Development Agency (CDA) and the Ministry of Health. A coalition of civil society organisations came together to submit monthly requests to the CDA for reports monitoring the state of the homes; these included the guidelines followed by the staff, financial reports and staff training records. The aim of the requests was to obtain factual information on conditions in the children's homes and the changes being made to improve living conditions. The non-governmental organisation, Jamaicans for Justice (JFJ) served as the moderator for this initiative and set up a help desk in their secretariat to assist with and follow up on requests made under the ATI Act.³

The ATI Act placed an obligation on the CDA to release the requested information, which was then compiled and formed the foundations for the JFJ Report – *The Situation of Children Under the Care of the Jamaican State*.⁴ The JFJ Report documented shocking findings including inadequate treatment for children with psychological and behavioural problems leading to suicide attempts; excessive violence and sexual abuse against other children; poor hygiene standards including dirty bedding and poor waste disposal; and a systematic failure to use requisite logs and maintain children's records.

The civil society report generated intense public pressure on the government to improve the state of children's homes. It forced the government to commission an official review which became *The Keating Report: A Review of Children's Homes and Places of Safety in Jamaica*. The Keating Report, made public in 2004, officially confirmed the issues that had already been highlighted by the JFJ investigation: children were being subjected to sexual and other forms of abuse and there was neglect of those who had attempted suicide.⁵ Importantly, the report made clear that the government was accountable for these abuses and owed the children a duty of care.⁶ It recommended a drastic overhaul of the current system and made recommendations to improve visitation to the homes and the disparity of record keeping and communications, and the restoration of help lines.

In October 2006 JFJ presented their earlier report to the Inter-American Court of Human Rights (IACHR), a move which caught the attention of the Jamaican authorities and resulted in a meeting with the members the Office of the Children's Advocate (OCA) in November 2006. The Children's Advocate is mandated to protect the rights of children and to ensure that their best interests remain a government priority. At the meeting, discussions were held over changes that could be made in the investigation process undertaken by the OCA into incidents of serious breaches of children's rights in the state-run homes. The meeting resulted in the establishment of a formal agreement between JFJ and the OCA to keep channels of communication and correspondence open.⁷

This case illustrates how right to information laws can open up even the most opaque institutions such as children's homes, old people's homes, borstals and prisons to public scrutiny. The information obtained under Jamaica's access law brought to light patterns of continuous neglect and abuse as well as disobedience to rules and norms, sustained non-compliance and lack of proper monitoring within the governmental system. The ATI Act was the main tool that JFJ and other concerned organisations used to access information about the dire state of the country's children's homes. Without it, the plight of children placed under the state's care would have remained invisible and ignored and the abuse experienced by these children could have continued unchecked for many more years.⁸ The coalition initiative also illustrates how organisations can work together, using access to information laws strategically over time to build up the evidentiary base for making careful interventions in international and local forums. In this case, the basic information was collated, analysed and made visible to the public, forcing

the government to respond and eventually bring about systemic improvement.

Jamaica's Access to Information Act, 2002

Jamaica's Access to Information Act, 2002⁹ was made operational in January 2004 in a phased manner.¹⁰ All ministries, agencies and government bodies have an obligation to release information under the Act.

The Act gives the public a general right to access documents held by public authorities including government agencies as well as organisations partly owned (at least 50%) by the government. However, the Governor General, security and intelligence services, the judicial function of courts, and any body decreed by the Minister of Information are all excluded from the obligation of disclosing information under the Act.

An Access to Information Unit was established to oversee the implementation of the law. This Unit provides training and education to the public bodies to which the Act applies and also to the public. The law must be reviewed by Parliament within two years of it coming into force – a process which is yet to be completed.

The Rights of the Child

Children are entitled to the same rights, freedoms and protections given to all human beings in the international human rights treaties. However, because of their unique vulnerability and reliance upon adults to take care of their needs, the United Nations has also recognised that children require special protection and have rights which apply uniquely to them. This understanding gave rise to the International Convention on the Rights of the Child (CRC) which came into force on 2 September 1990.¹¹

The CRC is the first internationally binding treaty that brings together and provides protection for a vast array of civil, political and socio-economic rights for children. It is the most widely ratified of all the human rights instruments; more countries have agreed to abide by its provisions than any other international human rights law. The

rights laid forth in the Convention are based on the premise that all children are entitled to live a life that is free from hunger, want, neglect or abuse by the state and those who are entrusted to take care of them. These rights are aimed towards ensuring that children are able to grow up to reach their full adult potential.

The four key principles underlying the CRC are: non-discrimination, devotion to the best interests of the child, the right to life, survival and development, and respect for the views of the child.¹² State Parties are under obligation to take steps to ensure that the highest possible standards in health care, education, civic and social services are provided for children. The Convention's two optional protocols provide further protection for children in the areas of armed conflict¹³ and with regards to the sale of children, child prostitution and child pornography.¹⁴ Individual complaints about violations can be filed before the Child Rights Committee – the Convention's independent monitoring body for countries which have accepted the optional protocols.

Jamaica ratified the CRC in June 1991 and is party to the Convention's optional protocols.

Consumer Rights

The Corngate Scandal

Australia and New Zealand have a long history of working together to give their citizens shared benefits. One such agreement concerns the food standards that are set for both countries by one shared body—Food Standards Australia New Zealand (FSANZ). This regulatory body determines the standards for food products marketable in both countries and has legal recognition under the Food Standards Australia New Zealand Act.¹⁵ It also holds the power to decide what information is provided to consumers about the food products that they will consume.

Between 2001 and 2004, 165,000 tonnes of Bt-10 corn – a genetically engineered variety of corn approved only for consumption by animals – was incorrectly labelled as fit for human consumption and distributed around the world.¹⁶ When independent researchers discovered and reported the widespread distribution of this genetically modified variety of corn, many countries and inter-governmental organisations banned its import and pro-actively published information warning people against its consumption. FSANZ behaved differently however, withholding the information from the public in Australia and New Zealand.

Australia and New Zealand both have access to information laws. New Zealand consumers used the mechanisms established under their Official Information Act, 1982¹⁷ to request information about whether the corn they were purchasing was the Bt-10 variety. However, FSANZ denied them access to the information because of a technical loophole¹⁸ – FSANZ is based in Australia. New Zealand consumers were told they must request information through the mechanisms established under Australia's Freedom of Information Act, 1982¹⁹ instead. When consumers and organisations in New Zealand attempted to do so, they were denied the information on the basis that they could not provide an "Australian contact address" as required under Australia's law.²⁰

Predictably, New Zealand consumers were not satisfied with this response. Given the widespread concern over health and safety as well as the environmental effects of genetically modified crops, access to information is absolutely necessary for consumers to be able to make informed choices when purchasing food products.

FSANZ's refusal to disclose the information triggered a public campaign during which New Zealand consumers called on their politicians to ensure that more information was made available about genetically engineered corn and other imported foods. The campaign created such public uproar that it was dubbed "Corngate" by the media.²¹

The Green Party of Aotearoa New Zealand used the Official Information Act to access a Cabinet document which revealed how the New Zealand government planned to veto the joint Australia-New Zealand "country-of-origin" labelling standard without holding a public consultation or parliamentary debate.²² Country-of-origin labelling informs consumers about the origins of food products. As certain countries are known to export genetically engineered vegetables, fruits and other processed food products without labelling them, country-of-origin labelling allows people to know if they may be buying genetically modified foods. If the Cabinet decision was to have taken effect, only Australian consumers would be informed where the food stuffs they were buying came from while in New Zealand consumers would be left in the dark.

Acting on behalf of the thousands of citizens who had expressed their concern at the lack of information provided on food products, the Green Party used the information to introduce the Consumer Right to Know (Food Information) Bill in June 2006. The Bill required mandatory labelling of genetically engineered food products in order to enable the consumer to make an informed choice about the foods they were about to buy. However, the Bill did not succeed at its first reading, being voted down by a large majority.²³ Nevertheless, as a consequence of all the negative attention to the issue, the New Zealand government itself came out with detailed instructions requiring the labelling of imported food products about their country of origin.²⁴

Despite many years of having access to information legislation some bureaucracies continue to deny information which it is in the best interests of the public to know, especially that which is inconvenient, sensitive or embarrassing. However, the public can be inspired to campaign when they perceive that information is being withheld irrationally or to favour illegitimate interests. Despite the resistance that public campaigns may initially incite, the pressure they generate can serve to enhance transparency in the long run. The Corngate scandal raised awareness about the dangers of incompletely labelled food products and forced the government to recognise that the public would not be satisfied to "just trust" that the food they purchased would be safe; the public has

the right know enough to be able to make informed and independent choices about the food they consume.

New Zealand's Official Information Act, 1982

New Zealand's Official Information Act, 1982²⁵ was passed by Parliament in 1982 in order to: "make official information more freely available; to provide for proper access by each person to official information relating to that person; to protect official information to the extent consistent with the public interest and the preservation of personal privacy; to establish procedures for the achievement of those purposes".²⁶ It also repealed the Official Secrets Act, 1951 and is overseen by an independent Office of the Ombudsmen.

The scope of the Act is broad, applying to information held by any Minister in her or his official capacity, any government department or organisation, including ministries, hospitals, universities, schools, the Security Intelligence Service, and state-owned enterprises. Local governments are covered by a separate law – the Local Government Official Information and Meetings Act, 1987.²⁷

Given its age, the law has been reviewed a number of times and a number of recommendations for its improvement have been made to government.²⁸ However, few recommendations have been incorporated in the legislation to date.

Consumer Rights

Every human being is a consumer of some commodity or service whether through the buying of goods such as food and health care products, clothes, cars, furniture and shares, or through availing of utilities and services such as electricity and water supply, public transport, and communication facilities. Recognising how important it is to protect people against manipulation or deceit when they acquire commodities or services, the UN has adopted a set of guidelines for consumer protection.²⁹

These guidelines outline the importance of protecting the physical safety, health and economic interests of consumers. There is also a comprehensive provision protecting the consumer's right to access

information about products and services. Article 31 states that: "Governments should develop or encourage the development of general consumer education and information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels."³⁰

Right To Education

School Admission Scandal Paves the Way to Justice for Thai Children

In early 1998 a young Thai girl named Natthanit took the standard entrance exam for admission to the well regarded state primary school – Katsetsart Demonstration School – an exam she had been working towards for two years. Later, Natthanit was told that she had failed the exam and could not be admitted to the school. However, when her mother, Sumalee Limpa-Owart asked the Rector of the school if she could see her daughter’s answer sheet and marks awarded, she was refused.³¹

Two months later, Sumalee used Thailand’s Official Information Act³² to request access to her daughter’s marks and answer script. In November 1998, the Official Information Commission ruled that the answer sheets and marks of Natthanit and the 120 students who were admitted to Katsetsart Demonstration School were public information and had to be disclosed. The school and parents of the students who had secured admission resisted, claiming that the information was private and should not be released. In fact, 109 of them got together and took Sumalee to court claiming their right to privacy and accusing her of abusing her position as a state public prosecutor.³³ Despite the Commission’s orders in favour of Sumalee the school continued to deny their obligation to disclose. They reasoned that they must first consult with the “council of State, the Attorney General’s Office and the Ministry of University Affairs, for setting up procedures for disclosing examination results, in order to cope with similar requests in the future.”³⁴

Midway through the two-year legal battle to receive information on her daughter’s marks, Sumalee was offered a compromise by the school; she may inspect the list of test results of all students that had taken the entrance exam, but all names would be removed. The list showed that one third of the students who had been admitted to the school had in fact received a failing grade.³⁵ Sumalee suspected that this was not an unusual occurrence for the Katsetsart Demonstration School, which had been surrounded by rumours of corruption and bribery for securing the admission of children that are *dek sen* – i.e. children that are well connected or belong to elite families.³⁶ It was alleged that the parents often paid “tea money” or used social connections to get their children admitted to the school even if they did not make the grade.³⁷

Sumalee continued with her legal battle against the school and in 2000, the Supreme Court of Thailand ruled that the complete list of students, including names of candidates, must be disclosed. The records revealed that a majority of the students who had secured admission, regardless of their poor performance in the entrance exam, belonged to leading political and business families. This information led to a media and public outrage, and more families of children who were denied entry requested information from the school using the Official Information Act.³⁸

The Thailand State Council ruled that the school's admission policy violated Thailand's constitutional guarantee for education regardless of one's social or economic grounds.³⁹ Thailand's Ministry of University Affairs ruled that state schools, such as the Katsetsart Demonstration School must amend their admission procedures. This ruling has been hailed as historic and one that has undercut the "nepotism and cronyism" in the nation's schooling system.⁴⁰

Sumalee's experience illustrates how information sought to redress individual grievances can lead to larger policy changes that benefit the whole community. Sumalee's complaint touched on an injustice which reverberated throughout the populace. Everyday information like school admission lists provided the concrete evidence of wrongdoing which had long been suspected but was hidden from public scrutiny. By using Thailand's Official Information Act to get these records, Sumalee prompted similar queries, breaking the habitual acceptance of unfair practices. Her actions catalysed a nation-wide campaign for better access to education for all children, not just for those from a privileged background.

Thailand's Official Information Act, 1997

Thailand has had a constitutionally enshrined right to information since 1991. In 1997, the Thai National Assembly passed the Official Information Act providing the legal framework for people to exercise their right to information.

The law allows citizens to demand official information from any state body. In spite of this, some bodies such as the Anti-Corruption Commission are not covered by the law; there are no time frames within which public bodies have to respond; and there are a number of discretionary exemptions to disclosure. In addition, information relating to the Royal Institution (Thailand is a constitutional monarchy) is to be

kept secret for 75 years. However, in line with international best practice, the Act requires these bodies to publish certain information relating to their structure, powers, subordinate legislation and policies proactively.

Many successful requests for information were made in the first few years of the Act's operation – some of which were the impetus for wide-ranging policy change, such as the above story. However, it has been noted by international experts that interest and use of the law appears to be slipping, especially with the media who seem to use the Act very infrequently.⁴¹

The Right to Education

The right to education is very closely connected to the right to information. Information is the key to enable people to educate themselves and their communities. Governments also have a duty to educate the public about a range of issues including their basic human rights. Education is particularly important to children in order to facilitate the full development of their personalities and for them to form opinions about the world around them.

Article 26 of the UDHR states that: “everyone has the right to education”⁴² and that: “education shall be free at least in the elementary and fundamental stages” but sadly this is not always the case. Article 13 of the ICESCR broadens the scope of this right to higher education and vocational training and the Committee on Economic Social and Cultural Rights has declared that State Parties “...are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in Article 13 (1).”⁴³ In order to establish transparency in the educational system governments should be required to provide parents and other citizens access to information about schools and colleges funded by the State.

Unfortunately many nations in the world are unable to provide free public primary education for school-aged children and even in those with a legal guarantee of free education, charges may be levied.⁴⁴ Many countries worldwide do not have a minimum age of employment – this contributes to the occurrence of child labour and means many children have no choice but to work instead of attending school.⁴⁵

Thailand acceded to the ICESCR in December 1999.

Right to a Healthy Environment

Right to Information Law Empowers Slovaks to Protect their Forests

In Slovakia, deforestation must be carried out in accordance with a forest management plan which is prepared by the company proposing to cut down trees. This plan, envisaging the next ten-year period, must be approved by the government and then supervised closely by a state oversight body. The approval of a Forest Management Plan by the Ministry of Agriculture should indicate that the proposal is ecologically sound.⁴⁶

Until 2005, the development of a forest management plan involved only three actors – the company proposing the deforestation, the Ministry of Agriculture that accords its approval to the plan and the state oversight body. Proactive disclosure of information related to any forest management plan to the public was not compulsory and as a result, members of the public were not given the opportunity to be informed and to participate in the planning, management and protection of their environment.

Between 2000 and 2004, various deforestation projects were underway in Eastern Slovakia. At this time a large environmentalist group known as the Vlk ('Wolf') Forest Protection Movement began submitting requests for information on proposed forest management plans to the Presov City administration and the Ministry of Agriculture under the newly introduced Act on Free Access to Information, 2000.⁴⁷ Vlk requested the information believing that the public should be allowed to participate in decisions to approve deforestation plans, and have access to all relevant information about the environment in which they live, including its management and protection.

Vlk's requests for information were rejected by both the city administration and the Ministry on the ground that the Plans were "classified" information. However, Vlk were determined to access the data and took their claim to the Supreme Court, arguing that the government's refusal to provide the information was a breach of their rights under the Act on Free Access to Information.

The Supreme Court ruled in Vlk's favour, holding that the government had acted illegally and that information on forest management and administration is not subject to classification under the law. Interestingly, the court also ruled that the government had classified the information

without following the correct processes. Following the court ruling, the government released the information on the forest management plans.

Armed with the knowledge that the government had failed to follow the correct processes with regards to the formulation of forest management plans, Vlk spearheaded a public initiative to demand the expansion and increased protection of national forest and nature reserves in Slovakia. Vlk's work paid off. The government expanded two nature reserves from their original 50 hectares to 400 hectares affording the area greater protection under Slovakian law than a mere classification as a national park.

The struggle to get information released as a result of the Supreme Court's judgment created public awareness about the dangers to the environment and the value of openness in decision-making. This generated pressure for changes in the law on the protection of forests. In 2005, amendments were made to the Act on forests to allow civil society groups to access the information and background material used in developing forest management plans. Importantly, the new amendments set a precedent for public participation in the development of forest management plans by allowing non-governmental representation at official meetings. This opened up the whole process to a much larger and more diverse audience. This is particularly important when it comes to protecting a country's often scarce but coveted natural resources. Assured transparency reduces the risk of collusion between powerful commercial interests and closed government systems. It also reduces the possibility of subverting internal procedures for private gain and circumventing detailed but often unknown rules and regulations. Access to information about procedures not only led to the expansion and protection of nature reserves but gave Vlk the knowledge and power needed to demand crucial changes to the forest management law. Most importantly public participation in the planning, management and protection of the forests in Slovakia was institutionalised because of the use of right to information.

Slovakia's Act on Free Access to Information, 2000

Like many constitutions drafted during the 1990s, the Slovakian Constitution of 1992 provides for a general right of access to information.⁴⁸ The right was guaranteed in the Act on Free Access to Information⁴⁹ of 2000 which came into force in 2001.

This law provides any natural or legal person the right to access information from any state agency or private organisation that is making a public decision. One outstanding feature of the law is that bodies must respond to a request for information within 10 days of receiving the request. The Act provides a two-tier mechanism to hear appeals and a large monetary penalty for officers who are found in violation of its provisions.

The Right to a Healthy Environment

Although not a human right in the conventional civil liberties perspective, the United Nations has long recognised that the right to a healthy and clean environment is essential for the fulfilment of all other human rights. At the 1972 Conference on the Human Environment, the UN declared that: “man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even to the right to life itself”.⁵⁰ Since this statement was made there has been increasing international acknowledgement that every person has a fundamental human right to live in a healthy and pollution-free environment. The Committee on Economic, Social and Cultural Rights has stated that the right to a healthy environment is one of the: “underlying determinants of health” and is an integral element of the right to health as laid out in Article 12 of the ICESCR.⁵¹

The Rio Declaration on the Environment and Development is perhaps the most comprehensive international statement of countries’ obligations to provide a healthy and sustainable environment for their citizens. Principle 1 declares that human beings are: “entitled to a healthy and productive life in harmony with nature” and Principle 10 extends this right, claiming that every individual also has an entitlement to access official information concerning the environment, including information on hazardous materials and activities.⁵²

Slovakia succeeded to the ICESCR in May 1993 by virtue of having been a constituent of the erstwhile country of Czechoslovakia that had originally ratified this treaty. Slovakia is also party to the Rio Declaration. As a member of the European Union, Slovakia is subject to the provisions of the Aarhus Convention – the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁵³

Right to Food

India's Right to Information Law Empowers Poor People to Access their Food Entitlements

Over one billion people live in India and 80% of these people live on less than US\$2 per day.⁵⁴ To help the poor to get over severe deprivation the Central Government established a Targeted Public Distribution System (TPDS) consisting of fair-price shops dotted all over the country that provide essential rations – rice, wheat, sugar, cooking oil and kerosene (fuel oil) – at highly subsidised rates.⁵⁵ Yet even with these lower prices, the poor who are lucky enough to be covered by this system can barely afford to buy rations. The system is not free from corruption and the media has often highlighted instances of diversion and the black marketing of supplies by unscrupulous shop owners acting in league with corrupt bureaucrats.⁵⁶

Kalol taluk (sub-district) in the State of Gujarat is home to thousands of poor families, many of whom belong to ethnic and religious minorities. Their poverty makes them dependent upon the TPDS for sustenance. Every poor family is required by law to formally apply to the Office of the Deputy Mamlatdar (local government officer) for a ration card – an essential document that records the names of all family members and the quantity of rations they are entitled to buy from the fair-price shop. In theory, people should be able to walk into the Deputy Mamlatdar's office on any working day and complete the formalities of applying for a ration card. In reality, getting that life-saving ration card is anything but easy. In Kalol taluk, a large sign pasted on the outer wall of the Deputy Mamlatdar's office instructed people to visit it only on Saturdays if they wanted to apply for a ration card. The office was off-limits for the poor on all other working days. All government offices in Gujarat remain open only on the first and third Saturday every month, other Saturdays are holidays. This meant that people living in about 70 nearby villages could visit the office only two days a month to apply for their cards. Everybody knew that on those two crowded days people were given priority if they had bribed officials or their touts. Others could wait their turn or come back the next working Saturday.

Fed up with this system Aslambhai Diwan who lives in Kalol decided to file a request under India's Right to Information Act 2005 (RTI Act)⁵⁷ to find out more about the Deputy Mamlatdar's responsibilities and duties and the entitlements of the people under the TPDS. He also asked for a

copy of any rule or order issued by the government that required that office to entertain ration card-related work only on Saturdays. The Public Information Officer initially refused even to accept the information request. So Aslambhai posted the request by registered mail. Fifteen days later Aslambhai was summoned to the Deputy Mamlatdar's office and advised to withdraw the request. He was told he had no business interfering in the working of government offices. Aslambhai refused to withdraw the application insisting that under the RTI Act he had the right to receive a reply. He advised the officer that he was well within his rights to refuse the request provided he mentioned the same in writing along with reasons for refusal, so there was no need to withdraw the application. Aslambhai's father was also pressurised to persuade his son to withdraw the request but Aslambhai persisted for a written response.

The Deputy Mamlatdar had no choice but to respond to the information request as not doing so would have made him liable for monetary penalty. He informed Aslambhai in writing that there was no such rule or government order that required them to entertain ration card-related work only on Saturdays. This procedure was adopted apparently, for the "convenience" of poor people most of whom are wage labourers. The officer also gave a written assurance that he would entertain applications for ration cards on all working days and during all working hours. He requested Aslambhai not to report the matter to higher authorities fearing that they may initiate disciplinary action against him.

Things have improved greatly in the Deputy Mamlatdar's office since Aslambhai's RTI intervention. Now families are able to apply for their ration cards whenever they wish during the week without paying bribes or waiting in long, unending queues. By using the RTI Act hundreds of families in Aslambhai's community were able to gain much easier access to their entitlements under India's TPDS system.⁵⁸

India's Right to Information Act is the product of people's struggle for the realisation of fundamental rights in the face of corruption and bureaucracy. The Act is new but it is being embraced by thousands of people across the country. People are actively using the Act to obtain their entitlements under well-financed public schemes that provide the poor with subsidised housing, health care and education. Otherwise, all too often benefits from these schemes never reach the people they are designed to help. The Act's use across the country by all segments of society is evidence of its intrinsic value. However, its use by the extremely poor to redress grievances, get entitlements and expose corruption and

discrimination is indicative of the truth that the right to know is absolutely fundamental to the practical realisation of all other rights.

India's Right to Information Act, 2005

India's Right to Information Act of 2005 provides all citizens with access to information held by local governing bodies, central or state governments, and by bodies controlled by or substantially financed by government.

The law has a number of best practice provisions. The definition of information is very broad, enabling citizens to access to a wide range of information that does not find mention in many other laws. For example, samples of materials used in public works are also considered "information". The Act requires every public body to appoint a Public Information Officer (PIO) who is responsible for giving information and personally liable for wrongly withholding it. It also provides a long list of information that must be proactively disclosed and updated regularly. Information Commissions must be established centrally and in each state in order to oversee implementation of the Act and adjudicate over disputes. The exemptions to disclosure allowed under the law are overridden if the public interest in disclosure outweighs the potential harm caused to the protected interests. Poor people are able to access information free of cost and oral requests can be made by those who cannot read or write. The PIO is duty bound to assist in recording these on paper. Additionally, although the Official Secrets Act of 1923 remains in place, the access law overrides it and any other legislation limiting access to information.

The implementation of the law varies greatly across the country. There have been reports of threatened and actual violence against those who have requested information that has the potential to reveal evidence of corruption and wrongdoing. Awareness about the law has not yet reached all nooks and corners of the country.

The Right to Food

The UN Special Rapporteur on the Right to Food has proclaimed that: "In a world overflowing with riches, it is an outrageous scandal that more than 826 million people suffer hunger and malnutrition

and that every year over 36 million die of starvation and related causes.”⁵⁹ Human beings cannot survive without adequate food, essential to the fulfilment of their right to life and right to health.

The right to food is enshrined in Article 25 of the UDHR and finds international legal protection in Article 11 of the ICESCR which states that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including adequate food...”⁶⁰ Unfortunately there is an astonishing disparity between this assertion and the reality faced today by millions worldwide.

At the World Food Summit in 2002 many countries committed to halving the number of those afflicted with hunger by the year 2015 – a target reiterated in the Millennium Development Goals.⁶¹ Unfortunately, at the current rate of progress, these objectives will not be achieved by the majority of poorer countries until much later. The right to food places an obligation on governments to ensure that all individuals have the capacity to feed themselves adequately and also to avoid actions that result in deprivation and malnutrition.

India acceded to the ICESCR in July 1979.

Gender Equality: Women's Rights

Equal Pay for Equal Work: Information Exposes Gender Bias in the British Broadcasting Corporation

The United Kingdom is widely regarded as a country where women's rights are respected and upheld. In all areas of public life women have the same rights and freedoms as men, for example the right to vote, to own property and to contest elections for public office. However, the legal entitlement of equal pay for equal work has been slow to become a practical reality.

In 1970, the UK introduced the Equal Pay Act⁶² which makes it illegal for employers to pay men and women different salaries for doing the same or similar work. This law has helped to reduce the gender pay gap, but statistics in 2004 still pointed to huge inequalities and in some areas of the UK the gap was still growing.⁶³ Independent research carried out in 2004 discovered that on average, hour for hour, women in the UK earned 24% less than men.⁶⁴ A number of reasons have been cited for this "gender pay gap" including historical differences in education and the fact that the lowest paid occupational sectors remain female-dominated.⁶⁵ In addition to this, there were widely held perceptions of a virtual "glass ceiling" for women managers which meant that men were much more likely to be promoted than their equally qualified and experienced female colleagues to top management positions. One particular public body to come under scrutiny at this time was the British Broadcasting Corporation (BBC).

In 2006, an anonymous applicant submitted a request for information from the BBC under the UK Freedom of Information Act.⁶⁶ The requestor wanted to know whether the organisation was paying its female news reporters less than their male counterparts. When the information was released it confirmed a huge difference between male and female reporters' salaries. In spite of the BBC's professed commitment to gender equality, it continued to pay female correspondents an average of £6,500 a year less than their male colleagues.⁶⁷

The discovery came at a time of mounting public pressure for the government to tackle gender equality within the public sector. In February 2006, the Women and Work Commission's report *Shaping a Fairer Future*⁶⁸ examined the experiences of women in the workplace and highlighted the need to address the gender pay gap with a thorough

action plan. In response, the government made recommendations for all public bodies to implement a two-year plan to tackle gender inequality in the workplace, placing particular emphasis on closing the gender pay gap. By 2008, 45% of all large organisations are required to have undertaken pay reviews.⁶⁹

Shortly after the BBC's unequal pay scales were discovered and publicised by the national media, the BBC announced its plans to undertake a thorough pay review to identify any discrepancies within the organisation.⁷⁰ Although it claimed that the gap in reporter's wages was a result of differences in age and experience rather than gender, the fact remains that the organisation was paying female employees significantly less for doing the same work – a practice in contravention of international human rights standards.⁷¹ The pay review will attempt to address this issue.

Access to information highlighted that despite everything, traditional attitudes that devalue women's work remain a reality, entrenched deep within the systems of even well-established democracies. Access to information allows these kinds of hidden prejudices to become visible and be corrected. The UK still has a long way to go towards ensuring full equality for working women and it is important that people continue to use their right to information to hold to account those corporations and authorities that continue to lag behind. There is a long journey ahead. However, the case of the BBC illustrates that successes are possible when individual organisations are shamed in the public domain. Information sheds light on outdated policies and practices and spurs people to demand change.

The United Kingdom's Freedom of Information Act, 2000

The UK's Freedom of Information Act⁷² was adopted in 2000 but did not fully come into effect until 2005. The law grants all individuals, regardless of citizenship and residency, access to information in the possession of thousands of public bodies in the country. Public bodies are required to respond to requests within 20 working days, a period that can be extended in order to conduct a public interest test regarding the release of the requested information. This provision has proven problematic and contributed to the backlog of many cases. The law includes thirteen pages of exemptions from disclosure, some are "absolute", others are subject to a public interest override

and others require a level of harm to be predicted before they can be withheld.

The law creates the office of the Information Commissioner – an independent body established to oversee and enforce compliance by public bodies. Although the law also includes extensive whistleblower protection, it is compromised by the Official Secrets Act⁷³ of 1989 which remains in place.

The law applies to England, Wales and Northern Ireland as well as UK government bodies operating in Scotland. Bodies under the control of the Scottish Executive are covered under The Freedom of Information (Scotland) Act which was approved by the Scottish Parliament in May 2002 and came into effect in January 2005.⁷⁴ The Local Government (Access to Information) Act⁷⁵ provides a right of access to meetings and other information of local authorities.

Women's Rights

Women must enjoy the same rights, protections and freedoms as men. This principle of gender equality is recognised in the preamble to nearly every international human rights instrument. However, in reality, women are often treated as second-class citizens whose rights and ability to participate in their societies are circumscribed by their governments through outdated laws and policies. Because of the traditional conception of women belonging in the private arena of the home while men go “out” into the public domain to earn money for their families, women have often been denied the same level of access to public life as men. Even in Western democracies such as the UK, women were not allowed to vote until 1928.

Recognising how ingrained discrimination against women is in so many areas of the world, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly.⁷⁶ With 185 signatories to date, it is one of the most widely ratified human rights charter – next only to the Child Rights Charter. CEDAW defines discrimination as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status,

on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". State Parties that have ratified CEDAW are obliged to eliminate laws, practices and institutions that discriminate against women and to create an atmosphere where women can enjoy equal status with men in all respects.

The UK ratified CEDAW in April 1986 and acceded to its Optional Protocol in December 2004.

Right To Health

Disclosures on State-Run Homes Forces Irish Government to Improve Healthcare Facilities for the Elderly

In early 2005, a 73-year-old woman died at Beaumont hospital soon after being transferred there from Leas Cross Nursing Home in Dublin, Ireland. At the inquest into her death, concerns were raised about her treatment, with her daughter revealing that her mother had been suffering from bed sores “the size of melons which had penetrated into the bone.”⁷⁷ This story began a series of investigations and revelations regarding the operation of the state-run nursing home, Leas Cross, and other care facilities for the elderly in Ireland.

Shortly after the inquest, an undercover reporter for the current affairs television programme – *Prime Time Investigates* – went to Leas Cross Nursing Home to investigate the allegations of neglect and maltreatment of its elderly residents. The reporter revealed the home’s extreme disregard for the elderly residents’ right to adequate conditions of health care. Hidden cameras showed blatant neglect of patients at Leas Cross;⁷⁸ one had several untreated bedsores and went on to develop a dangerous skin infection.⁷⁹

Due to the pressure applied by the media and the public outrage that ensued as a result of the programme, Leas Cross was closed in August 2005 and Ireland’s government promised to review of the conditions of all aged-care facilities in the country.⁸⁰ A Commission of Investigation was set up to review the management, operation and supervision of Leas Cross.⁸¹ The Commission examined deaths at the nursing home between 2002 and 2005 and a report was released in November 2006.⁸² The report, in its assessment of the standard of care at Leas Cross, revealed: “shocking deficits in the care provided to elderly residents... [and that the overall findings] were consistent with a finding of institutional abuse”.⁸³ The report also concluded that it: “would be a major error to presume the deficits identified in Leas Cross represent an isolated incident”.⁸⁴

The worrying situation in the nursing home was further compounded by revelations that came to light thanks to Ireland’s Freedom of Information Act, 1997.⁸⁵ In February 2006, the *Irish Times* wanted to discover more

about the Leas Cross story, so they used the Act to investigate the issue further.⁸⁶

To people's great surprise and concern the documents released revealed that in 1998 the health board's inspectors had advised against the registration of the nursing home – a fact that the public would have undoubtedly benefited from knowing at the time, and which would have allowed residents' families to make a more informed decision about whether their loved ones should be admitted there or some other care home.⁸⁷

Even more shocking, the information released under the FOI Act also showed that the government had been aware of serious mistreatment of residents as early as February 2004 but had neglected to take prompt action:

The documents ... obtained under the Freedom of Information Act, show that at that time, the Junior Minister with special responsibilities for services to the elderly, Ivor Callely, was made aware of a case of mistreatment... This case had resulted in one elderly lady developing serious physical ailments and pressure sores, described by a doctor ... as "the worst I had seen". The patient was also "severely dehydrated".⁸⁸

The Government of Ireland has responded to media reports of the revelations on Leas Cross in a number of ways. Minister for Health, Mary Harney described the findings as "deeply upsetting" and promised legislation to allow for the setting up of an independent inspection regime for all nursing homes.⁸⁹ This legislation has been introduced into Parliament as the Health (Amendment) Bill, 2006 which is currently being considered by government.⁹⁰

With the numbers of elderly people steadily increasing across developed and developing countries alike, concern for the health and safety of senior citizens has become a matter for urgent policy-level attention. In order to reduce dependence on subsidised systems of health care, states are paying ever increasing attention to making sure that old age does not equate to debility and ill-health. Many states actively promote healthy and independent lifestyles through public education about diet and exercise. However, it is also of crucial importance that governments give adequate attention to the standard of health care provided in the public facilities for this significant section of the population. The violations at Leas Cross have been described as one of Ireland's darkest days.⁹¹ Yet, because the

information surrounding this tragedy was made public through freedom of information, it drew attention to the dangers inherent in caring for a particularly vulnerable group like the elderly. The law was also useful in reminding the state of its obligations to provide adequate oversight of private institutions to ensure that they are not exploitive or abusive.

Ireland's Freedom of Information Act, 1997

Ireland's Freedom of Information Act⁹² was passed in 1997 and came into effect in 1998, allowing any person to apply for information held by a public body.

The law lists nearly 500 bodies to which a person can apply for information.⁹³ However, a significant number of bodies remain outside of the scope of the Act and Ireland is one of the only European countries to exclude its police force from the operation of the law. Ireland's Act requires public bodies to proactively publish a range of information relating to their structure, functions, duties, and internal rules.

In 2003 amendments were made to extend the situations in which information can be withheld from disclosure and introduced fees for applying for information. The 50% fall in the number of applications made under the law has been attributed to these amendments.⁹⁴

Lack of Drug Information Denies Australian Women their Right to Health

Australia is one of the first Commonwealth countries to pass an information access law. Others like Belize, Trinidad and Tobago, South Africa, Jamaica, India and Uganda passed their access laws only during the 1990s and much later.⁹⁵ However, the Australian law has a number of shortcomings. Most worryingly, it includes a number of broad exemptions that can be used to restrict access to important information that should otherwise be made available in the larger public interest. This interesting case shows how such provisions can be used to effectively withhold crucial information that could help to ensure people's health and well-being.

Recently Australia introduced Herceptin – a drug that has been proven, in certain cases, to reduce the risk of relapse in women treated for breast cancer. Initially this potentially life-saving drug was expensive and many women suffering from breast cancer who wanted to use the drug could not afford it. The Australian government has a policy of reducing the cost of beneficial drugs by subsidising them under its Pharmaceutical Benefits Scheme (PBS).⁹⁶ In this case however, the government declined to subsidise Herceptin, and did not tell people why such a decision was made.

A group of women suffering from breast cancer used Australia's Freedom of Information Act to apply for information about the government's decision not to subsidise Herceptin. However, the government refused to give the information claiming that disclosure was not "in the public interest".⁹⁷

The government's denial of information relating to the life-saving drug was contrary to the objectives of a good right to information law, namely: maximum disclosure of information, enabling the people to make public authorities accountable for their decisions. The slight to these women was two-fold: not only were they denied easy access to an affordable, potentially life-saving medicine, but they were also denied the information necessary for them to understand why government was not willing to make Herceptin available at a subsidised price. As tax payers these women had a right to know why the it did not want to spend their money on subsidising a life-saving drug which they were in need of. Without such information they had no means of developing counter arguments to meet the government's refusal and this further prevented them from initiating a public debate on the subject.

Eventually the government announced that Herceptin would be subsidised under the PBS in August 2006⁹⁸ but the refusal to honour its obligations under the FOI Act is still unaddressed. The question that remains is how could the disclosure of information about a decision affecting the lives of hundreds of Australian women be against the public interest? The case illustrates the dangers in allowing broad exemptions to disclosure that can often go unchallenged, for example, by allowing ministerial certificates that classify information as "secret". These practices run counter to international best practice which dictates that in all circumstances, the need to protect the public interest must override executive discretion.

The Right to Health

The right to enjoy the highest attainable standard of health is enshrined in Article 25 of the UDHR and finds international legal protection in Article 12 of the ICESCR. Article 12 declares that States Parties: “recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”⁹⁹ and places them under obligation to arrange appropriate measures to ensure that the right is progressively realised. The Alma Ata Declaration of 1978 also recognised the importance of health as a fundamental human right.¹⁰⁰

In 2000, the Committee on Economic, Social and Cultural Rights elaborated on the scope of this right stating that: “Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available includ[ing]...adequate sanitation facilities.”¹⁰¹ “The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, ...and access to health-related education and information...”¹⁰²

The right to health takes on particular significance when it comes to the protection of vulnerable groups such as children, pregnant women and the elderly who may suffer increased susceptibility to illness. In 1991 the UN published their Principles for Older Persons which highlights the particular needs and rights of the elderly.¹⁰³ Article 11 recommends that: “Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.”

Ireland and Australia ratified the ICESCR in August 1979 and March 1976 respectively. Both countries are also Member States of the World Health Organisation.

Right to Life

Freedom of Information Exposes Death Penalty Plight of Homosexuals in Iran

All over the world, lesbian and gay people experience discrimination and the violation of their basic human rights, even their right to life, simply because of their sexual orientation. Seven countries around the world still award the death penalty for people who engage in same-sex acts.¹⁰⁴ Iran is infamous for its violation of the right to life through the use of the death penalty for even minor offences. In spite of the country's proclamation that it would only award the death penalty for the most serious of crimes,¹⁰⁵ Iran continues to have one of the highest death penalty rates in the world,¹⁰⁶ sentencing people to execution for such vaguely worded offences as "corruption on earth". Iran has executed more young offenders in the last five years than any other country¹⁰⁷ and recently sentenced two teenagers to death for their involvement in homosexual activities.¹⁰⁸

In Iran, homosexuality is a criminal offence under the penal code,¹⁰⁹ with punishments ranging from multiple flogging to life imprisonment and death.¹¹⁰ Although the country continues to publicly deny the fact, Iran has a long history of executing homosexuals and civil society groups estimate that it has sentenced approximately 4,000 lesbian women and gay men to death since 1979.¹¹¹ To ward off intense international criticism of these human rights violations, Iran has often accused sentenced individuals of crimes such as rape and murder¹¹² and the current President has even gone so far as to claim that there are no homosexuals living in the State of Iran.¹¹³

This denial of a whole community of individuals prompted the British newspaper *The Times* to request information from the United Kingdom's Foreign and Commonwealth Office using the UK's Freedom of Information Act.¹¹⁴ *The Times* requested the minutes of a meeting that took place between British and Iranian MPs at the Inter-Parliamentary Union, a peace meeting held in May.

The documents released under the Act contained shocking evidence of Iran's blatant violations of the rights of homosexual people and of its willingness to subject them to torture and execution. In the meeting, one of Iran's most high-ranked politicians stated his view that homosexuals

should be tortured and executed.¹¹⁵ He was recorded as stating: “that according to Islam gays and lesbianism were not permitted” and he proclaimed that: “those in overt activity should be executed” [he initially said tortured but changed it to executed]. He argued that: “homosexuality is against human nature and that humans are here to reproduce. Homosexuals do not reproduce.”¹¹⁶

This story illustrates the power of the right to information to create awareness of rights’ abuses and prejudices despite political and national boundaries. The UK media’s use of access laws in one country were used to highlight human rights violations in another, from where it may have been impossible to get authentic information or indeed any at all. Access to information affirmed rights violations, state prejudice and discriminatory treatment.

Philipp Braun, the Co-Secretary General of International Lesbian and Gay Associated stated: “Sentencing people to death for love and/or affection towards persons of the same sex is... barbaric and draconian. ILGA calls on the seven countries which kill people simply because they fall in love with persons of the same sex to immediately revise their laws and to abolish the death penalty for consensual acts between adults of the same sex.”¹¹⁷

The Right to Information in Iran

The Islamic Republic of Iran has no legislation providing for the right to access information and is notorious for actively suppressing the publication, dissemination and viewing of many types information especially that which is critical of Islam or state policy. Iran censors with a heavy hand and has even gone so far as to ban many literary masterpieces such as Tracy Chevallier’s *Girl with a Pearl Earring* and William Faulkner’s *As I Lay Dying*.¹¹⁸ The repression of information is rife across all forms of media, including television, radio, films, the Internet and the print media.¹¹⁹

The Right to Life

The Human Rights Committee – the treaty monitoring body for the ICCPR has claimed that the right to life is: “the supreme right from which no derogation is permitted even in time of public emergency”.¹²⁰ Whereas the purpose of all other human rights is to protect the *quality*

of people's lives, the purpose of the right to life is to protect *life itself*. The right places an obligation on states to refrain from killing or threatening the life of citizens and to put in place positive measures to protect people from threats to their lives thereby preventing avoidable deaths.

The right is protected in Article 3 of the UDHR¹²¹ and Article 6 of the ICCPR¹²² which states that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Iran ratified the ICCPR in March 1976.

Dead or Alive: Forcible Disclosure of Tsunami Victims' Identities Quells Panic in Sweden

The Boxing Day tsunami of 2004 devastated many parts of southern and south-eastern Asia, affecting hundreds of thousands of people and their families. Many countries such as Norway and Finland had large numbers of citizens holidaying in the affected areas at the time and published the names of those who were missing following the tragedy. In making this information available, governments not only helped families to identify the fate of their friends and relatives but also helped authorities to remove many names from their missing persons' lists.

In Sweden, the media agency Tidningarnas Telegrambyrå (TT)¹²³ wanted to obtain information from the police on the names of Swedes who were in the area at the time so that they could identify missing individuals and publish the names of those who were missing or presumed dead.¹²⁴ However, although Sweden was the first country in the world to enact an information access law in 1766,¹²⁵ the media agency's request for information was rejected by the police who argued that they needed to protect the relatives of those who were missing from unwelcome attention.¹²⁶

TT applied to the Supreme Administrative Court seeking orders for release of the information. The court ruled that disclosing information about Swedish people vacationing at a resort would not be invasive of their privacy considering the circumstances in which the request was made. It ordered that the information should be disclosed and the Swedish police were forced to release the list of 565 missing persons.¹²⁷ The information

was finally published on websites and newspapers. In spite of this, the police refused to allow six names to be published on the list stating that they were “protected identities”.¹²⁸

Sweden had one of the highest numbers of casualties of tourists holidaying in the tsunami-affected resorts. Despite such a national tragedy, the Swedish police denied access to information until the court stepped in to correct the anomaly. This case demonstrates that like many other human rights, the right to information is not absolute and must be balanced with the protection of other rights such as the right to privacy. This means that it is sometimes necessary to withhold information from the general public in order to protect the interests and safety of the individuals or groups of people. This was the Swedish police’s rationale. However, in this situation the right to privacy was overridden by the people’s need to know the fate of their fellow citizens.

Sweden’s Freedom of the Press Act

The world’s first freedom of information legislation was enacted in Sweden. The Freedom of the Press Act passed in 1766 contains 15 Articles in Chapter 2 which provides rules for accessing information. The Act states that the people of Sweden must have free access to official documents created or received by a public institution. It stipulates that a public official *must* respond to requests for information and do everything in his/her power to give the information as quickly as possible. People are permitted access to all official documents except where the information is clearly exempted under Article 2 or where a special law (such as the Secrecy Act) restricts access to information.

In the event that a public official denies access to official documents, the decision may first be appealed internally, then to the general administrative courts and ultimately to the Supreme Administrative Court. Complaints can also be made to the Parliamentary Ombudsman.

Right to Equality: Racial Discrimination

Tape Exposing Police Racism Compels Canada to Address Inequity Issues

In 1942 Canada's Department of Defence acquired the "Stoney Point Reserve"¹²⁹ from Canada's aboriginal community (the First Nations)¹³⁰ in order to establish a military base. After being forcibly removed from the area, the local First Nations community - the Stoney Point Band – began an ongoing struggle to reclaim their land which resulted only in inadequate compensation and promises that one day it may be returned to them.

Tired of the department's empty promises, the Stoney Point Band held an unarmed protest at the Ipperwash Provincial Park in September 1995. This park is the site of an ancient burial ground, a sacred area which they wished to protect from further defilement and destruction.

On the night of September 6, the heavily armed Ontario Provincial Police (OPP) approached the park with the intention of removing the peaceful protestors. However, the situation turned violent and resulted in the tragic death of an unarmed protestor – Dudley George. The entire incident was recorded on video by the Ontario police.¹³¹

The exact nature of that night's events may have remained secret indefinitely as the Conservative Party-led government at the time stoutly refused to hold a thorough enquiry. However, Canada's Access to Information Act, 1983¹³² proved useful, unearthing a disturbing and important aspect of the case – members of the OPP had used provocative and racially abusive language to lure the protesters out of the park.¹³³

In 2004, the Canadian Broadcasting Corporation (CBC) used the Access to Information Act to acquire a copy of a video tape that the police made of the event. Although the camera's lens was covered, it continued to record voices and sounds during the entire incident. This audio recording, which contained evidence of members of the police force using abusive language and racial insults directed at the protestors, confirmed incitement and revealed deep-seated racist attitudes in the police force.¹³⁴

As soon as the videotape's contents were exposed, the Ontario Provincial Police Association issued a public apology and began a thorough investigation into the night's events. The acting sergeant who shot and

killed Dudley George was found guilty of criminal negligence causing death and was imprisoned.¹³⁵

The newly elected Provincial Government in Ontario also set up a Commission of Inquiry to investigate the entire incident. In May 2007 Honourable Sidney B. Linden, who led the inquiry released the Commission's findings, stating that the Ipperwash tragedy highlighted the importance of holding public officials and institutions accountable for their actions.¹³⁶ Importantly, the murder of Dudley George was found to signify racial prejudice within the police force which the Commission sought to address with recommendations to government for change.

The Commission also recognised that lack of education about the country's history and relationship with its aboriginal people contributed to racial tension. It recommended the development of a comprehensive public education plan regarding Canada's treaty obligations with the First Nations people.¹³⁷ The Commission made a strong recommendation for the creation of a Ministry of Aboriginal Affairs for ensuring that indigenous issues received the "priority and focus"¹³⁸ they deserved. It also recommended that the government recognise the treaties made with the First Nations people, which allow non-aboriginal people to settle in Ontario, and which set out a duty to consult with the First Nations people in any area in which there is a proven or asserted aboriginal right.¹³⁹

The Commission of Inquiry of the Ipperwash tragedy revealed racial inequalities and tensions in Canada and provided the starting point from which to address them. For change such as this to occur, it is crucial that people have the right to know about the shortcomings and flaws in their systems of governance. The fullest revelation of information makes the invisible and accepted – here institutional discrimination toward segments of the public embedded in the police – visible and helps put an end to denial. In this instance, evidence disclosed under Canada's Access to Information Act played a key role in bringing these shortcomings to the public's attention.

Canada's Access to Information Act, 1983

Canada's federal Access to Information Act¹⁴⁰ commenced in 1983, and since then has been held to have "quasi constitutional" status by the courts. Under the Act, Canadian citizens and permanent residents

have the right to access records held by government institutions. They have 15 days to comply with the request. The law states that the public should be allowed access to government information and that exceptions to this should be narrowly tailored but it unfortunately includes a number of broad reasons for which information can be withheld.

Canada's Act has received praise for various provisions, including its comprehensive whistle-blower protection¹⁴¹ which is rare among right to information laws. However Canada's government has been criticised for non-compliance, slow response times and for charging excessive fees.

Given its age, various reviews of the Act have been conducted over the years but suggestions for amendments have been largely ignored.¹⁴²

All Canadian provinces have their own access to information laws.

The Right to Live without Racial Discrimination

The right of every human being to live without being subjected to any form of racial discrimination is a basic human right. Following the Second World War, international outrage at the treatment of Jews, Poles, gypsies and other racial and cultural minorities provided the impetus for the drafting of the Universal Declaration of Human Rights which declared openly that: "All human beings are born free and equal in dignity and rights" and: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race."¹⁴³ The principle of racial equality is also enshrined in the preamble to the ICCPR which states that individuals will be entitled to their human rights: "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin".¹⁴⁴

Increasing worldwide concern at South Africa's erstwhile apartheid regime gave rise to the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in 1965,¹⁴⁵ the first legally binding international instrument dealing exclusively with racial

prejudice and discriminatory treatment. The Convention defines discrimination as: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.¹⁴⁶ States Parties are obliged to review policies and laws which perpetuate racial discrimination, not to engage in any practice of racial discrimination against individuals, groups or institutions, and to ensure that all public authorities and institutions do likewise.

Canada ratified the ICERD in November 1970 and acceded to the ICCPR in May 1976.

Right to Freedom of Religion

Greek Ombudsman Report: Lack of Information Worsens Repression of Minority Faiths

Greece's Constitution protects its citizens' fundamental right to freedom of religion stating that every individual has the right to practice one's chosen faith with the protection of the state.¹⁴⁷ Yet history is witness to discrepancies between the constitutional guarantee of religious freedom and its practical implementation. With 95.2% of Greece's ten million citizens identifying themselves as Greek Orthodox Christians,¹⁴⁸ the church retains a huge influence. The Constitution recognises it as the prevailing religion in Greece.¹⁴⁹ In fact, the Ministry of Education and Religion pays the salaries of the clergy and finances the maintenance of church buildings.¹⁵⁰ The Greek Orthodox Church has historically shown reluctance to allow new and minority faiths to flourish, and the government has been known to restrict other faiths in order to protect the supremacy of the Church.

One such example is the religious minority group "Ellinai". The group was officially founded in 2005 but its history is as ancient as Greek mythology.¹⁵¹ Followers worship the ancient Greek gods and believe in the fundamental principles of world peace and ecological awareness.¹⁵² The Orthodox Church has publicly denounced the Ellinai religion as "pagan", a stance that has government backing.¹⁵³ In 2006, the Ellinai won a court battle in which the government was forced to officially recognise its status as a religious group.¹⁵⁴ In spite of this, the government has continued to deny followers their constitutional rights. The government has not given the Ellinai a license to set up a place of worship – meaning the group cannot legitimately conduct its religious practices or ceremonies in a place of public access.

As recently as in 2001, Orthodox Christianity, Islam and Judaism were the only religions to be officially recognised in Greece as "legal persons of public law" – which means that they are offered full protection and recognition under the law.¹⁵⁵ Under Greek law, a religious group must have a "house of prayer permit" from the Ministry of Education and Religion in order to be able to open a place of worship. However, the ministry issues such permits only on the advice of the Bishop of the Orthodox Church and the government has a right to prosecute all groups who operate places of worship without a permit.¹⁵⁶

In 2001 the Constitution was amended to allow the Greek public greater access to information.¹⁵⁷ The constitutional amendments reinforced the people's entitlement to access information and enabled lawful restrictions to be imposed on this right only for a limited number of reasons such as national security, combating crime, or to protect the human rights or interests of third parties. The ombudsman's office is now tasked with representing and investigating any grievance from the public where access to information has been denied or the information provided has not been sufficient.¹⁵⁸

In 2006, the ombudsman submitted an annual report to Parliament documenting complaints received during 2005 and the investigation of constraints on access to information.¹⁵⁹ What was particularly telling was the number of complaints received concerning restrictions on religious freedom, and how the lack of information in the public domain had exacerbated the suppression of minority faith-based groups.

For example, the report pointed to a severe lack of information with regard to the construction of places of worship, and official policies regarding religious teaching and the celebration of the Orthodox Sacrament within schools.¹⁶⁰ The ombudsman penned recommendations to the government, strongly advising that it dissociate itself from any action that could be deemed discriminatory against religious minorities. Religions other than the Orthodox Church, the ombudsman insisted, must be treated with the same respect and recognition as the Church.¹⁶¹ The ombudsman's recommendations, though not binding, have some influence on the government's opinions and actions. Most of the ombudsman's previous recommendations have led to new policy initiatives and legislation to address the issues brought forward on behalf of the public.¹⁶² The amendment of the Greek Constitution gave the public increased rights to access information and it fell upon the ombudsman to receive and investigate complaints regarding the availability of information in the public domain. This has provided an avenue for suppressed religious groups to voice their concerns and bring the violations of their right to information and freedom of religion to light.

This case illustrates how the right to information fortifies other rights. Here, the addition of a right to access information coupled with a forum through which to ventilate grievance, enhanced guarantees of religious freedom in Greece.

Greece's Code of Administration Procedure, 1999

Article 5(a) of the Constitution of Greece states that access to information is a right to which all persons are entitled.¹⁶³ The Article also places the state under an obligation to facilitate access to electronic information. The constitutional right to information is supported by the Code of Administration Procedure of 1999¹⁶⁴ which provides people access to documents created by the government. There is an entitlement to access documents that have been created by non-government bodies only where there is a legitimate and special interest of a person involved.

The Code includes a broad list of exclusions and exempts: "secrets defined by law" from disclosure.

The Right to Freedom of Religion

The right to be free to choose and practice one's own religion is enshrined in Article 18 of the UDHR¹⁶⁵ and protected in Article 18 of the ICCPR. Both instruments place freedom of religion within the same context as freedom of thought and conscience. The ICCPR states that: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."¹⁶⁶ It goes on to assert that: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

Many people experience persecution and discrimination because of the religions they have chosen to follow. In countries where the political make-up of a state is grounded in religious beliefs, people belonging to religious minorities are especially vulnerable to persecution.

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief sets international standards for the elimination of discrimination based on religious difference.¹⁶⁷ The UN has also appointed a Special Rapporteur to assess the status of freedom of religion worldwide.

Greece acceded to the ICCPR in May 1997.

Right to Freedom from Torture

Silence is Torture: US Releases Detention Camp Information Following International Pressure

On 11 September 2001, terrorists hijacked civilian aircrafts and flew them into the World Trade Center in the United States of America killing nearly 3,000 people. Immediately after the attacks, the US President, George W. Bush announced a global “war on terror”. As part of this campaign, people suspected of association or involvement with terrorism could be detained in camps in and outside the US and transported forcibly to undisclosed locations through a process known as “extraordinary rendition”.¹⁶⁸ What was not publicised until some years later was the full extent of the shocking conditions of US-run detainment camps for suspected terrorists that had been established in various secret locations around the world – including the now well-known camp located in Guantanamo Bay, Cuba.

In late 2001, the US President issued a military order stating that people suspected as potential terrorists could be held indefinitely without trial in the detention camps and that the detainees would have no legal redress at any court – be it domestic, foreign or international. Trial would only be possible by a Military Commission.¹⁶⁹ In 2002, the US Justice Department issued a memorandum stating that interrogators may cause severe pain to detainees before their actions would be officially classified as torture and that the US President could authorise a “significant range” of cruel, degrading and inhuman acts that could be used on prisoners that would not amount to torture.¹⁷⁰

The US government’s secrecy about the treatment and health of detainees in the camps is in contradiction with the US’s long tradition of transparency in government bodies. The federal Freedom of Information Act¹⁷¹ passed in 1966 allows any person to request information from any federal government agency. The states have also passed laws that provide citizens access to information and open up decision-making processes for the public to scrutinise. However, the “war on terror” has been used to severely limit people’s right to access information. The US government has withheld considerable information from the public on the grounds that it is necessary for the sake of national security.¹⁷² Information regarding camp detainees is said to fall within this category, and as a result, finding out the truth about conditions in the camp, and even where they are located,

has been difficult if not impossible to gain. There are even restrictions on disclosing the names of people being detained at such camps.

Shafiq Rasul, Ruhul Ahmed and Asif Iqbal are three such detainees of British origin who were released without charge from the Guantanamo detention centre in 2004 after two years of being subject to more than 200 incidents of interrogation and countless acts of torture. On release from Guantanamo Bay, these three men testified to some of the nightmarish experiences they had endured, firstly as prisoners in Pakistan and then in Guantanamo Bay. Their experiences included being locked in a suffocating container with 200 other prisoners. Only 30 people survived this mistreatment by breathing air from holes in the container that had been made by machine guns. While being interrogated for up to eight hours a day, guards would stand on the prisoners' bodies and hold a gun against their heads while shouting death threats.¹⁷³

The dissemination of these three prisoners' testimonies has resulted in mounting international pressure on the US government to provide the public with more information on the treatment of detainees. In 2006, the Associated Press filed a Freedom of Information (FOI) request for the release of the identities of detainees held in Guantanamo Bay. The US Department of Defense (DOD) declined to provide the information arguing that it would be an invasion of the prisoner's privacy. The Associated Press successfully appealed to the courts¹⁷⁴ – with the judge ruling that “none of the detainees... had a reasonable expectation of privacy during the tribunals.”¹⁷⁵ The court later went on to order the release of photographs of the detainees ruling that: “there is a clear public interest in obtaining this information so as to assess not only DOD's conduct with respect to the... care and (literally) feeding of the detainees”.¹⁷⁶

The right to information in this case has contributed to holding a government to long recognised legal standards. Knowledge of torture practices created widespread debate about the limits of acceptable custodial treatment which has potentially helped to stem further erosion of the absolute prohibition of such practices. Even as the debate continues, state agencies' awareness that they may at some future time be held to account for egregious violations of human rights may act as a deterrent against such behaviour.

The United States of America's Freedom of Information Act

The US has a long history of providing the public access to information. In 1946, Congress enacted the Administrative Procedures Act which required that all bodies of government to actively disseminate information about their structure and procedural undertakings. Yet this law was not very effective and in 1966 the Freedom of Information Act¹⁷⁷ (FOIA) was enacted. It became operational the next year.

In line with best practice, the FOIA recognises the right of any person or organisation, irrespective of citizenship, to request information from federal government bodies. The law also requires regular dissemination by government agencies of information relating to their structure, function and rules. Yet, there are many exemptions and approximately 140 statutes that provide other grounds on which information can be withheld. The judiciary and some other elected offices are exempt from the obligation to disclose information on request.

The law has been substantially amended over time but unfortunately, the Bush Administration has used a number of means to attempt to restrict general access to information including the enactment of the 2001 Presidential Records Act. This law allows former presidents and vice presidents to prevent public access to government records generated during their tenure as they deem appropriate.

All fifty states of the US have laws providing for the right to information.

Canadian Anti-Terror Legislation Enables Governments to Suppress Public Knowledge of Torture

Post 9/11 the Canadian federal government has put in place measures to limit people's right to information¹⁷⁸ and reinforced its powers under the Official Secrets Act, 1939, and in 2001 renamed it the Security of Information Act.¹⁷⁹

The effects of the government's increased emphasis on information security were illustrated when Canadian reporter, Juliet O'Neill,

published an article about Maher Arar, a Syrian-Canadian who was arrested by US officials on allegations of terrorist-related offences. In 2002 Arar was taken to Syria, where he was kept imprisoned and tortured until his eventual release in 2003. He was never charged with the commission of any crime. In January 2004, when O'Neill refused to reveal the source of the leaked national security document on which she based her story, the Royal Canadian Mounted Police (RCMP) used their powers under the Security of Information Act to raid her home and office to look for the information they sought.¹⁸⁰ Officers dismantled her laptop computer and went through personal letters and clothing looking for information concerning the source of the story¹⁸¹—all this because she dared to inform the Canadian public about their government's complicity in the arrest and subsequent torture of Maher Arar.

O'Neill went on to win a landmark legal case in which the courts struck down Section 4 of the Security of Information Act which made it an offence to receive or communicate secret or official information to persons not authorised to receive it. The courts claim that the Section was unconstitutional and vague and that its provisions restricted "the free flow of government information," and infringed upon O'Neill's right to freedom of expression and the freedom of the press.¹⁸² The documents which were seized by the RCMP were ordered to be returned to O'Neill.

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The right to be free from torture and other cruel, inhuman or degrading treatment or punishment is essential to the preservation of human dignity and is inextricably linked to the right to life and the right to health. This right has been recognised throughout international human rights and humanitarian law. Article 7 of the ICCPR states that: "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment"¹⁸³ and the right is also an integral element of the Geneva Convention which provide guidelines for the treatment of civilians and prisoners during times of war.¹⁸⁴

The right to freedom from torture is a non-derogable human right. There are no circumstances under which suspension or abrogation

of the right is acceptable – from declared states of emergency to fighting international terrorism – it is always illegal for states to torture either their own citizens or those of other countries.

Torture has been broadly interpreted in international jurisprudence. The Human Rights Committee has stated that the aim of ICCPR Article 7 is to: “protect both the dignity and the physical and mental integrity of the individual” and clarified that: “even in situations of public emergency” this right is not to be suspended.¹⁸⁵

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) came into effect in 1987.¹⁸⁶ It is a comprehensive international treaty that defines torture, requires states to take preventative measures against torture and holds them accountable for violations of its provisions. Article 17 of the CAT established the Committee Against Torture which is empowered to receive claims of torture and cruel, inhuman, or degrading treatment and also provides means for states to report known violations of other states.

The US ratified the ICCPR in June 1992 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1994.

Canada acceded to the ICCPR in May 1976 and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in June 1987.

Right to Water¹⁸⁷

World Bank Influence in Water Project Hinders Critical Reforms to Delhi's Water Supply

In 1998, the Delhi Jal Board (DJB) which manages the supply of water to the 13 million residents of Delhi was granted a World Bank loan to privatise this essential service and provide round-the-clock water supply. The DJB invited bids from interested parties through public tender for providing consultancy services for this project. The multinational corporation, PricewaterhouseCoopers (PwC) was short-listed in 2001.¹⁸⁸

Alarmed by the DJB's move towards privatisation which had the potential to deprive Delhi's poorer inhabitants of inexpensive access to water, a local non-government organisation *Parivartan* intervened to find out whether all had been done according to established financial and technical norms. They sought details of the tender process using Delhi's Right to Information Act¹⁸⁹ and were given about 4,000 pages of information.

The documents revealed that PwC had consistently ranked lower in the financial and technical evaluation as compared to other bidders and had actually failed to clear the evaluation testing. Furthermore, the records revealed that senior DJB officials had been aware of this and had expressed their opposition to PwC being short-listed at the end of the tender process. So why was PwC chosen despite its poor performance? The documents showed that the World Bank had repeatedly intervened in the tendering process insisting that: "at least one consultant should be short-listed from a developing country."¹⁹⁰ While PwC is a multinational firm, it has a subsidiary firm registered in Kolkata in India and was made to appear as if it were a local entity.

The information also revealed the extent of the World Bank's influence in PwC's successful bid. One civil servant had noted in the record of internal deliberations that the privatisation move: "could be in jeopardy if the suggestions of the World Bank were not agreed to."¹⁹¹ As a result, PwC was reinstated by the DJB with higher marks than originally given and eventually short-listed.

If the intended aim of the project was to ensure efficient delivery of 24 hour water supply to all the city's population, the information released showed that in its proposed form the outcomes would be far from this. It was revealed that promises of massive profits were made to water

supply companies which would have resulted in a significant increase in the price of water for all consumers while round the clock supply would not have been available in the poorer settlements of the city where the majority of the population live. Accessibility to water would actually be reduced and many people would be unable to afford water at all.¹⁹²

With these revelations the DJB and the World Bank came under intense media and public criticism. As a result, the Chief Minister of Delhi announced that the DJB would not move ahead with the recommendations of the World Bank or consider the final list of successful candidates. Instead, the government held a public hearing over the issues to identify alternative solutions to Delhi's water supply problem. At the hearing, PwC's recommended blueprint for water reforms in Delhi was heavily criticised for mirroring structures established in places such as Manila, where the privatisation of water had failed to deliver the benefits initially promised.¹⁹³

Parivartan also highlighted the need for transparency within international financial institutions such as the World Bank that are not subject to the jurisdiction of any country's legal system for their policies and decisions. Concerns were raised about the Bank's lack of willingness to disclose information that could greatly affect poor people's right to access water in Delhi. The Right to Information Act became a useful tool for preventing the denial of access to water to the disadvantaged sections of society in the name of privatisation. An examination by interested citizens using access laws provided an X-ray into the minutiae of the entire process, including the attitudes of officials and the extent of forces driving decision-making. As more and more public functions, like the provision of health care, water, power and transport are privatised, it is important that people are able to get information from the bodies involved in providing these services, not merely from governments. Recognising this, some right to information laws extend their coverage to place a duty on private bodies carrying out public functions. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if their work affects people's human rights.¹⁹⁴

The World Bank's Internal Disclosure Policy

The global movement towards the recognition of the right to access information has now extended to include international financial institutions such as the World Bank and the International Monetary

Fund. With the growing challenges and long-standing debates around the World Bank's operations, serious questions have been raised around the social and environmental impact of the Bank's activities and the importance of transparency and people's participation in its decision-making.

The World Bank's Policy on Disclosure of Information came into effect in 2002.¹⁹⁵ Although the organisation attempted to achieve a level of transparency through the release of Country Assistance Strategies (CAS) and by disseminating information using an online InfoShop and Public Information Centres, serious flaws still remain. The Policy only applies to limited types of information and exempts documents such as the assessment reports of developmental projects financed by the World Bank. The World Bank is not subject to the jurisdiction of any independent, external adjudicatory body for resolving information access-related disputes.

The Right to Water

Although water is essential for human life, over one billion people worldwide lack access to safe, clean water for drinking, cooking and washing.¹⁹⁶ Unsafe water causes the death of over two million people each year who fall prey to preventable, water-borne diseases such as dysentery, giardiasis, polio and typhoid.¹⁹⁷ According to the Committee on Economic, Social and Cultural Rights: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights... [it] entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."¹⁹⁸

Although not traditionally recognised as a fundamental human right in the UDHR or the ICESCR, the right to water has achieved increasing international recognition as one of the most essential and basic of human needs and has been addressed in more recent international human rights treaties. For example, Article 14 of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) recognises the right of women to enjoy: "adequate living conditions, particularly in relation to housing, sanitation... and water supply".¹⁹⁹ The Convention on the Rights of the Child (CRC) also realises how crucial water is for the healthy development of all children.

Article 24 requires States Parties to combat disease and malnutrition: “through the provision of adequate nutritious foods and clean drinking water”.²⁰⁰

The provision of safe, clean water is also an objective of the Millennium Development Goals in which countries pledged to reduce by half the proportion of people without access to safe drinking water and basic sanitation by 2015.²⁰¹ In addition, the World Bank has initiated its own Water Sanitation and Supply Programme which it claims is: “at the core of the World Bank’s mission to reduce poverty”.²⁰²

India ratified CEDAW in July 1993 and acceded to the CRC in December 1992 and the ICESCR in 1979.

Appendix: I

Table of National Access to Information Laws Around the World

COUNTRY	YEAR	TITLE OF THE INFORMATION ACCESS LAW
ALBANIA	1999	Law on the Right to Information for Official Documents
ANGOLA	2002	Law on Access to Administrative Documents
ANTIGUA & BARBUDA	2004	Freedom of Information Act
ARMENIA	2003	Law of the Republic of Armenia on Freedom of Information
ARGENTINA	2003	Access to Public Information Regulation
AUSTRALIA	1982	Freedom of Information Act
AUSTRIA	1987	Federal Law on the Duty to Furnish Information
AZERBAIJAN	2005	The Law on Right to Obtain Information
BELGIUM	1994	Law on Access to Administrative Documents held by Federal Public Authorities
BELIZE	1994	The Freedom of Information Act
BOSNIA AND HERZEGOVINA	2001	The Freedom of Access to Information Act
BULGARIA	2000	Access to Public Information Act
CANADA	1983	The Access to Information Act
CHINA	2007	(to come into effect in May'08) Ordinance on Openness of Government Information
COLOMBIA	1985	Law Ordering the Publicity of Official Acts and Documents
CROATIA	2003	Act on the Right of Access to Information
CZECH REPUBLIC	1999	Law on Free Access to Information
DENMARK	1985	Access to Public Administration Files Act
DOMINICAN REPUBLIC	2004	Law on Access to Information
ECUADOR	2004	Organic Law on Transparency and Access to Public Information
ESTONIA	2000	Public Information Act
FINLAND	1999	Act on Openness of Government Activities
FRANCE	1978	Law on Access to Administrative Documents
GEORGIA	1999	General Administrative Code of Georgia
GERMANY	2005	Act to Regulate Access to Federal Government Information
GREECE	1999	Code of Administrative Procedure
HONDURAS	2006	The Law on Transparency and Access to Public Information
HUNGARY	1992	Act on Protection of Personal Data and Disclosure of Data of Public Interest

COUNTRY	YEAR	TITLE OF THE INFORMATION ACCESS LAW
ICELAND	1996	Information Act
INDIA	2005	The Right to Information Act
INDONESIA	2008	Freedom of Information Act
IRELAND	1997	Freedom of Information Act
ISRAEL	1998	Freedom of Information Law
ITALY	1990	Law on Administrative Procedure and Access to Administrative Documents
JAMAICA	2002	Access to Information Act
JAPAN	1999	Law Concerning Access to information Held by Administrative Organs
SOUTH KOREA	1996	Act on Disclosure of Information by Public Agencies
LATVIA	1998	Law on Freedom of Information
LIECHTENSTEIN	1999	Information Act
LITHUANIA	1996	Law on the Provision of Information to the Public
MACEDONIA	2006	Law on Free Access to Information of Public Character
MEXICO	2002	Federal Law of Transparency and Access to Public Government Information
MOLDOVA	2000	The Law on Access to Information
MONTENEGRO	2005	Law on Free Access to Information
NETHERLANDS	1991	Government Information (Public Access) Act
NEW ZEALAND	1982	Official Information Act
NORWAY	1970	The Freedom of information Act
PAKISTAN	2002	Freedom of information Ordinance
PANAMA	2002	Law on Transparency in Public Administration
PERU	2003	Law of Transparency and Access to Public Information
POLAND	2001	Law on Access to Public Information
PORTUGAL	1993	Law of Access to Administrative Documents
ROMANIA	2001	Law Regarding Free Access to Information of Public Interest
SAINT VINCENT AND THE GRENADINES	2003	Freedom of Information Act
SERBIA	2004	Law on Free Access to Information of Public Importance
SLOVAKIA	2000	Act on Free Access to Information
SLOVENIA	2003	Act on Access to Information of Public Character
SOUTH AFRICA	2000	Promotion of Access to Information Act
SPAIN	1992	Law on Rules for Public Administration
SWEDEN	1766	Freedom of the Press Act
SWITZERLAND	2004	Federal Law on the Principle of Administrative Transparency
TAJIKISTAN	2002	Law of the Republic of Tajikistan on Information
THAILAND	1997	Official Information Act

COUNTRY	YEAR	TITLE OF THE INFORMATION ACCESS LAW
TRINIDAD AND TOBAGO	1999	Freedom of Information Act
TURKEY	2003	Law on the Right to Information
UGANDA	2005	The Access to Information Act
UKRAINE	1992	Law on Information
UNITED KINGDOM	2000	Freedom of Information Act
UNITED STATES OF AMERICA	1966	Freedom of Information Act
UZBEKISTAN	2002	Law on the Principles and Guarantees of Freedom of Information
ZIMBABWE	2002	Access to Information and Privacy Protection Act

Note: This table lists only those countries with a specific national law or national subordinate legislation such as Pakistan's FOI Ordinance or China's information access regulations. The list excludes territories, states or regions which have their own substantive right to information law, for example Hong Kong, the Cayman Islands, Kosovo, Scotland or the states and provinces of Australia, Canada and the United States of America.

Endnotes

Introduction

¹ The right to information is enshrined under Article 19 of the Universal Declaration of Human Rights. United Nations General Assembly (1948) *Universal Declaration of Human Rights*, Resolution n 271 A (III) 10 December: <http://www.un.org/Overview/rights.html> as on 7 November 2007; and protected under Article 19 of the International Covenant on Civil and Political Rights. United Nations (1966) *International Covenant on Civil and Political Rights*: <http://www.ohchr.org/english/law/ccpr.htm> as on 7 November 2007.

² See Chapter 2 for the principles that underpin a world's best practice right to information law.

³ The right to freedom of information is declared in one of four fundamental laws of Sweden that form the Swedish Constitution. Swedish legislation contains several provisions related to freedom of information and access to public documents. For the Constitution of Sweden, see http://www.servat.unibe.ch/icl/sw00000_.html as on 7 November 2007.

⁴ The Latin phrase 'Ipsa Scientia Potestas Est' can be found in Bacon's *Meditationes Sacrae* (1597) quoted at http://www.quotationspage.com/quotes/Sir_Francis_Bacon as on 8 November 2007.

Chapter 1

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⁷ Above, n.1, Article 19.

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Convention on the Elimination of All Forms of Discrimination Against Women: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> as on 6 November 2007.

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¹⁹ Article 13, United Nations (2003) *United Nations Convention Against Corruption*: http://www.unodc.org/unodc/crime_convention_corruption.html as on 6 November 2007.

²⁰ Transparency International’s Corruption Perceptions Index is a tool which measures the perceived levels of corruption, as determined by expert assessments and opinions surveys in 180 countries worldwide. Transparency International (2007) *Corruption Perceptions Index*: http://www.transparency.org/policy_research/surveys_indices/cpi as on 7 November 2007.

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²⁴ The Commonwealth Human Rights Initiative (2007), *Your Guide to Using the Right to Information Act 2005*: New Delhi : http://www.humanrightsinitiative.org/publications/rti/guide_to_use_rti_act_2005.pdf as on 7 November 2007.

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⁹ Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission

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¹⁹ There are 34 countries in the Organization of American States, 24 of these have ratified the American Convention on Human Rights. Of the OAS members, those countries with a specific law implementing the right to information are: Antigua and Barbuda, Argentina, Belize, Canada, Colombia, Dominican Republic, Ecuador, Honduras, Jamaica, Mexico, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago and the United States of America.

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²⁹ Ibid.

³⁰ Ibid.

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³² Ibid.

³³ Ibid., p.43.

³⁴ Ibid., p.33, para. 57(41). On 26 August 2005, Act No. 20,050 reforming the Chilean Constitution entered into force.

³⁵ The European Union is made up of 27 European countries, with a further three being considered for membership as of September 2007. Of these, all but three countries have a law that provides for the right to information. Countries in Europe (including those outside the European Union) with a specific law implementing the right to information include Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Macedonia, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Turkey, the United Kingdom and Ukraine. The three countries without a law are Luxembourg, Cyprus and Malta — the last two being members of the Commonwealth. Greece has a code of ethics requiring civil servants to be transparent in their actions.

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³⁷ Article 11(1), the *European Union (2007) Charter of Fundamental Rights of the European Union*: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1916&format=HTML&aged=0&language=EN&guiLanguage=en> as on 12 May 2008. The President of the European Commission, Mr José Manuel Barroso, said that by signing and proclaiming the Charter, the Presidents of the European Parliament, the Council and the Commission were publicly signalling their indelible wish to make it legally binding on the Union's institution.

³⁸ Attached to the 1992 Treaty of Maastricht is a Declaration on the Right of Access to Information. On the basis of the declaration, a code of conduct was adopted and implemented by the Commission and the Council, detailing the conditions under which access could be requested to information held by these institutions. The 1997 Amsterdam Treaty moved further by granting, in the newly introduced Article 255 EC Treaty, a right of access to documents. According to Article 255, secondary legislation was to be adopted within two years of the Treaty of Amsterdam entering into force. The Treaty came into force in 1999 and the Regulation on Freedom of Information was passed in 2001. It

covers “all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union”. In 2002, the European Ombudsman promulgated a Code of Good Administrative Behaviour, which applies to all institutions of the EU. Under Article 22 officials are required to “provide members of the public with the information that they request”, and if they cannot they must state the reasons for non-disclosure. The Code requires officials to deal with requests in a timely way and to take steps to inform the public about their access rights.

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⁴⁰ United Nations Economic Commission For Europe (1998) *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*: <http://www.unece.org/env/pp/welcome.html> as on 20 November 2007.

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⁴⁷ *Promoting Open Government: Commonwealth Principles and Guidelines on the Right to Know* (1999) Commonwealth Expert Group Meeting on Right to Know and the Promotion of Democracy and Development, 30-31 March: http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/commonwealth_expert_grp_on_the_rti_99-03-00.pdf as on 19 November 2007.

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⁵⁰ United Nations (2003) Committee on Social, Economic and Cultural Rights, *General Comment no. 15 E/C.12/2002/11*, para.45: <http://www.unhchr.ch/tbs/doc.nsf/0/>

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Chapter 4

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About our partners

The Friedrich-Naumann-Stiftung für die Freiheit is the foundation for liberal politics. It was founded in 1958 by, amongst others, Theodor Heuss, the first German Federal President after World War II. The Foundation currently works in some sixty different countries around the world – to promote ideas on liberty and strategies for freedom. Our instruments are civic education, political consultancy and political dialogue.

The Friedrich-Naumann-Stiftung für die Freiheit lends its expertise for endeavours to consolidate and strengthen freedom, democracy, market economy and the rule of law. As the only liberal organization of its kind world-wide, the Foundation facilitates to lay the groundwork for a future in freedom that bears responsibility for the coming generations.

Within South Asia, with its strong tradition of tolerance and love for freedom, with its growing middle classes which increasingly assert themselves, and with its liberalizing economies, the Foundation works with numerous partner organizations to strengthen the structures of democracy, the rule of law, and the economic preconditions for social development and a life in dignity.

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The New Zealand Government created New Zealand's International Aid and Development Agency (NZAID) in July 2002 to give distinctive profile and new focus to New Zealand's Official Development Assistance (ODA) Programme. The agency is responsible for delivering New Zealand's Official Development Assistance (ODA) and for advising Ministers on development assistance policy and operations. NZAID is a semi-autonomous body within the Ministry of Foreign Affairs and Trade (MFAT). It has its own vote and management arrangements tailored to its core business.

Since the agency's formation, eliminating poverty has been central to NZAID's mission with a regional focus on the Pacific, reflecting the Government's commitment to be a good international citizen and neighbour. NZAID helps to eliminate poverty through development partnerships, particularly in the Pacific region, and also supports projects in Asia, Africa and Latin America.

NZAID places a high priority on building strong partnerships and concentrates its development assistance on activities that contribute to poverty elimination by creating safe, just and inclusive societies, fulfilling basic needs, and achieving environmental sustainability and sustainable livelihoods.



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CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

HUMAN RIGHTS ADVOCACY: CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

ACCESS TO JUSTICE:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Education: CHRI facilitates judicial exchanges focusing on access to justice for the most vulnerable. Participating judges get a rare opportunity to hear from activists and experts, focus on pressing issues specific to their region and familiarize themselves with recent legal and procedural, as well as social and scientific, developments relevant to their judicial work. The work was begun with INTERIGHTS some years ago. CHRI now works independently to orient lower court judges on human rights in the administration of justice.



We live in an age where information can be accessed and shared across the planet at the click of a button. Yet a lack of information continues to frustrate people's ability to make choices, participate in governance and hold public authorities accountable for their actions. Governments need information to act on people's behalf. The information they generate using public funds are for public purposes and meant for the public's benefit. This information is a public good that we own collectively.

The right to information is a unique human right, the touchstone for all freedoms to which the United Nations is consecrated. More than 70 countries have enacted laws to provide people access to government-held information. *Our Rights, Our Information* is a compilation of case studies that illustrate how the right to information has been used to secure a range of human rights from the right to food and healthcare to the right to be free from torture and gender-based discrimination.

Published in partnership with:

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