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*Freedom of Expression,  
Access to Information  
and Empowerment of People*

World Press Freedom Day 2008

**Freedom of Expression,  
Access to Information  
and Empowerment of People**

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# Message by Koïchiro Matsuura, Director-General of UNESCO, on the occasion of World Press Freedom Day, 3 May 2008

Freedom of Expression is a fundamental human right recognized in Article 19 of the United Nations Declaration of Human Rights, whose 60th anniversary we celebrate this year. On World Press Freedom Day 2008, UNESCO pays tribute to the courage and professionalism of the many journalists and media professionals killed and wounded while carrying out their professional activities, by dedicating this day to the themes of empowerment and access to information.

Alongside the dangers of conflict areas and war zones, journalists often face threats, intimidation and actual violence as a direct result of their work. These acts are unconscionable, not only because they violate the human rights of individuals, but also because they impede the free flow of accurate and reliable information which underpins good governance and democracy. Too often these crimes are not adequately punished.

Press Freedom and access to information feed into the wider development objective of empowering people by giving them the information that can help them gain control over their own lives. This empowerment supports participatory democracy by giving citizens the capacity to engage in public debate and to hold governments and others accountable. But this flow of communication does not happen automatically. It has to be fostered by a free, pluralistic, independent and professional media, and through national policies founded on four key principles at the heart of UNESCO's work: Freedom of Expression, quality education for all, universal access to information and knowledge, and respect for linguistic diversity. Indeed, the freedom to express oneself in one's mother tongue as widely and as often as possible and to master other national, regional or international languages is being highlighted by UNESCO in this International Year of Languages. Without strong policies to foster linguistic diversity in all aspects of a nation's life – in schools, administration, law and in the media – we risk denying

hundreds of thousands of people around the world the basic right to engage in public life and debate.

Technological advances – for example the Internet – allow the media to reach more people in more places, allow people to share their opinions more readily, and allow information to flow across borders. These are huge benefits. But Freedom of Information, and online information, alone do not guarantee access. People also need the Internet connectivity and IT resources to use that information, for example to access national or international news or to provide a plurality of media options, including community radio. Even more fundamentally, they need to have the capacity to use these tools - and this can only come about through the universal provision of quality education and promotion of multilingualism.

As we celebrate World Press Freedom Day 2008, let us remember three things:

First, the courage of those journalists who have put themselves at risk in order to provide the public with accurate and independent information.

Second, that Press Freedom and Freedom of Information are the founding principles for good governance, development and peace.

Third, that new technology can provide enormous information benefits, but needs to be underpinned by measures that empower people to make use of it: quality education for all, universal access to information and knowledge, and respect for linguistic diversity.

A commitment to removing all obstacles to Press Freedom, to improving the conditions for independent and professional journalism, and to empowering citizens to engage in public debate, is essential. On World Press Freedom Day 2008, UNESCO encourages its Member States to strengthen their efforts in this direction.

# Foreword by Abdul Waheed Khan,

## Assistant Director-General for Communication and Information, UNESCO

World Press Freedom Day sets in motion a global recognition and acknowledgement of the central role the news media play in our lives. This year, the themes of Empowerment and Access to Information punctuated these celebrations to focus on those key elements that go hand in hand. Indeed, there can be no empowerment without access to information.

At this year's World Press Freedom Day celebrations, UNESCO has set out to explore how media freedom and access to information feed into the wider development objective of empowering people.

**Empowerment** is a social and political process that is the natural by-product of access to accurate, fair and unbiased information representing a plurality of opinions. It allows citizens to gain control over their own lives, to work cooperatively and to provide direction to their leaders. The information flows must be on multiple levels and multi-dimensional, in a "multi-logue" with many conversations feeding into the collective consciousness and enriching the active life of community.

The rapid spread of the ICTs can provide useful tools as we seek to empower populations. But we have to ensure that the use of ICTs to improve the flow of information does not lead to a digital divide, a term that has become short-hand to describe the chasm between the information rich and the information poor within a society.

ICTs represent a huge advancement in content generation, as well as dissemination, which brings me to the theme of access to information.

I have already mentioned the multi-logue and the necessity for a variety of media outlets to feed into this

process. **Media pluralism is critical** and not easily attainable. Even in highly saturated media markets, pluralism is lacking. The usual suspects of talking-heads on TV and radio talk shows drive the policy agenda and influence public opinion in ways that actually stifle debate.

Closely related to this are the **enabling or legal environments** that create the frameworks in which media can thrive and grow. This means establishing the space for community radio, for example, one of the most influential and important steps taken to address a lack of pluralism in the media sector. Legal and policy frameworks are also where we confront the concentration of media ownership in the hands of the few. There may be many outlets, but if they are controlled by a handful of individuals, access is stymied. Governments must also make available the official documents that represent their work. Officials must be accountable and a functioning news media must have access to these documents in order to perform their role as watchdogs. Consequently, Freedom of Information laws are crucial.

We must realize that the role journalists play in society is central to the functioning of the community. Threats against the lives of journalists are meant to silence them and place the truth out of reach. There must be the political will to enforce the laws that deny impunity to those who would plunge their communities into darkness so that they can go on with their criminal ways.

Here is the formula for Access: Pluralism + Diversity of Ownership + Freedom of Information laws + Safety for Journalists.

# Introduction by Guy Berger,<sup>1</sup>

Head of the School of Journalism and Media Studies,  
Rhodes University, South Africa

## Interlinked rights

Freedom of Expression and the right to seek information are interlinked and fundamental human rights as stated in Article 19 of the Universal Declaration of Human Rights.<sup>2</sup> This is especially worth recalling as 2008 marks the 60th anniversary of that declaration.

Each year on 3 May, World Press Freedom Day marks the institutional form of Freedom of Expression. The occasion is the anniversary of the 1991 adoption of the Windhoek Declaration on a free and independent press. Another date, 27 September, is increasingly being celebrated annually as the Right to Information Day. At the 2008 World Press Freedom Day celebration in Maputo, UNESCO explored how both Press Freedom and Freedom of Information can feed into the wider objective of empowering people. This focus built on an earlier meeting of experts in Paris during 2008, which analyzed the link between Freedom of Information and sustainable development. UNESCO also hosted a lecture series during 2008, on the theme of ‘The Potential of Information and Communication Strategy for Development’. All three events are the sources of the content in this publication.

The issues covered herein are summed up in the title of the whole, namely: “Freedom of Expression, Access to Information and Empowerment of People.” Empowerment is a multi-dimensional social and political process that helps people gain control over their own lives. This in turn depends on access to the means to actively communicate, as well as on access to a plurality of information – including that held by the state.

## Media freedom is a precondition

To make empowerment into a reality, several conditions are necessary. A legal and regulatory environment must exist that allows for an open and pluralistic media sector to emerge. Political will to support the sector, and rule of law to protect, it must also exist. There should also be law that ensures practical access to information, especially information in the public domain. Finally, news consumers need the necessary skills to produce and circulate information and engage with the media, and also to critically analyze and synthesize the information they receive.

These elements, along with media professionals adhering to the highest ethical and professional standards designed by practitioners, serve as the fundamental infrastructure on which empowerment can prevail. On this basis, media can serve as a watchdog; civil society engages with authorities and decision-makers; and information flows through and between communities. Open and pluralistic media are, perhaps, most precious when they provide a forum for society to talk to itself. These moments of reflection are instrumental in defining community objectives, and making course corrections when society or its leaders have lost touch with each other or gone astray.

In all facets of community life, the media play a central role as the conduit for information and potentially as a catalyst for activism and change. For example, development issues can have a polarizing affect on a community, encompassing a debate that can stretch from economic benefits to environmental impacts to overall quality of life concerns. Through media, a non-

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<sup>1</sup> Professor Guy Berger is head of the School of Journalism and Media Studies at Rhodes University, Grahamstown, South Africa. In the past two years, he has contributed to two UNESCO projects – the first being an initiative to capacitate leading journalism-training facilities across sub-Saharan Africa, and the second being the editing of a book on media law in ten African democracies. Berger is very active in media freedom issues in southern Africa, and the Highway Africa project which is the world’s biggest annual meeting of African journalists. He writes a fortnightly column for the website of South Africa’s leading independent paper ([www.mg.co.za/converse](http://www.mg.co.za/converse)).

<sup>2</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, Article 19: “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.”

threatening informed discussion can ensue that can yield positive outcomes for all stakeholders. In these instances, media can ensure the voices in a community can be counted as much as the financial interests of investors in any one particular project.

But this all depends on Press Freedom – something that is still not guaranteed in many parts of the world. With 171 journalists killed in 2007,<sup>3</sup> a number just short of the record, and hundreds more threatened, imprisoned or tortured, it is not difficult to understand the challenges that must be overcome. These acts are unconscionable, not only because they violate the human rights of individuals, but also because they are detrimental to good governance and democracy, because they damage information flow and the emergence of accurate and reliable information.

Ensuring freedom for the media around the world is a priority. Independent, free and pluralistic media are central to good governance in democracies that are young and old. Free media can ensure transparency, accountability and the rule of law; they promote participation in public and political discourse, and contribute to the fight against poverty. An independent media sector draws its power from the community it serves and in return empowers that community to be full partner in the democratic process.

## Access to information

It is evident that the right to free speech (and the associated Press Freedom) is deeply interwoven with the right to access information. As the Special Rapporteur on Freedom of Expression for the Inter-American Commission on Human Rights declared in 2000, censorship violates not only the right of each individual to express themselves, it also impairs the right of each person to be well informed.

On the other hand, cognizance also needs to be taken of the wider way in which information access is essential for both democracy and development. This pertains not just to the state guaranteeing free speech to the citizens and their media institutions. It is also in respecting that information held by, or generated by, the state is equally the property of the people. As the

Declaration on Principles of Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights in 2002, states: *“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.”*

In other words, those in authority are merely caretakers of information on behalf of the people. If information held by the state is power, then it should be for the purposes of empowering society, and not for empowering officialdom against the citizenry. Empowering access relates not just to the data held by the state, but also to processes – such as access to policy- and regulation-related meetings within public institutions.

In the face of calls for the Right to Information, many political leaders and civil servants spring immediately to a defensive posture of stressing the need to limit the circulation of “sensitive” information. But there are also many others, especially when freshly elected, who see the value in democratizing access as a way to reform the state in the interests of transforming it – that is, by exposing those officials appointed under a previous regime to the glare of a new day. It is exactly the purpose of Freedom of Information to throw open the curtains that conceal what happens in the corridors of executive power, thereby exposing officialdom to public scrutiny and accountability. The power of enduring public shame and anger, as a countervailing power to potential abuses by government, cannot be underestimated. When executive behavior has to occur in the sunlight, its excesses are curbed, and valuable public input can be incorporated.

Like most rights, that to Freedom of Information, can be qualified – but such limitations should be secondary, rather than primary, considerations when it comes to legislation provision for information access. There is substantial jurisprudence, and valuable standards proposed by NGOs such as ARTICLE 19, around this issue. In terms of these, any limitations to the right to Freedom of Information need, at least, to serve a legitimate interest and be necessary in a democratic society.

Not stopping at defining access and its limitations, some Right to Information laws go further and provide

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<sup>3</sup> International Federation of Journalists.

for penalties for state officials who obstruct legitimate information requests. Some laws also set out protection for officials who might release otherwise restricted information in good faith or in the public interest. In addition, legislation sometimes includes provisions along the lines of the African Commission Declaration that public bodies should be required, even in the absence of a request, to actively publish information of significant public interest.

In terms of encouraging the empowerment of citizens, therefore, Freedom of Information is at the heart of a participatory democracy. Consider the consequences of an uninformed electorate going to the polls; consider the consequences when information flows are curbed or manipulated in times of political crisis or ethnic strife. Freedom of Information promotes a true sense of ownership within society and therefore gives meaning to the concept of citizenship.

At the same time, Freedom of Information as an elaborated legal right does not guarantee access as such. Its reality needs monitoring, such as that done by the Open Democracy Advice Centre in South Africa. That NGO has developed a quadruple-focus index which it administers annually to gauge the information-readiness in public institutions. The results are publicized as the “rusty padlock” award for worst practice, and the “golden key” prize for the best.

## The importance of ICTs, community media and audience participation

While Freedom of Information laws, which permit access to public information are essential, so too are the means by which information is made available. Advances in ICTs bring ever greater potential for information to reach more people in more places and in practice enable people to have access to information and express their opinions. ICTs open up the possibility for transparency and good governance to become practical realities.

ICTs are of course also highly relevant to the media. Media, however, can play an additional role in empowerment that goes beyond the utilization of new technology. Even though many media outlets have made provisions for this role and have therein become more accessible to the people they serve, nowhere is accessibility and specificity of purpose so well defined as

with community media. Currently radio is the most widespread form of community media in the developing world because it is cheap to produce and to access, often caters to listeners in their mother tongues and is not dependent on textual literacy.

While not always the case, women and young people will find a home for their issues and encouragement of their participation within the community media framework. The inclusion of women remains a challenging development issue because they are habitually excluded from the decision-making processes within their own societies, whilst being the first point of contact on many health and educational issues. Similarly, more attention should be given to the inclusion of youth within the media and to developing their media literacy skills.

Over the long-term, local media can create a coherent narrative of a region’s development and help people formulate goals and plans for how to improve their situation. The media can help contextualize national development programs within community frameworks and bring these goals closer to their intended beneficiaries. Effective local media can also help people understand the history and evolution of oppression or discrimination and give them the necessary perspective to make rational choices to overcome these ills. With this information, people have the means to participate in democratic processes and shape their own futures locally and nationally.

A more recent development complements the role of community media in terms of empowering citizen access. New technology is giving citizens an unprecedented opportunity to inform others. In crises, citizens reporting like journalists may be the only way for human rights abuses and other violations of a criminal or environmental nature to be brought to face broad public scrutiny. Citizen reporting may also be a way to work against censorship, following protests or political turmoil. If information becomes decentralized, censorship becomes less effective because it is no longer containable within the media outlets.

New technologies are not only changing the media dynamic when it comes to content, but are also a significant factor in creating new ways for media to interact with its audience. Blogs, mobile phones and various other online devices are bringing the producers of content in closer contact with the consumers of it.

Feedback can be instantaneous. For the first time in the history of the media industry, especially in the most well developed media markets, there is as much information coming in from consumers as is going out to them through traditional and new means of communication. Managing these flows of information is becoming increasingly critical to the future of the media business. The bonds are being strengthened between these entities and with this deeper connection come heightened expectations that the users will be listened to.

Encouraging participation is therefore key to the survival of media outlets in a competitive market place, while also providing an opportunity to engage with audiences. From an audience perspective, participation can influence the content in a very proactive way and it enables individuals to access a ready-made platform through which they can share their opinions.

Against this backdrop, the possibility also exists for governments to become models of disclosure through e-governance by putting their information online. But without a means to access the Internet, people would not be more empowered. Internet connectivity and IT resources have increasingly become crucial to unhindered access to information put online by the state, as well as that contributed by the media, other institutions and private citizens. In this environment, the challenge of meta-data and the semantic web are topical concerns given the challenges of finding (and/or creating) specific information ‘needles’ in a ‘cyber-haystack’ of information that surpasses anything yet seen – and which keeps growing in size. But what can the concepts of “digital revolution” or “information society” effectively mean to 80% of the world’s population who still have no access to basic telecommunication facilities, or to approximately 860 million illiterate individuals, or to the two billion inhabitants of the planet who still have no electricity? The priority given to narrowing the digital divide in every respect is therefore fully justified. Linked to this focus is the challenge of people learning to use new technologies, and of building their media capacity and information literacy.

## Conclusion

Information can change the way we see the world around us, and our place in it, and can shape how we adjust our lives in order to maximize the benefits available through our local resources. Fact-driven decision-making can significantly alter our political, social and economic perspectives. Freedom of Information and Freedom of Expression are the founding principles for empowerment that can drive progress in an informed and participatory manner.

Meantime, new technology will continue to evolve and allow, at least in principle, citizens to further shape their media environments as well as to access a plurality of information sources – including the state. The combination of media freedom and access to information and the Internet, along with audience participation and communications literacy, can only contribute to an increase in citizen empowerment.



### Key points from the Introductory contributions:

- Freedom of Expression and the Right to Information are fundamental rights.
- Press Freedom and access to information support participatory democracy.
- National communications policies should rest on UNESCO’s four principles.
- ICTs can help empower people for a “multi-logue”.
- Media pluralism, an enabling legal environment and journalistic safety are essential to empowerment and access to information.
- Community media and audience participation are especially important for empowerment.
- Media production capacity, media literacy and information literacy are essential.



# PART 1

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## **Press Freedom Contributes to Empowerment**

This Part of this book is comprised of two contributions delivered at the UNESCO May 3 seminar in Maputo in 2008. The authors point out how media fulfills an essential component of a democratic society. Access to a free, independent and pluralistic media is essential for gaining awareness of the issues that matter both nationally and internationally. Empowerment relies on access to diverse media outlets. However, political will by governments is indispensable for all this to happen. Commitments to international protocols and declarations on media freedom need to be respected. Even where the State respects media freedom, so too should other social forces.

# MISA statement on World Press Freedom Day, 3 May 2008

by Kaitira E. Kandjii, Regional Director,  
Media Institute of Southern Africa

The Media Institute of Southern Africa (MISA), a regional media and Freedom of Expression advocacy organization, based in Windhoek and working through national chapters in 11 Southern Africa Development Community (SADC) countries, joins the rest of the world in marking the World Press Freedom Day on May 3, 2008. MISA commemorates May 3 under the theme “Press freedom, access to information and empowering the people”. This theme captures all we expect from our media, and the role our governments should play in promoting media and Freedom of Expression rights.

The 2008 World Press Freedom Day comes at a time when the enjoyment and respect for media and Freedom of Expression rights in Southern Africa is on the slide. We mark May 3 under the shadow of a crisis in Zimbabwe and the deterioration of media freedoms throughout the region, notably in Lesotho, Angola and Swaziland.

May 3 comes at a time when the international spotlight is once again on Southern Africa, home to some of the world’s archaic and repressive media environments with Zimbabwe taking the lead. We mark May 3 with mixed feelings, for while we have made substantive strides since the Windhoek Declaration in 1991, the last three years have witnessed a steady deterioration of media freedom, reminiscent of Africa’s one-party-state era of the 70’s and early 80s, and characterized by the suppression of the basic fundamental rights of freedoms of expression, assembly and human dignity.

The southern Africa envisaged in the Windhoek Declaration of 1991 is a far cry from the arrests, beatings, torture and detention of journalists and the general repression of free of expression that are characteristic of Zimbabwe and the region today. The democracy for which we fought so hard is not the model we have witnessed in Zimbabwe and Angola where the state rules with absolute impunity, with no respect for

the rule of law and total disregard of the will of the people. The SADC leadership we envisaged 10 years ago is a far cry from what we have today, where some of our leaders sacrifice their morality and integrity in the face of unspeakable human suffering and state decay in Zimbabwe.

Southern Africa is a region at a crossroads, with a choice to regress or move with the rest of the world and reap the benefits of a free and diverse society. South Africa, a beacon of hope as a result of its advanced constitution which protects basic rights and its political and economic leadership, is slowly showing signs all too familiar with Africa’s post-colonial nationalist governments. That is intolerance towards criticism and leaning towards legislative power to seek protection from public scrutiny. The threats of a Media Tribunal proposed by the ruling ANC government, the deterioration of confidence in, and the ensuing tussle for control of, the public broadcaster the SABC as well as the proposed Protection of Information law, amount to a serious retrogression from the spirit of the democratic transition in South Africa in 1994, the spirit of a people’s victory and freedom. On May 3, the ruling party and government in South Africa need to take stock and introspect with a positive mind, on the relationship between the state and the media and also look at the role that the media plays in checking on centres of power to ensure accountability. More critically, South Africa should look at its leadership role and the implications for the rest of the region and the continent of the reversal of the enjoyment of basic rights in that country.

MISA further expresses concern on the state of government-media relations in Lesotho. The arrest of Thabo Thakalekoala, MISA Regional Chairperson, in 2007 on allegations of sedition points yet again to the need to repeal archaic insult and security laws that can be abused for political ends. MISA further expresses concern at the general continued use of “insult laws” not only in Lesotho, but also Swaziland and Zimbabwe, by powerful individuals in government, politics and

business to silence journalists. In light of these, MISA is participating in a campaign with fellow civic organizations to establish a SADC “insult laws” free zone. This campaign takes cognizance of the need to improve journalistic skills and also promote amicable dispute resolution through voluntary Media Councils.

In the course of the 2007 year, MISA issued 181 alerts. These document media and Freedom of Expression violations and developments in Southern Africa. Zimbabwe had the highest number of alerts at 57. The monitoring of media and Freedom of Expression violations generally point to further deterioration in the relationship between our governments and the media. This bad relationship is demonstrated through threats made against journalists and media organizations, and the enactment of media-unfriendly laws. While new positive laws were drafted and passed in Zambia, their implementation remains in limbo as the government procrastinates on taking them forward. New laws are also being proposed in Swaziland with far reaching consequences on the future of the underdeveloped media in that country. Tanzania is also going through a media legislative process whose consultations are not satisfactory. MISA underscores that while some aspects of media regulation, especially democratic broadcasting and telecommunications are required, governments in Southern Africa are generally caught in a time warp. Legislation remains focused on the traditional media, newspapers and television, and also focused on controlling rather than developing, and on protection of the elite and the powerful rather than on accountability and transparency. New laws being proposed in the region fall far short of recognizing developments in the ICT sector and how our media can be assisted to further reach out and develop capacity and skills.

On May 3, MISA urges SADC governments and civic society to work towards achieving the principles of the Windhoek Declaration of 1991 and the African Charter on Broadcasting of 2001, as well as to adhere to the African Union Banjul Declaration of Principles on Freedom of Expression in Africa. These declarations and principles broadly recognize the positive role that the public and independent media play in social, political and economic development. In this regard, a lot of work needs to be done in enacting democratic media laws that promote the growth of the media and telecommunications sector, and hence promote the right to Freedom of Expression.

On May 3, we emphasize that SADC governments should work to consolidate media and Freedom of Expression rights through improving protocols such as the SADC Protocol on Information, Sport and Culture. More work needs to be done to ensure the enforcement of these protocols and Declarations on Freedom of Expression. More should also be done to strengthen the capacity of protective bodies such as the African Commission on Human and Peoples Rights and the SADC Tribunal as a way of enhancing their role in defending basic rights. The knee-jerk response to the crisis in Zimbabwe serves as a reminder on why SADC and Africa need stronger and effective protective regional and continental bodies.

On May 3, MISA also celebrates the sacrifices being made by journalists, media organizations and communities in defending media and Freedom of Expression rights, often under serious threats of all sorts. MISA commends the few governments that continue to maintain a healthy, interactive and consultative relationship with the media and civic society. May 3 is therefore that time to take stock, and ask the question how far we have come.

# Press Freedom and the Empowerment of People

by Atmakusuma Astraatmadja, Executive Director,  
Soetomo Press Institute, Indonesia

Freedom of the press and expression has come again through a long way to Indonesia after it was missing for about 40 years – or more or less two generations – between the 1960's and the 1990's. People have made efforts in the last decade to re-establish this freedom which we once enjoyed under the Soekarno regime in the 1950's.

The Indonesian parliament (Dewan Perwakilan Rakyat, DPR) passed the new Press Law on 13 September 1999, and ten days later President B.J. Habibie signed it into law. This statute:

- Guaranteed freedom of the press;
- Eliminated licensing as means of controlling the press;
- Removed the government's ability to ban publications;
- Limited the power of the government to introduce subsequent regulations;
- Removed restrictions on who might practice journalism; and
- Guaranteed the rights of journalists to join associations of their own choice, to seek, acquire, and disseminate ideas and information, to be free of censorship, and to refuse to divulge the names of their sources.<sup>4</sup>

Significantly, for the first time the 1999 Press Law provided penalties of fines or imprisonment for those who attempted to restrict Press Freedom rather than the reverse, and it allowed for self-regulation of the press through the establishment of an independent Press Council.<sup>5</sup> However, for the last ten years, in the era of *Reformasi* or Reform following the fall of President Soeharto in May 1998, people are still learning very hard how to communicate their views peacefully

through dialogue instead of expressing anger and violence – as if to compensate the inability to take the stand openly and honestly for 40 years. The termination of an authoritarian regime in Indonesia does not necessarily end the pressures on the media. During the current era of *Reformasi*, the threats against the media and freedom of the press could come from society besides laws and regulations, the Criminal Code in particular.

In a number of cities, including the national capital city, Jakarta, leaders of mass organizations or religious groups and political parties – and, even, regional government leaders – coerce, if not terrorize, media organizations to print or broadcast their statements in full or to publicize the reports in their favour.

Only one and a half months ago, the employees of the Sanitation Office of Jayapura, the provincial capital city of Papua, dumped five truckloads of trash in front of the office of the *Papua Pos* daily as a protest to the publication of an interview with the chairman of the local parliament who criticized the works of this office.<sup>6</sup> The mayor of Jayapura later ordered the Sanitation Office to take back the smelly rubbish, but denied that he had asked for apology from the newspaper.<sup>7</sup> Some people are of the view that that action is a more effective response to the press than using the universally accepted right of reply. They seem to prefer using pressures and physical forces instead of intellectual arguments in solving their “conflicts” with the media.

However, there is always a blessing behind the open controversies. Both media workers and the public have learned that it is more possible to create common understanding on, if not to solve, important issues in an atmosphere of openness – which is the character of Press Freedom and democracy.

<sup>4</sup> Dr. Janet E. Steele, unpublished article “Habibie and the Press”.

<sup>5</sup> *Ibid.*

<sup>6</sup> ROW, ‘Dinas PU Buang Sampah di Kantor “Papua Pos”’ Kompas, 9 March 2008, p. 3; ROW, ‘Wali Kota Jayapura Bantah Minta Maaf kepada “Papua Pos”’, Kompas, 12 March 2008, p. 24.

<sup>7</sup> *Ibid.*

We have lately been involved in a nationally-heated controversy about the Moslem minority group, Ahmadiyah, which the majority Moslems regard it a “deviant” sect of Islam. Some Moslem groups and many clerics, including members of the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI), have demanded that the government ban Ahmadiyah for “heresy.” But many others, including clerics and intellectuals as well as politicians and most members of the Presidential Advisory Council, are against the banning, saying that the idea is a violation of the Constitution which guarantees freedom of religions and beliefs and basic human rights. In other words, banning the religious sect is against democracy.

It is unfortunate that there have been a few hundreds of the Ahmadiyah followers who have left their home to become refugees in more peaceful regions of the country. It is indeed unfortunate that early this week an Ahmadiyah mosque was burned down by people in a village of the West Java Province. But, the situation could be much worse if there were no open intellectual polemics on Ahmadiyah between the conservatives and the liberals in the media. I believe that such incidents could be minimized even further if we were more successful in the development of media literacy down to the villages.

We now have about 900 print media, but most of them have only a very small circulation. Keen readers of the newspapers, tabloids and magazines are mostly those who are living in big cities such as national and provincial capital cities. We have also a large number of state and private television and radio stations, about 50 and 3,000 respectively,<sup>8</sup> but they are very cautious when reporting and discussing social and especially religious issues to avoid potentially violent reactions from the audience. However, by practising strict self-censorship, the media and the public could only learn a very limited lesson from their precious historic experiences.

Indonesia has only had 10 years so far to learn about living in a democratic atmosphere since the fall of the New Order regime that limited open and frank discussions on sensitive issues such as those related to state

security, races, ethnic groups and religions. We need more time to develop an open-minded society. The free press is our hope to continue the ideal.

The deputy executive director of the Centre for Strategic and International Studies (CSIS) in Jakarta, Rizal Sukma, in an article appearing in the *Jakarta Post* daily a few days ago, reminded readers that Indonesia is still regarded as the only free country in Southeast Asia.<sup>9</sup> He wrote: “That recognition is possible only because mass media in Indonesia continues to enjoy and defend freedom of the press.

“Indonesia’s democracy owes a great deal to the existence of free media ... Without freedom of the press, Indonesia’s democracy would have suffered an early death.

“... we need to remind ourselves that free press is the last bastion of democracy.”<sup>10</sup>



### Key points from Part 1:

- Seventeen years after the historic Windhoek Declaration, some countries in Southern Africa are experiencing a reversal in media freedom.
- This takes the form of severe harassment of individual journalists, the promotion of policy and regulation that are unfriendly to a free media; the non-implementation of progressive legislation; and the reversion to archaic “insult laws”.
- Southern African governments should respect the Windhoek Declaration and the Declaration on Principles of Freedom of Expression, adopted by the African Commission on Human and People’s Rights in 2002.
- Indonesia has enjoyed ten years of media freedom, and a growth in media pluralism. However, some social groups demonstrate intolerance, leading to a culture of self-censorship.
- Media freedom remains essential to Indonesian democracy and to the development within an open society in that country.

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<sup>8</sup> A substantial increase from 300 print media, 6 TV stations and 800 radio stations under President Soeharto’s New Order government.

<sup>9</sup> Rizal Sukma, “A free press is the last bastion of democracy”, *The Jakarta Post*, 29 April 2008, p. 2.

<sup>10</sup> *Ibid.*

# PART 2

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## **The Role of Community Media, Journalists and the Public**

This Part also draws from the UNESCO 3 May Maputo conference. The contributors examine the significance of community media, journalistic conditions of work and the relationship of the media to politics and the public. The first contributor argues that local media invite participation from marginalized and vulnerable populations that are often overlooked by larger media. Although it is not guaranteed that marginalized groups, such as women for example, will be included in the dialogue, community media has the potential to provide an inclusive and interactive platform for decision-making. The conditions of journalists as employees need to be addressed through law-reform, collective bargaining agreements and trade unionism, is the proposal of the second contributor. Journalists themselves need to rethink their role in democratic communications, according to the third contributor who argues further that they should focus on pluralism, civic voices and expressing differences. This contribution also covers three other factors: the way the changing political culture of participation impacts on journalists' relations to their industry; the privatization of public information; and the Internet.

# Community Broadcasting: Good Practice in Policy, Law and Regulation

by Steve Buckley, President, World Association of Community Radio Broadcasters (AMARC)

This year marks the 15th occasion of World Press Freedom Day, but for those of us in community broadcasting we have another anniversary to celebrate. Twenty-five years ago, in 1983, a group of Canadian community radio activists had the optimism to believe that beyond their borders not only were there others engaged in the practice of community broadcasting, but that there was, perhaps, out there, an embryonic international movement waiting to be born. Although at the time, community radio was not much known outside the Americas, together with a few European countries and Australia, this small founding group had the audacity to title their small gathering a World Assembly of Community Radio Broadcasters. Or rather, as this was Quebec, *La Assemblée Mondiale des Artisans des Radio Communautaires*, or AMARC, for short. Community radio broadcasters are indeed artisans or craftspeople, creating images with sounds, not designing media to a formula driven by marketing calculation or propagandistic intent, but drawing on a passion for the medium and a belief that community broadcasting can make a difference to people's lives and livelihoods.

When AMARC first began in the early 1980s we drew inspiration from stories of KPFA and the Pacifica Network in the USA, from the rise of free radio in France and Italy, stations like Radio Popolare of Milan, from the Australian experience starting with 5UV in Adelaide, and from Ireland where BLB was broadcasting community radio south of Dublin. But this was not a phenomenon of developed countries alone. We drew inspiration too from the rich history of community broadcasting in Latin America, that dates back to the Bolivian miner's radios of the late 1940s, and today has a presence in almost every Latin American country – not only worker's radios like those of the Bolivian miners, but educational radios, indigenous people's radios, women's radios, radios in almost every major urban centre and in some of the remotest rural communities. Over the years, the Latin American experience has profoundly influenced the growth of the international community radio movement particularly

as we have come to better understand the role of media in development.

Beyond Latin America, there was almost no experience of community radio in the developing world. It was not until 1991, that the first community radio initiative in Asia, the Tambuli project in the Philippines, got off the ground. It was the same year, in Africa, that the Malian revolution led to the opening up of the airwaves, previously a state monopoly throughout Africa. Mali was quickly followed in 1992 by community radio in Benin also after a democratic revolution, and then by South Africa. In South Africa, the first community radio stations in 1983 were illegal but licensing commenced in 1994 under the transitional government, and has flourished in the post-apartheid era. The growth of community radio in Africa, from the mid-1990s onwards, and more recently in Asia, has brought a much greater focus on and awareness of the role that community radio can play in voice and empowerment.

In almost all cases we find a close correlation between the emergence of community radio and political change towards greater democracy. In Mozambique, for example, it

was the end of conflict and the emergence of multi-party democracy that provided the conditions in which community broadcasting commenced and also now flourishes. Not only in Africa, but in Asia, we find similar patterns. Community radio started in Nepal in 1997, following the first democratic revolution. It played a central role in the defense of democracy and human rights in 2005 and since the second democratic revolution in Nepal of May 2006, there has been rapid growth. Similarly in Indonesia, community broadcasting emerged after the fall of the Suharto dictatorship in 2000.

Recent years have also seen mainstream recognition of community radio in the discourse of human rights

and of development. Driven in the part by the dotcom boom there has been increasing discussion of the role of information and communications in development. For some the Internet was seen as a panacea to all ills, but the dotcom bust produced more sober reflection, from which, among other things, emerged a growing recognition of the vital importance of traditional communication media, and especially radio, in reaching the poorest and most marginalized people of the world.

Economists like Amartya Sen, Joseph Stiglitz and Jeffrey Sachs have all highlighted the importance to effective and sustainable development of having a free, independent and pluralistic media environment that can not only provide access to knowledge and information but can contribute to transparency, good governance and the rooting out of corruption. Community broadcasting, in this broader context, is now seen by many development experts as a vital tool to empower the poorest people and communities.

The freedom to establish private broadcasting outlets does not guarantee everyone is able to exercise equally their right to freedom of opinion and expression. Civil society organizations in general and organizations of disadvantaged people in particular are not typically able to compete on purely economic terms with private commercial broadcasters. People and groups who face social and economic marginalization, especially those in rural areas, are often poorly served or not served at all by private commercial media, and they lack easy access to finance capital to establish their own services. Community broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion.

Human rights and development experts have noted that people faced with social and economic exclusion also face systemic obstacles to Freedom of Expression that are associated with the conditions of poverty – low levels of education and literacy, poor infrastructure, lack of access to electricity and general communications services, discrimination and so on. Community media have become a vital means by which the voiceless are able to exercise their right to Freedom of Expression and access to information. The 2002 Annual Report of the Special Rapporteur for Freedom of Expression of

the Organization of American States was particularly important in its analysis of the relationship between poverty and Freedom of Expression and it gave extensive attention to the specific role of community radio. Among the points which that report addressed was the existence of legal obstacles that either prevent or restrict the establishment and operation of community broadcasting services. The report said: “Given the potential importance of these community channels for Freedom of Expression, the establishment of discriminatory frameworks that hinder the allocation of frequencies to community radio stations is unacceptable.”

The importance of community broadcasting is also recognized in the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and People’s Rights in 2002, and which calls on African states to ensure: “An equitable allocation of frequencies between private broadcast uses, both commercial and community”. It also states that “community broadcasting shall be encouraged given its potential to broaden access by poor and rural communities to the airwaves.”

The Ninth United Nations Round Table on Communications for Development, in its final declaration, referred to community media in the following similar terms: “Governments should implement a legal and supportive framework favoring the right to free expression and the emergence of free and pluralistic information systems, including the recognition of the specific and crucial role of community media in providing access to communication for isolated and marginalized groups.”<sup>11</sup>

Despite such international recognition there remain serious obstacles to the establishment of community media in many countries, especially for community broadcasters – radio and television services – that require access to radio spectrum in order to operate. In some countries, community broadcast services exist in substantial numbers but being not legally recognized have a precarious existence and frequently face persecution. In other countries they have been prevented from being established by strictly enforced licensing systems that exclude this form of broadcasting. These difficulties are often associated with governments that seek

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<sup>11</sup> Ninth United Nations Round Table on Communications for Development, Rome, September 2004.

to control the flow of information but they have also been reinforced in environments where private media are strong due to the interests of private media groups in excluding potential competition for audience.

Overall the recent trends for community broadcasting have been positive. There are over 100 countries with some form of community broadcasting rather more than there are countries with national public service broadcasters. Nevertheless there remain many countries where community broadcasting is either not permitted or is reluctantly tolerated but not encouraged. There have been a number of studies, most recently including work by AMARC and by the World Bank Institute, that have examined, in detail, the country level legal and regulatory environments that have given the best results in enabling community broadcasting to establish and to flourish.<sup>12</sup> Countries that can be mentioned as good examples include Benin, South Africa, Australia, Colombia, France and the Netherlands, among others. In these studies are outlined some characteristics of good practice which may be summarized in the following key points:

- 1 Community broadcasting should be recognized in policy and law as having distinct characteristics and be guaranteed fair and equitable access to the radio frequency spectrum and other broadcast distribution platforms, including digital platforms.
- 2 Procedures for the award and regulation of broadcast licensing and frequencies for community broadcasting should be fair, open and transparent, and under the administrative responsibility of an independent regulatory body.
- 3 Community broadcasters should have access to a diversity of funding sources without unreasonable restrictions. This may include public funds administered in such a way that this does not compromise their independence.

## Characteristics of community broadcasting

Community broadcasting generally refers to broadcast media which are **independent, civil society based and which operate for social benefit and not for profit.**

There are a wide range of more detailed definitions and descriptions that can be found in policies, laws and regulations as well as in academic analyses and practitioner discourse, but it is useful to start with these basic elements. Let us consider each of these in turn:

**Independence** is perhaps the most complex element. The independence of the service means that it should not be directly or indirectly controlled by any body of central or local governmental, or face undue influence by such bodies through ownership or funding. It should also be independent of commercial interests and no commercial broadcaster or other commercial entity should be able to own or otherwise exercise control over the service. Many commentators would argue that community broadcasters should also be editorially independent of any particular political party or religious institution. In practice, the principle of independence can be as challenging to defend for community broadcasting as for any other media.

**‘Civil society’-based** is more or less self explanatory, at least in countries where there is a strong civil society and established legal forms for civil society association. But where civil society is weak or where the legal forms of association are restrictive we often find hybrids that are less easily described. Civil society based implies forms of ownership and control that can be expected to promote and support community participation in program making, operation and management, and including mechanisms to ensure the provider is accountable to the community it serves.

**Operating for social benefit and not-for-profit**, taken together, mean that these are media that belong in the field of public interest rather than of private economic gain. Social benefit means the achievement of objectives that contribute to the social and economic well being of the community. Any profit should thus be used wholly and exclusively for securing the future of the service or for the delivery of other social benefit to the members of the public or community that it is intended to serve.

Community broadcasting is often also considered to be a form of local broadcasting but we need to be careful in

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<sup>12</sup> AMARC (2008) Best Practices on Community Broadcasting Regulatory Frameworks – a Comparative Study of Regulatory and Legal Frameworks and National Policies in 19 Countries. AMARC-LAC; Buckley, S., K. Duer, S. O’Siochru and T. Mendel (2008) *Broadcasting, Voice and Accountability: A Public Interest Approach to Policies, Laws and Regulation*. World Bank/University of Michigan Press.

using geographical indicators to describe forms of social organization. A community broadcaster operating in Kathmandu, for example, may also be serving that city's global diaspora. Communities may share proximity or place but also cultural, linguistic and other interests. The right to establish community broadcasting services should be available for community-based organizations and other civil society groups in rural and urban areas and for geographical and interest-based communities. They should not face a priori or arbitrary limitations on transmission power or transmission coverage nor should they be reserved exclusively for particular social groups or communities, rural or urban. They should also not face any content restrictions beyond those which legitimately apply to all broadcast media. They should be owned by and accountable to the community that is served and should provide for participation by the community in management as well as in program making. Characteristics which might be usefully included in any legal or regulatory definition of community broadcasting – and derived from countries where specific licensing arrangements for community broadcasting are in place – specify that they:

- are independent of the government and of commercial organizations;
- serve specific communities, either geographical or communities of interest;
- have ownership and management representative of that community;
- operate for purposes of social benefit rather than private financial profit;
- enable participation by the community in program-making and management.

These provisions form a good basis for legal or regulatory definition. The regulatory framework, including the terms and conditions of licensing, may require these characteristics to be respected, while allowing flexibility for the broadcaster to adapt its service to best meet the needs and conditions of the community it is intended to serve.

In practice there are significant variations in the definitions of community broadcasting but most definitions include some or all of these characteristics. The African Charter on Broadcasting, adopted in 2002 by media

practitioners and Freedom of Expression advocates from throughout Africa, has become a widely referenced statement of good practice for media policy, law and regulation. It includes the following definition: “Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.”<sup>13</sup>

South Africa is one of the countries that has adopted a comprehensive legal and regulatory framework for community broadcasting. The South African Broadcasting Act of 1999 described provisions for licensing of community broadcasting as follows:

- 1 Despite the provisions of this Act or any other law, a community broadcasting service licence may be granted by the Authority in the following categories:
  - (a) Free-to-air radio broadcasting service;
  - (b) free-to-air television service.
- 2 The licence of a community broadcasting service must be held by a licensee.
- 3 The licensee referred to in subsection (2) must be managed and controlled by a board which must be democratically elected, from members of the community in the licensed geographic area.
- 4 The programming provided by a community broadcasting service must reflect the needs of the people in the community which must include amongst others cultural, religious, language and demographic needs and must:
  - (a) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;
  - (b) be informational, educational and entertaining;
  - (c) focus on the provision of programs that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture; and
  - (d) promote the development of a sense of common purpose with democracy and improve quality of life.

<sup>13</sup> The African Charter on Broadcasting was adopted in Windhoek in May 2001.

- (5) All surplus funds derived from the running of a community broadcasting station must be invested for the benefit of the particular community and monitored by the Authority, which has the power to audit the financial records of the services.<sup>14</sup>

Recognition and differentiation of community broadcasting in law and regulation are desirable features but not sufficient. Indeed, in some cases, the legal framework has been operated as a means to limit the viability or influence of community broadcasters by, for example, excessive constraints on transmission power or unreasonable limitations on sources of finance. In Indonesia, for example, community radio is recognized in law, but is limited to very low power and restricted in its sources of revenue. Similar restrictions apply in Brazil. It is essential therefore that the legal and regulatory framework also offers fair and equitable access to frequencies as well as to economic and other resources without the inclusion of unreasonable restrictions.

Broadcasting involves access to a limited resource, namely the radio spectrum. Countries which have adopted policies, laws and regulations designed to encourage community broadcasting have therefore also explicitly in law, or administratively in practice, reserved a substantial part of the radio frequency spectrum for use by these services. In the United States, for example, community broadcasting has its roots in a historic decision of the Federal Communications Commission in 1945 to reserve 20 per cent of the broadcast spectrum for non-profit services.<sup>15</sup> Thailand has made a similar arrangement in a law passed in 2000,<sup>16</sup> while France has in practice allocated around 25 per cent of the FM broadcast spectrum for non-commercial *radios associatives*.

## Regulation of community broadcasting and the licensing process

Licensing of broadcast services is generally considered necessary to ensure fair and equitable access the radio

spectrum. Unregulated use of the spectrum is an inefficient mechanism for allocation of spectrum resources and can result in interference between competing signals, degrading the quality of service for the listener, or low power services being swamped by high power signals from neighbouring locations. This said, it can be noted that in many countries, and in all regions of the world, community broadcasting has often commenced outside of formal licensing frameworks, in response to demand and in the absence of appropriate legal or regulatory arrangements. Licensing should be designed to support the development of a plurality of independent broadcasters, including community broadcasters, and not as a mechanism to restrict them or to maintain governmental control over broadcast content and ownership.

Licensing procedures for community broadcasting should be fair, open, transparent and set out in law, and should be the responsibility of an independent licensing body. Criteria for application and selection should be established openly and in consultation with civil society. The process should be responsive to demand from community-based organizations that meet the essential characteristics set out in the definition. It is preferable that a portion of the frequency spectrum should be set aside for this purpose. There should be no unnecessary obstacles that would exclude or deter communities from seeking authorization, and the process should be independent of political interference. Licensing of community broadcasting should not present unreasonable technical, economic or other barriers to entry with eligibility criteria based primarily on demonstrating social purpose and social benefit and adequate provisions for community participation in ownership and operation of the service.

The process of applying for a license should be set out clearly in law. This may take the form of a call for applications for a particular locality or applicants may be able to define themselves the different localities they propose to cover. The information to be provided by applicants should be specified by the licensing body and may include:

<sup>14</sup> Broadcasting Act number 4 of 1999, Section 32.

<sup>15</sup> Federal Communications Commission (1945) Allocation of Frequencies to the Various Classes of Non-Governmental Services in the Radio Spectrum from 10 Kilocycles to 30,000,000 Kilocycles, Docket No. 6651 (June 27, 1945).

<sup>16</sup> Allocation of Telecommunication and Broadcasting Frequencies Act 2000.

- legal status and membership of the applicant;
- proposed coverage and intended audience;
- content of the program service to be provided;
- involvement of and accountability to the community;
- proposals to ensure the delivery of social benefit; and

The application requirements, selection criteria and mode of assessment should be published prior to the invitation to apply for licensing and should be developed in a manner that includes open and public consultation involving civil society groups. Decisions on licence applications should be taken within a reasonable timeframe and allow for public comments to be submitted on the applications received. Any decision not to issue a licence should be accompanied by written reasons and be subject to judicial review. On deciding to issue a licence the regulatory body should confirm, in accordance with technical norms and standards, the frequency assignment to be provided to the licensee, appropriate to the achievement of the proposed coverage of the service that has been approved through the licensing procedure.

In Benin, for example, the *Haute Autorité de l'Audiovisuel et de la Communication* (HAAC) is an independent regulatory body responsible for the licensing of private radio and television services. The HAAC distinguishes between Commercial Radio and Non-Commercial Radio and it publishes a *Cahiers des Charges* setting out the procedure and criteria for licensing of Non-Commercial Radio services. In addition to the not-for-profit status, the HAAC identifies Community Radio by its range, its focus on a specific community, its use of specific languages and its focus on local information and mobilization, cultural development and further education. The licensing process for community radio starts with the HAAC publishing the list of available frequencies based on its frequency map and issuing a published call for applications from all sectors, public, private and commercial. It processes the received applications and allocates the frequencies based on the proposed program content as well as the viability of the proposed services.

Broadcast licenses may contain certain terms and conditions – for example set out in the law or in regulations, either of a general nature, or specific to an

individual broadcaster. The proposals set out in the license application will normally form part of the license terms and conditions. License terms and conditions should be relevant to broadcasting and should be consistent with the objectives set out in the broadcasting law, and be designed to ensure that the community broadcasting service characteristics are protected and maintained for the duration of the license period. They may include:

- specification of the technical characteristics of the service;
- specification of the duration of the license;
- requirement to comply with general broadcast law and regulations;
- requirement to provide the service proposed in the license application;
- provision for sanctions in the case of non-compliance.

In South Africa, the Community Broadcasting Licence specifies the licensee, the station name, the frequency and related technical parameters, the location and coverage area, the commencement date and the expiry date. In addition, the Licence requires compliance with a number of general licence conditions for community sound broadcasting including the following requirements:

- to have due regard to the character, control, management, objectives, intentions, undertakings and representations made by the licensee in its application
- to establish and maintain formal structures which provide for community participation in the control, management, operational and programming aspects of the service
- not to change the name or the ownership and control of the licensee or the control of the broadcasting service without written consent of the regulatory authority
- to ensure the licensee is and remains under the control of a non-profit and non-political entity
- to apply profits and any other income to the promotion of its broadcasting activities or in the service of the community
- to establish a procedure for handling complaints and to broadcast information on how to make a complaint.

## Funding arrangements and sustainability

The regulatory framework for community broadcasting should have regard to the sustainability and resourcing of the sector. License fees should be waived or nominal for community broadcasters so as not to exclude communities with few resources. There should be no unreasonable restrictions on sources of revenue such as advertising. Financial models for community broadcasting vary from one country to another and according to local circumstances. Community broadcasting services should have fair and equitable access to a diversity of funding sources. To guarantee their independence community broadcasters should not be dependent on any single source of funding.

In South Africa, for example, there are no funding restrictions imposed by the regulatory framework, and advertising and sponsorship are carried. Some international donors make a substantial commitment to the sector. Community radio stations are also able to apply for support from the Media Diversity and Development Agency.

Funding arrangements are only one of the issues that affect the viability and sustainability of community broadcasters. The social base, authenticity and responsiveness of the broadcaster to its audience are crucial factors which are strengthened by interactive programming and by accountable and participatory management structures. Most community broadcasters depend heavily on volunteers to assist in program-making, fund-raising and other activities and rely on the active involvement of local groups and organizations to provide expertise and input on matters of local and community concern. Support programs should recognize that social, institutional and technical sustainability are as important to the functioning and survival of community broadcasters as economic arrangements.

The most important measure of economic sustainability for a community broadcaster is the ability to secure contributions from their own community by, for example, generating fees from announcements by local organizations and businesses, sponsorships by community groups for special programs, or by charging other

organizations for air-time. External donors usually stop their financial support within a few years and should not be considered a principal source of long term assistance.

Community broadcasting should also have opportunities to access public funding support. These may include direct public grants and contracts, however public funding arrangements should not be allowed to compromise the independence of the community broadcaster. Several countries have established special funding mechanisms to support community broadcasting that operate at arms length from government, such as the Media Development and Diversity Agency in South Africa. Where public funding is provided this may come through direct taxation, or through another mechanism such as a levy on cable concessions or a percentage of commercial broadcast revenue as in France with the *Fond de Soutien d'Expression Radiophonique*.

Where a dedicated public funding arrangement is made for community broadcasting this should operate through an independent body rather than a government department. In Australia, for example, the Community Broadcasting Foundation Ltd. (CBF) was established in 1984 as an independent, non-profit funding body.<sup>17</sup> The primary aim of the organization is to act as a funding agency for the development of community broadcasting (radio and television) in Australia. The CBF receives an annual grant from the Department of Communications, Information Technology and the Arts. The CBF assesses applications for funding and distributes grants for development, programming and infrastructure support, sector coordination and policy development.

The application process and decisions for public funding of community broadcasting should be fair, open and transparent and based on clear public interest criteria. The fund may include regular and guaranteed core financial support according to a transparent formula. The formula may be based on the amount of funds raised from other sources or the size of potential audience or some other objective measure. Funding may also be available for start-up and development costs and to support the provision of joint services to the sector through country level associations of community broadcasters.

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<sup>17</sup> Community Broadcasting Foundation website [www.cbf.com.au](http://www.cbf.com.au).

## Concluding remarks and challenges ahead

The evidence of good practice described above can contribute to a set of objectives for media reform that can enable community broadcasting to develop and flourish. At the same time, it remains important to note again that community broadcasting has often been established in the absence of a clearly codified legal and regulatory framework. Sometimes this has been in the context of liberalization. In other cases it has been in the context of weak or failed states or of weak regulation that tolerates community broadcasting without recognizing its legitimacy or providing a formal permit to broadcast. Spain is one example where community broadcasters are largely tolerated but operate without formal legal authority. On the other hand some countries, such as India, have put in place regulatory arrangements for community broadcasting but have been less effective in actually implementing them. Political will is also required to implement legal and regulatory provisions in a manner designed to encourage and not restrict the growth and development of community broadcasting.

There are many challenges ahead for community broadcasting – the rush to marketisation of the airwaves, the privatization of spectrum, the growth of powerful media concentrations that deter politicians from acting in the public interest on media reform, and the emergence of new digital broadcasting technologies with the uncertainties that this brings. The migration of audiences to new technologies is perhaps the most far-reaching challenge to community broad-

casting development. Community media not only have opportunities on the new digital platforms but are also threatened with being left out by some of the new forms of gate-keeping which could lead the sector into renewed marginalization or even exclusion. At the heart of this challenge is the tension between the traditional regulation of broadcasting in the public interest and the economic imperatives that drive the development of new distribution platforms.

The substantial worldwide growth of community broadcasting over the last 25 years is an indicator that this sector has a crucial and specific contribution to make to a plural media landscape and that it meets needs which are not well catered for by other media. Growth has taken place both in the number of individual services and in the number of countries that make some provision in policy and law for community broadcasting.

The vital role of community broadcasting is also witnessed in the courage of community radio activists who continue to operate in sometimes very dangerous conditions – in situations of conflict, or in fragile or lawless states where parallel powers show little respect for human rights – risking physical violence and intimidation and sometimes death as in recent times in Philippines and Mexico.

The adoption by progressive minded governments of policies, laws and regulations that enable or regularize this sector is an important step taken in modern processes of media reform and is evidence of a commitment to a participatory and democratic culture.

# Working Conditions of Journalists in Africa

by Gabriel Baglo, Director, International Federation of Journalists, Africa Office, Senegal

## Introduction

The working conditions of journalists can be defined as the political, legal, professional and social environments in the society and in the workplace where the journalists live and operate.

Media relations with governments in Africa over the past two decades have been characterized by various negative factors that have continued to impede progress. Most African governments have adopted obnoxious media legislation to ensure that they can gag the independent press. These included outrageous registration and licensing fees, archaic defamation laws that imprisoned journalists for their work, and forceful arrest and detention of journalists without trial. Journalists in Africa continue to receive death threats; and face intimidation and harassment, arbitrary arrest and detention. Some are severely beaten and tortured. Meanwhile media houses are relentlessly raided by state security agents and publications and media equipment seized and destroyed. On the other hand, the public media in the continent has continued to be monopolized by governments and in most instances are used as propaganda machinery.

The safety of journalists in Africa has been a cause of major concern. In many parts of the continent, journalists and media workers have been forced to go into exile, maltreated, jailed and assassinated for exercising the right to independent journalism and to free speech. The most appalling instances have been in Somalia, Ethiopia, Eritrea, Zimbabwe, the Democratic Republic of Congo, The Gambia, Swaziland, Niger, and Chad. In Eastern and the horn of Africa, 13 journalists are still languishing in jail in Ethiopia at the Kality prison in Addis Ababa; 15 other journalists are held incommunicado in jails in Eritrea. In the Gambia, “Chief” Ebrima Manneh, a Gambian journalist, was arrested in July 2006 and has been held incommunicado. In Niger, Moussa Kaka and his colleagues have been jailed over the last six months without charge. The assassins of journalists in Burkina Faso, DR Congo, the

Gambia, Somalia, and Zimbabwe are yet to be brought to justice.

## 1 Despite some progress, the legal framework for freedom of expression, press freedom and media work has remained a challenge in Africa

Freedom of Expression is a fundamental human right. Apart from the “Right to Life” there is no other right in the groups of rights that is more significant than the right to seek, receive and impart information and ideas. Article 9 of the African Charter on Human and Peoples’ Rights guarantees the Freedom of Expression. Likewise, other international conventions like the Covenant on Civil and Political Rights also guarantee Freedom of Expression. In Africa all the countries have signed and ratified the African Charter, thus taking a commitment to uphold the principles of the Charter. Moreover, the majority of the governments have also gone ahead to reflect this fundamental principle in the national constitutions.

However, Article 9 of the African Charter has been considered inadequate by most media organizations in the continent. In this regard, media organizations in the continent, in collaboration with the African Commission on Human and Peoples’ Rights drafted the Declaration of Principles on Freedom of Expression in Africa, which recognizes that “Freedom of expression is an inalienable human right and an indispensable component of democracy”. The Declaration was adopted by the African Commission at its 32nd Ordinary Session in Banjul in 2002.

Unfortunately this Declaration is not binding on the member states, and – like the Charter – it has not brought the desired results for the eradication of all obnoxious media legislation in the continent. Today, there has emerged an advocacy group of media organizations in the continent who are lobbying for a Protocol

to the African Charter on Freedom of Expression in Africa. The protocol is supposed to be binding and should be able to bring States and peoples not only before the Commission but also before the African Court of Human and Peoples' Rights recently established in Arusha, Tanzania.

At sub-regional levels, the Economic Community of West African States, (ECOWAS) and the Southern Africa Development Community, (SADC) have also come up with Charters on freedoms and information, and regional community courts, which have been adopted by the member states.

These institutions and instruments need to be tested by journalists, Press Freedom and Freedom of Expression activists, human rights defenders and civil society organizations, when journalists and media rights are violated under obnoxious legal frameworks; and when attacks, arrests, jailing, killing of journalists and closure of media outlets occur.

The creation of the African Union (AU) in 2000 raised hope for Africa in several respects. In its Constitutive Act, the AU states among its objectives the wish to "promote democratic principles and institutions, popular participation and good governance; promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments". These values require the consolidation of democracy, the rule of law, the possibility for all African citizens to take part in public affairs, Freedom of Expression and Press Freedom.

The right to inform and to access information is one of the conditions for, and criteria of, democratic governance. It implies respect for Freedom of Expression and, particularly, the public's access to the means of information as well as access for journalists to information in the public domain, as well as media pluralism and the existence of a public service media.

The implementation of these rights in the different AU Member States is currently very uneven. They are, moreover, often violated. The right to free speech is not among the major principles or criteria for good governance of the African Union, nor is it among the criteria for the African Peer Review Mechanism (APRM) of the NEPAD. These are very unacceptable omissions.

It is worth noting that despite the arbitrary persecution, harassment and murder of media professionals on the continent, some governments have already implemented reforms or taken decisions with a view to respecting Press Freedom. Other African governments should be encouraged to follow these laudable examples.

1.1 Violations of journalists and media rights are based on obnoxious legal frameworks: Attacks, arrests, jailing, and killings of journalists, as well as attacks and closure of media outlets, have continued unabated

Despite the development of the legal framework at continental level, various factors have been employed by most governments, to hinder Freedom of Expression and of the press in Africa. African governments in general have often legislated very draconian measures in order to intimidate the press. Such arbitrary measures include: the charging of exorbitant license fees for media house, registration of journalists, obnoxious libel and defamation laws and the levy of heavy importation taxes on media-related materials and equipment, arbitrary arrests and jailing of journalists. Of all the measures employed by governments in the continent, defamation laws, most especially libel, continue to be the greatest stumbling block for journalists in the continent.

A historical reflection on the issue of libel will reveal that most of these laws were basically formulated by the colonial administrations to suppress divergent views in order to strengthen their hold on the continent. These negative and archaic laws have unfortunately been perpetuated by most African governments and embedded in the Criminal Code. Criminal libel suits throughout Sub-Saharan Africa are used ruthlessly by governments seeking to break the back of the media and to place tremendous financial burdens on the independent press. A single libel conviction can force a newspaper to stop publishing or go financially bankrupt. Africa in particular has been inundated with obnoxious libel laws that are entirely designed to intimidate the media and to clip its wings in order to starve the populace from the truth that is shrouded by the dark veils of corruption within governments.

Too often in the continent, journalists are arbitrarily arrested and detained without charge beyond the

periods stipulated by the constitutions. In certain instances, journalists have been detained for up to two months without charge, as in the case of Lamin Fatty of the Independent Newspaper in The Gambia in 2006 (see below). There have been the cases of the journalists detained in Eritrea since 2001 and Ethiopia since 2005. Dawit Isac is still jailed arbitrarily in Eritrea. Some of these colleagues in Ethiopia were recently sentenced after about two years in prison; the others are still in prison. There were also instances in the region where, after being detained unconstitutionally, the journalists were simply released without ever being charged.

It is the ardent belief of the IFJ that no journalists should be imprisoned because of his/her work in relation to defamation offences. Defamation is not a criminal offence. It is absolutely unacceptable to codify libel under the press laws as a criminal offence. This is why, the IFJ in collaboration with other media organizations in Africa has continuously advocated for the decriminalization of all defamation laws, sedition and the creeping “insult laws” that have been utilized by some governments against the journalists and the media.

Despite the emergence and growth of various media houses in Africa, “criminal defamation” laws continue to constitute a grave restriction on the Freedom of Expression and of the press. Even in the so-called democratic states on the continent, where the media is said to be very vibrant, traces of these unjustified laws continued to surface. In 2004, President Abdoulaye Wade of Senegal promised to repeal the criminal penalties for libellous offences. However, in 2007, about seven journalists were either charged or arrested for criminal defamation in Senegal. Abdou Latif Coulibaly, Pape Amadou Gaye, Moussa Guèye and Pape Moussa Doucar were all threatened with criminal defamation charges under Article 80 of the Penal Code in 2007. Article 80 criminalizes “any manoeuvre or act that might compromise public security or cause serious public disturbance”. Three of these journalists who had been imprisoned in relation to these charges, were released soon after partly because of the loud protests of the media organizations and the Senegal national union of journalists, SYNPICS.

In The Gambia, Lamin Fatty, a reporter with the Independent Newspaper, was arrested in March 2006 and after being illegally detained for two months was

charged with “false publication” under the Criminal Code Amendment Act 2004. After a very lengthy trial, Fatty was also convicted by the Magistrate Court and fined D50, 000 (about US\$2000) or, in default, ordered to serve one year in prison. Fatty’s only crime was the publication of a story in which he indicated mistakenly that Samba Bah, the former Interior Minister, was arrested in relation to a failed coup in March 2006 – in fact the Samba Bah in question was not the minister, but Corporal Samba Bah of the Gambia National Army. Even after a correction was issued to this effect by the paper, Fatty was still dragged to court and heavily fined. Similarly, Fatou Jaw Manneh, a female journalist, is still standing trial, charged with the “publication of false news with intent to cause fear and alarm in the public” and uttering “seditious words”.

Niger has been the epicenter in recent times in relation to dubious libel charges against journalists. Moussa Kaka, Niger correspondent of Radio France International (RFI) and director of the privately-owned radio station, Radio Saraouniya, was arrested on 20 September 2007 by police officers and charged with “involvement in a plot against the state’s authority” for suspected links with the Tuareg-led rebels of the Niger Movement for Justice (MNJ). The authorities had been tapping Kaka’s telephone conversations with MNJ members. The court then decided not to accept as evidence the tapes of Kaka’s conversations with the rebels, as it is illegal to tap private correspondence under Niger law. This was the only evidence the prosecution had in its case. However, Moussa still remains in custody. Journalist Ibrahim Manzo Diallo, editor of the private newspaper *Air-Info* was arbitrarily arrested and detained by police in October, 2007. Diallo was later charged with “criminal association” on accusations that he has links with the MNJ. In February 2008, the editor of *L’enqueteur*, Ibrahim Souley, and the newspaper owner, Soumana Maiga, were sentenced to one month in jail by a court in Niamey, and ordered to pay CFA 40, 000 each for damages to the Minister of Economy and Finance, Ali Mahamane Lamine Zene, who had filed a libel complaint against them. Three of the journalists were later released on bail, but Moussa Kaka was still being held in custody under these defamation charges.

In Guinea Bissau, Albert Dabo, a journalist working with Reuters and the private radio station, Bombolom FM, was charged on August 29, 2007 with libel, violating state secrets, libellous denunciation, abusing

Press Freedom and colluding with foreign journalists. This follows a complaint lodged against him by the chief of the national navy, Rear Admiral Jose Américo Bubo Na Tchuto. Rear Admiral Na Tchuto says Dabo falsely attributed to him the allegation that soldiers are implicated in drug trafficking during an interview for ITN News, a British television in which Dabo acted as an interpreter. According to Dabo, none of the media outlets where he works carried this interview.

Disheartened about these degrading and bogus charges, media organizations in the continent have continued to advocate for the decriminalization of all defamation laws. There has been very little significant development from governments in relation to their willingness to abolish these negative laws once and for all. However, there has been an interesting development in some few countries such as in Ghana in relation to libel charges. In 2001 the Ghanaian Government repealed the criminal sanction for libel, publication of false news and defaming the president. On 16 November 2006, an Accra high court exonerated Western Publications Limited, publishers of the privately-owned Accra-based *Daily Guide* newspaper, its managing editor, Gina Blay, and its former deputy editor, Ebenezer Ato Sam, of libel charges brought against them by the former first lady, Nana Konadu Agyeman Rawlings. The court, presided over by Justice Iris May Brown, ruled that the *Daily Guide* was performing its constitutional duties by informing the public, and that the information published about the former first lady was without malice. We are yet to see other rulings that will borrow a leaf from this positive development.

In Eritrea, 15 journalists are being held in prison, incommunicado and not even charged since 2001. In September 2001, opposition leaders advocated for democratic reforms, which were widely carried by the press. Following these reports, ten journalists were arrested along with some opposition leaders. All private media houses have been forced to close down. The Eritrean government in an official statement labelled the journalists as “traitors working for the enemy” and a threat to national security. Five other journalists were arrested before the wave of repression began in 2001. There are no independent media or foreign correspondents in Eritrea at present.

The government of Ethiopia is holding 13 journalists in its jails after its police went on a rampage raiding

newspaper offices, confiscating equipment and issuing lists of wanted editors and writers in a naked crackdown against dissenters in November 2005, following general elections six months earlier. Let us recall that 20 journalists were arrested and only eight of them were released in April 2007, while the rest are still kept at the Kality prison in Addis Ababa, the capital. It is worth recalling that Ethiopia has more than 100 journalists in exile; this is the same for Zimbabwe.

Many of African governments have forced journalists into exile. For decades, aggressions, assassinations, use of arbitrary detentions, torture and ill-treatment of journalists, and misuse of criminal charges within special courts and unfair trials, have continued unabated in Africa. This barbarism should stop. The African media and the media in the world should continuously expose these cases of acts of harassment and persecution of journalists by many African states and continue to make them the headlines.

In this regard, the IFJ and its affiliates in Africa, in collaboration with other media organizations, called on the Heads of State of Africa during the Africa Union Conference in Ghana, in July 2007, asking them to take various steps: to instantly ensure the release all journalists and media professionals imprisoned in Eritrea, Ethiopia, the Gambia and the whole of Africa; to institute measures to end the impunity when journalists and media professionals are brutalised and assassinated in the exercise of their work; to order the reopening of all media outlets closed down by governments; and to create conditions for the return of exiled journalists into their home countries. On the same occasion the IFJ launched the “African Journalists out of Jail Campaign”.

## 1.2 The way forward to press freedom and freedom of expression in Africa

### Decriminalizing libel and all forms of defamation laws

The IFJ will continue to oppose all forms of defamation laws that are designed to render the media ineffective, and without doubt constitute a grave restriction on the Freedom of Expression and of the press. The IFJ firmly believes that the only way forward for the continent in this regard, is the total eradication of all defamation

and seditious laws. The IFJ is in support of all efforts in the continent that are aimed at repealing criminal defamation. It is our collective responsibility to ensure that the role of the media to report and hold governments and civil servants accountable is not eroded by obnoxious legislation.

### Litigating and campaigning against attacks, arrests and jailing of journalists

It is also in the interest of journalists and media organizations in the regions to ensure that the available mechanisms in each region are utilized in the fight to decriminalize libel. The ECOWAS Court of Justice is now operational and organizations have already started to file cases in this court. The SADC Court and African Court will also be operational soon. Hence it is necessary for journalists to utilize these courts in order to seek redress for wrongs inflicted on them in their countries if they cannot seek for redress in their own national courts.

There is also the need for media organizations and national press unions to continue to mount pressure on their respective governments for the decriminalization of all defamation laws. National unions in particular, should be able to work together with the regional media groups like the West African Journalists' Association (WAJA), the East African Journalists' Association (EAJA), the Southern Africa Journalists' Association (SAJA), the Union of Trade Unions and Professional Journalists' Associations of Central Africa (USYPAC) and the Association of Journalists' Unions in the North of Africa recently formed in March 2008. Co-operation here would be to develop advocacy tools and strategies for the decriminalization of libel. Such partnership and collaboration can surely yield the desired results.

### Campaigning to get all African journalists out of jail

As noted above, the IFJ launched its "All African Journalists Out of Jail Campaign" in Ghana in July 2007 prior to the African Union Conference. This campaign is specifically aimed at putting pressure on governments that have imprisoned journalists on libel

charges to be released unconditionally and without further delay. The campaign will also focus its direction on the issue of impunity in an attempt to bring to justice those who wilfully perpetrate heinous crimes against journalists.

### Campaigning against impunity

Beyond the negative laws and the jailing of journalists, the African media and journalists are also confronted with impunity. Over the last ten years the continent has witnessed the brutal murder of a significant number of her best journalists. The common denominator behind all these murders is that the perpetrators of these heinous crimes are still at large. Media campaigns should vehemently continue to condemn these barbaric acts in the strongest possible terms and persistently call on governments to conduct credible and independent investigations into these murders and to ensure that those responsible are brought to justice. The IFJ is of the ardent belief that impunity has no place in a democracy.

### Promoting freedom of information laws

The IFJ has reiterated its stance on the need to pass Freedom of Information laws in the continent's parliaments. 'Good governance' is centered on the principles of accountability and transparency. This, however, cannot be achieved anywhere, if information that is vital for the public interest continues to be hoarded by governments. It is a major challenge for the African media and journalists to lobby and convince African governments to adopt Access to Information bills. The general public has the right to know, and journalists who seek for information to report on matters that are of public interest, should be provided with the details they seek, in order to inform, educate and empower the public. However, most governments continue to conceal information in the name of "national security". The right to investigate and report freely without any form of hindrance lies at the core of quality journalism.

In September 2006, media and civil society organizations from Africa met in Lagos in a Regional Workshop on Freedom of Information to discuss ways to promote

the right of access to information held by public authorities and, in particular, to share experiences regarding strategies for advancing the adoption of laws that fully protect this right. The participating organizations expressed concern that Africa is lagging behind in the global movement towards the adoption of Freedom of Information Laws: only South Africa, Angola and Uganda have adopted Freedom of Information laws respectively in 2000, 2002 and 2005.

In order to provide a platform for cooperation and collaborative activities among civil society organizations in the continent, the participants agree to establish a regional Freedom of Information Centre in Africa, where experiences garnered in the different countries can be pooled and shared among civil society activists and which will provide technical assistance to organizations involved in any stage of Freedom of Information advocacy or implementation. The Regional Freedom of Information Centre called *Africa Freedom of Information Centre* is hosted by the Media Rights Agenda (MRA) in Lagos, Nigeria.

The center will carry out several activities: promote the right of access to information; advocate for the adoption and implementation of access to information laws and policies; build the capacity of civil society to participate in governance; build a constituency behind access to information; research the status of Freedom of Information laws in African countries; and also develop and implement Freedom of Information advocacy, litigation and monitoring strategies.

Journalists and media organizations should take advantage of this process and boost the campaign for access to information legislation in Africa. Freedom of information further affects not only the journalists and the media but also citizens, researchers, lawyers and others.

## 2 Journalists' working conditions in Africa

### 2.1 Media enterprises and employers

The current working conditions of journalists in Africa represent a major impediment to their capacity to perform in line with professional ethics and pro-

fessional obligations. Poor conditions of services for journalists, weak union and related activities, gender inequality and low membership remain a major concern in the continent. Professional organizations often lack the basic capacities and means to design sustainable, progressive programs of action on behalf of their members. This requires immediate and direct intervention if realistic prospects for meaningful change are to be realized.

Most journalists working in the continent have no job security. They are deprived from any form of social security, health benefits or other forms of social welfare benefits, while some are owed numerous months of salaries. Closely related to this, is the fact that most African journalists, especially those in the lower cadre who work as reporters, are poorly-paid and ill-motivated which partly explains poor performance and most importantly, the continuous disregard of the ethics of the profession.

In the light of these critical issues, there has been a clarion call by the IFJ Africa Office and some media organizations in the continent, for a collective bargaining standard framework that will to some extent determine what journalists are being paid, and the conditions of service in relation to the qualifications that they have and their level of professionalism. The IFJ is in the forefront of this crucial course and is confident that the desired results will come sooner rather than later. Already, there have been great strides in this regard in the sub regions. Standard collective agreements have been adopted in West and Central Africa, while collective negotiations have also been launched at country levels.

However, there still remains a Herculean task ahead. Most media owners and executives had often not been committed to any form of collective bargaining agreements for their workers, while governments have not also provided the necessary support to back such agreements.

In sub-Saharan Africa, the main independent media enterprises are based in South Africa, Kenya, and Nigeria.

There are four large media companies in South Africa that publish newspapers and magazines and have shares in broadcasting. *Independent Newspapers*

*Holding and Avusa Media* are two media employers founded by mining magnates and originally controlled by Anglo-American Johannesburg Consolidated Investments. Their most well known newspapers are *The Star*, *The Sowetan*, *The Cape Argus*, *The Sunday Times* and *Business Day*. *Nasionale Pers* is an Afrikaans company that owns several Afrikaans newspapers and magazines, as well as Media24 with vast satellite broadcast and internet interests worldwide. In terms of main employer, it is worth noting the SABC (South Africa Broadcasting Corporation), the public broadcaster which has no real television competitors besides the private channel e-TV licensed in 1998.

In Kenya, the main employers are the *Nation Media Group* (owner of the *Nation newspapers* and the *Nation TV*) and the Standard Group (owner of the *East African Standard newspaper* and *KTN*) with tentacles in Uganda and the Tanzania. There is also the public service KBC (Kenya Broadcasting Corporation).

In Nigeria the main media employers that pay the highest salaries are the state owned *Radio Nigeria*, *Nigeria Television Authority*, *Voice of Nigeria* and the *News Agency of Nigeria*. In the private media organizations, the salaries are lower, the jobs are precarious and there has not been a minimum standard of conditions of service acceptable in the industry.

This situation is almost the same in the growing and young independent media houses in Uganda, Ghana, Cameroon, Cote d'Ivoire, Namibia, Swaziland, Botswana, Senegal, Sudan, and Tanzania. Apart from these growing medium-size media enterprises, most of the independent media houses on the continent are usually weak and poorly-established and cannot provide proper salaries and sustainable jobs to journalists and media workers.

It is a fact that the main media employers on the continent are the public service or state-owned media. Unfortunately, most commonly the journalists working in the state media do not enjoy editorial independence. They operate as civil servants with the obligation to be silent, subservient and docile to government and public authorities. The campaign for the transformation of the state owned media into public service has been slow and may eventually free the journalists of the public service.

## 2.2 Precarious conditions

Though the editorial independence is not guaranteed in the state media, the jobs are more stable and sustainable even if the salaries are not competitive. In the independent media the reporters' salaries are very low and as a whole the jobs are not secured.

In most of the main media houses the editors have privileges and are better paid. Usually reporters and working journalists negotiate their contracts on an individual basis. Worse still, most of these journalists do not have any employment contracts, and there are no collective agreements leaving the ground for employers to decide as they deem fit.

In some state-owned and independent media businesses reporters are employed on freelance basis, although they work fulltime. The safety of journalists in Africa has been a cause of major concern. Media enterprises need to provide health and safety insurance to their staff who find themselves covering conflicts or violent events, or who are victims of accidents or other forms of natural disasters in the course of their duties. There should be insurance cover for medical care when journalists are attacked or are sick. But most employed journalists do not have such.

Generally the treatment of journalists, reporters and media workers remains the main challenge in the media houses. Working journalists, reporters and media workers make the bigger part of the employees of the media staff. However, apart from some good examples of salaries in South Africa and Cape Verde, there is a lot of exploitation of the media staff on the continent namely in Nigeria, Kenya, Côte d'Ivoire, Ghana, Senegal, Uganda, Cameroon, Democratic Republic of Congo, Tanzania, etc.

## 2.3 Recruitment and training of journalists

Recruitment of journalists is another challenge as it constitutes the way people enter the profession. A number of media houses do not respect minimum standards for the recruitment of media staff. This is because there are often no guidelines for recruitment based on educational qualifications, skill level and years of experience. Where guidelines exist, they

are often not respected. Some media houses employ relatives as staff or prefer to recruit unqualified staff in order to pay low salaries, taking advantage of the weak labour laws in most of these countries where there is no standard minimum entry wage for journalists.

Training is also a concern: less than half of the media staff is well trained. This should be addressed through the recruitment of the staff or by the training on the job. But unfortunately most employers do not take into account the academic background of the journalists applying for jobs. As a whole the poor quality of the media in the continent is very much a reflection of the lack of training, poor recruitment procedures and horrible working conditions.

#### 2.4 Collective bargaining agreements, (CBAs)

From 2003, the IFJ has supported sub-regional organizations WAJA, SAJA, EAJA, OMAC-USYPAC, to promote a framework and standard CBAs. In West Africa, WAJA came up with the standard CBA in 2004 and is now lobbying to have it adopted by ECOWAS in countries in West Africa where there is no such accord. On the basis of the standard CBA, journalists' unions in Benin, and Côte d'Ivoire, have adopted new national CBAs. In Burkina Faso, Niger and Nigeria, the unions are preparing for negotiations for adopting national CBAs.

In central Africa, another standard CBA was adopted in 2006. In line with the Central Africa standard CBA, a national CBA was adopted in Chad in May 2007 and was supposed to be implemented in 2008. In Cameroon journalists unions have completed discussions with the employers and governments to adopt a national CBA in April this year. In Congo Brazzaville, discussions have started for a CBA. In the Democratic Republic of Congo, the journalists' union has been campaigning since 2004 to engage dialogue with media employers and make sure that journalists have formal contracts with their employers.

Besides the efforts in South Africa, Kenya, Uganda, the process of regional CBA is supposed to take off in eastern and southern Africa very soon.

Collective bargaining to set the minimum conditions for entry and practice of journalism in Africa seems to be the battle field for journalists and media workers to secure better conditions in the media industry and promote better media quality in Africa.

Building and strengthening of journalists' trade unions seem to be one of the urgent solutions to collective bargaining and better working conditions of journalists in Africa. Until 2003, very few journalists unions on the continent had initiated and negotiated CBAs with media employers and governments. In Senegal and Côte d'Ivoire there exist national CBAs, though these agreements are not evenly implemented, especially within the independent media. In countries such as South Africa, CBAs have been negotiated from one enterprise to another. Building and strengthening strong trade unions of journalists on the continent will have many benefits: it would help to organize entry levels in the profession, promote social dialogue and collective negotiations in the industry, improve the working conditions and promote professionalism and quality journalism.

## Conclusion

**The way forward to ethical journalism in Africa by building journalists' associations, trade union development, collective bargaining and social dialogue in the workplace**

The journalists' and media workers' unions in the continent face a profound crisis of survival. Many national unions are not viable, with neither the financial resources nor the human capacity to provide a service to their members. They need the support of a strategy that reinforces their professional independence at the local level, that creates viable and sustainable national structures, and that looks towards developing regional and international co-operation.

Journalists and the media community in Africa face a double challenge – to build a professional movement that will defend quality and standards, and to create decent working conditions for all media workers and staff. The social development of journalism is a crucial element in building a framework for Press Freedom. Without good working conditions, free of poverty

and corruption, there are no solid foundations for the creation of a professional culture of independent and ethical journalism.

The IFJ promotes the building of strong journalists' and media workers' unions and the creation of sub-regional networks for the defence of journalists' rights and the improvement of their working conditions in order to confront the increasingly complex national situations marked by insidious and indirect attacks on Freedom of Expression and employee's rights.

There is a strong need to empower the regional organizations like WAJA, EAJA, SAJA, USYPAC and the Association of Journalists' Unions in the North of

Africa with the capacity to follow up on national issues and act as a catalyst for lessons learnt and guidelines in support of national trade union development.

The five sub-regional groups will operate within the framework of the African Federation of Journalists (FAJ) as the continental body of journalists' trade unions in the media industry. The FAJ was launched in November 2007 in Abuja, Nigeria, as the continental organization of the IFJ and is set to become a major force in enforcing trade union development in the media industry in Africa, addressing professional and social matters as well as protecting and defending the freedoms of expression and information in the continent.

# Freedom of Expression, the Right to Communication: Old Challenges, New Questions

by Ana Maria Miralles Castellanos, Professor,  
Universidad Pontificia Bolivariana, Colombia

What does it mean to speak about Freedom of Expression today? What do we say when we invoke Freedom of Expression? What rights are we defending and what is the ownership of these rights? Can it be the journalists and the media only?

I ask these questions due to the context in which the right of freedom of speech was formulated; it is obviously different from the current one. It is not that the right has changed; the circumstances have changed dramatically not only in the political context, but in the field of communication itself. On the political side, two factors have generated a relevant change of perspective: the paradigm of civic participation and the political crisis, with the consequent fading of the classic role of the intermediation of the political parties between the civil society and the state, and the growing communicative ability of governments to interact with the citizens without such intermediation. This is a sign of weakness of the political side with delicate implications for democracy. In the communication field, we know the main theme is monopolies, media concentration and the dominance of the commercial aspect of the media, apart from the huge impact of advertising pressures.

Thus, many things have changed since the establishment of Freedom of Expression. Today when we talk about this principle, we know that it invokes more than the right to expression of the media and journalists: it demands the right of citizens' expression. This is what's really important in contemporary societies. But at the same time different rights are claimed: to inform us as citizens, as well as the right to speak. This is because the right to Freedom of Expression is not just for communication and media professionals. This means the right of access to public information and information as a public good. There are also civil and political human rights, and the issue of how to articulate the third generation of economic and social rights. Analyses from the public journalism perspec-

tive suggest that citizens' voices have been hijacked by politicians and journalists. But we are now at a point, under the paradigm of civic participation, which today has become widespread, that promotes the empowerment of public opinion.

Citizens seek steps beyond Freedom of Information as it prevails today, which has meant a privatization of a public good. Indeed, whether the information is a public good, is one of the things that people today dispute with both the media and those who want to stop the work of the journalist or hide information. So it is necessary to think about the following: Why do journalists, when they see violations of their activities, claim this right as if it belongs to them and the media, and not to all citizens?

Facing all these changing circumstances, a reflection is necessary on how communication, journalism and democracy should be re-thought.

In contemporary societies, the citizen – beyond the media – is the agency that should serve as a cornerstone of Freedom of Expression, assuming that there is a critical distance between the citizens, and the media and politicians, due to the increasingly autonomous nature of public opinion.

Instead of thinking of Freedom of Expression in a diminished way as belonging to one sector (journalists), it is important to promote how the right to speak must include all citizens and especially the marginalized sectors of the public – those cut off from the real possibility of participating in public affairs. The right should cover both pragmatic and symbolic construction of spaces for their participation.

When Freedom of Association and Freedom of Expression face each other, in this case there is a battle in which there is an increasing privatization of information. It runs against the understanding of information

as a public good, that is a collective good to ensure free access to the extent that is required. Even freedom of association in journalism sometimes goes against citizens, as, for example, when citizens say: 80% of the economic and political information is hidden from us. In this case, we might think, who defends citizens from media? Citizens now know that there is a concealment of information due to media interests and business influence through advertising pressures, and this raises the question about who can fight for the defense of Freedom of Expression and the Right to Information, as opposed to the concealment of information or major omissions of the media and journalists with their mechanisms for selecting information.

## Censorship is no longer necessary

Today, more than ever it is necessary to consider who threatens Freedom of Expression. The concern was related to the classical censorship of the governments, but in the actual context of eliminating intermediation of political parties, the decision-makers took communication into their own hands. This phenomenon began in the 80's in Latin America with then president Carlos Menem in Argentina and this trend has not been stopped.

- 1 Clearly, governments changed tactics; they are deploying communications capabilities, rather than being an expression of a truly democratic public communication. They are a form of privatization of public information. In this regard, there are several lines of action that must be mentioned:
- 2 Governments have their own communication and advertising strategies. There are presidents who call in the early hours to the radio stations to include items in the agenda for "self-interviews" to disarm their opponents without a rebuttal possibility. These are some new subtle forms of censorship: the imposition of the agenda and composition of the information.
- 3 It is also clear that there is another kind of self-censorship: in the classrooms we can feel this phenomenon. Students anticipate what they will not be able to say if they work in the media. The self-censorship has its origin in economical and political pressures. According to Ryszard Kapuscinski, nowadays the journalist more than working for a cause, works for institutions. Instead of defending

the ideals of the profession, the practitioners are defending the interests of the company and hence their own.

- 4 One of the reasons that makes censorship unnecessary is the existence of the public officials or the "public" sector media communicators who in fact are governmental communicators. Here is censorship produced by the communication field. Why? These communicators are acting with the logic of private business communication, but are applying it to the public sector. These are image creators, who are not dedicated to building bridges between rulers and ruled, something that would really reflect a genuine democratic character of public communication.
- 5 And according to the prevailing journalistic practices, censorship is not necessary. There is a strong bureaucratization of the media. Many issues demonstrate it, such as information with a single source and the fact that journalists rely on official sources almost exclusively. Other kinds of sources have a secondary character. Apart from the fact that this is a fairly common practice in journalism, it is related to another source of structural censorship. Who has the legitimacy to speak as the sources? In this connection, journalistic speech has excluded common citizens and legitimized a minority to speak in the public arena. What happens ultimately from this structural censorship, is the concealing of actors and interests having an impact on public life.
- 6 The way the journalistic and the public agenda is built indicates that there is no need for censorship. Public Relations departments, groups engaged in lobbying, and the spokesmen of governments have developed strategies to legitimize sectorial agendas as if they assume the public interest, and thereby avoiding the construction of real scenarios of public debate.

## External pressures

But it is true that there are still pressures that come from outside the journalism field.

- Today, corporate censorship is working. It is doubtful to consider this as an external pressure because it could be considered an internal pressure, taking into account who are the current media owners and the fact that families have become big financial

conglomerates. Edurne Uriarte and Ignacio Ramonet say that although there has been talk about journalism as the “fourth estate”, the first power today is not only the market, but the economic power itself which regulates social relations and which sponsors notes in the news. The alliance is almost structural between news organizations and economic interests. However, from the point of view of the politics of media coverage, it entails submission of the political language to the audiovisual language, and media is the main power here.

- Another adverse condition in this context is constituted by violent actors. These signal the defeat of the word as articulated to the modern public space. The death of journalists in various countries throughout the world while exercising their profession is today a truly alarming problem. This continuous situation has not provoked a deep reaction in the citizens. Killing or silencing a journalist is an attempt to silence the society itself. In this way, agents of the state and actors outside the law have been silencing the voice of the society through the journalists.
- The corruption in the business sector is often linked to political sectors that can interpose legal resources related to the freedom of association to prevent the media from reporting about their irregularities. These have become the latest novel piece of undermining freedom of speech. Using courts to silence media investigations under the argument of the right to the good image can be a strategy for the corrupted, but the judges have to be clear (and this will depend on the legislation) that it is above all a collective Right to Information, it is a public good and therefore a fundamental right. These new attempts at censorship have led also to a field of solidarity. In two recent cases in Colombia, two local newspapers faced restrictions on publication and this resulted in a very interesting strategy: a pool of media from other cities and especially from the so-called Reference media continued publishing reports even though judges banned the media that led the investigation.

## Access to public information

Freedom of access to information should be understood as an institutional arrangement and not as the practical Freedom of Expression. Freedom of access

to information laws are undoubtedly an essential element to assuring that citizens are well informed. Why talk about access to public information as part of the theme of Freedom of Expression? Actually, the Freedom of Expression theme has been more complex and involves not only the right to broadcast messages, but also to receive them because the right to expression would be meaningless without having access to information. The existence of laws for freedom of access to public information ensures not only the words, but the right of citizens to information on an ongoing basis. More than accountability and transparency so popular today among some governments and which are marked by a propagandistic sense, a law on freedom of access that is well implemented is much better in assuring transparency and the flow of useful information to society.

One of the most interesting experiences in Latin America is the Federal Institute of Access to Information (IFAI) of Mexico. Requests for information from citizens are handled in a timely manner. Five commissioners whose operations are public, and who are available for consultation by the citizens, produce a detailed analysis of the major concerns of the citizenship. This makes Mexico's access to information law not only a genuine public service, but also a mechanism for making known the concerns of the governed. Today, the freedom of access laws represent the defeat of a policy of secrecy and this is linked to the paradigm of citizen participation. It is necessary to keep in mind that the information society, despite the speeches of certain sectors, does not happen simply through technologies but from access of all to information of public interest. That is why information is a public good, what sociologists call “a pure public good”.

## The need for pluralism

Freedom of expression and pluralism are linked concepts. The ethical-political horizon shows us the need for a plurality of voices. Freedom of expression will be no more than the practical expression of that ideal of pluralism. A democratic society from the exercise of information means a society that accepts dissent and incorporates it not only politically but also socially. A pluralistic society is one that recognizes the value of differences, not as tolerance but for the democratic development of the difference.

And here comes a question that needs posing: Why are communication and journalism so consensual? Why do we understand that their role is social cohesion? As Chantal Mouffe has said: the principle of democracy is the right to dissent and not consensus. Democracy is a system that is prepared to accommodate differences, in other words, its purpose is to open space to all expressions. Here the concept of democracy is closely linked to information. However, from the journalistic field there is no attention to the role of information and communication to give more visibility to dissent. Why is journalism afraid of dissent? Giovanni Sartori tracks how historically since the beginning of the emergence of political parties, they were seen in a negative light as factions promoting the dissolution of a whole. Journalists' role is not to promote social cohesion. But current journalism highlights dissent as something negative, missing the key point that democracy is the system that opens space for differences. When journalism does that, it is promoting the exclusion of different groups from public space.

What democracy should do is allow the expression of conflict and this requires the construction of collective identities around very different positions, which is the model we intend to promote in *Citizen Voices*, a project of public journalism in Colombia which connects common people to public debate. This means that today the identities are not linked to racial, ethnic or religious groups, but to conditions shared by established groups' linkages among themselves, through value-based, emotional or practical affinities

Perhaps one of the clearest signs of a lack of pluralism is that 'the Other' is constructed as an enemy and not as an adversary. An enemy must retreat or be removed. A relationship based on this implies that 'the Other' is outside the realm of the 'symbolic mine' and therefore we must eliminate it. When the symbolic field shares adversaries, not enemies, it allows the possibility of symbolic exchanges. Against the enemy, there is only recourse to violence. It is the tension between the logic of identity and the logic of difference, and it is where you establish pluralistic democracy.

In exclusionary and stratified societies such as ours, there should be communication that permits the visibility of these interests and their points of articulation. This is the role of journalism in a truly modern democracy. This is a journalism that exceeds its status

as favorite instance of the official voice and that falls more frankly in the field of civil society and its contradictions. The old idea of a watchdog does not need to be entirely reappraised, but it is too reductionist in regard to the aims of democracy. It is necessary to take into account that it stems from a model in which citizenship delegated to journalists the monitoring of abuses of power. The idea that modern journalism has to understand is that while it is possible to reach consensus, it will always be partial and temporary as this consensus will be necessarily based upon acts of exclusion. Therefore the main contribution of journalists to democracy is to help promote and disseminate dissent.

## Violence and conflict

There is no distinction in the journalistic discourse between violence and conflict. The indiscriminate use of language to address two different issues in journalism has caused more than one problem. The implications are on the line that the scale of violence is presented purely as series of brutal actions detached from any political conception. I am referring to the case of armed groups, for example. Linking news to violence dazzles the possibilities of alternative constructions of the political conflict. It has been said that due to the enormous pressure exerted by media coverage, it seems that violence reaches everywhere.

What journalism and public communication have not been able to build is precisely the dimension of the conflict in the political sense. It is not that the Colombian President Alvaro Uribe was right at the time he held the view that there was no conflict in Colombia; his claim was a denial of the political dimension. The denial of the conflict did not refer to the empirical evidence but its intention to depoliticize, which ironically has not yet been politicized in a consistent manner. In any case, the government and its eyes gaze up at the journalistic representation of conflict outside the political arena and in reducing that representation to violence itself, implies that it needs to be addressed by force because it is presented in the media as an aberration.

There is no doubt that this is a debate that involves the ability of society to understand the role of conflict and its resolution mechanisms through social rather than legal means, with appropriate exceptions because of the

nature of the crime or the need for greater neutrality. The social construction of the conflict with opponents can change the subjects.

## What about the so-called electronic democracy?

Since a few years ago there was much talk of the information society. I cannot avoid maintaining a relatively sceptical stance against the item, because the bulk of the discussion on the matter has been directed to the topic of technology. Why my opposition to this approach? What is worrying is that without resolving old problems of exclusion and quality of information, responsibility is vested in technology to respond to challenges that are actually more dependent on the design of journalism and communication. Responses to the great challenges of a more democratic communication and journalism should not be discharged completely on the technologies.

It is in this light that we should look at electronic pages of the various agencies, political parties and social forces, electronic journals, e-mail, mailing lists and discussion, electronic political gatherings and so on. These constitute a battery of new technological resources that can enable citizens to not only enjoy reference tools, but to also control, critically evaluate and even self-manage around specific issues. The Internet offers wide freedom and new possibilities to the public if we can overcome the control of the traditional elite which decides for others. Ultimately that depends on the political culture that exists and not on the so-called new technologies.

### **Some ideas on how to think of journalism as a democratic communication**

- We must go beyond the gaze of politics as negotiation of interests and restore its function as an articulator of collective interests.
- There is a need to look beyond the consensual and work in the search for the dissent and its media visibility.
- We must organize journalistic work in a manner that takes into account the new political and cultural identities, rather than just the institution.

- There is a need to develop communication imaginatively to find the points of intersection of demands among identities in order not to make the mistake of presenting them as something isolated and anecdotal, and even folkloric, which are forms of separation.
- We must confront the failure of journalistic discourse to effectively address structural issues such as hunger, poverty and exclusion.
- It is necessary to insist on the need for journalists to think about the scale of the event and not merely about the facts. Only in this way can they build understanding of the present.
- The reportage must allow provocative interpretations of various sectors. That is now a central part of the work of journalists. The perspective of civic mapping of actors, different from the traditional civil society and political society, should have an active role in generating topics of current public interest.
- Building more dialogue and less appearance. This is a key issue. The sensational language of media is too often devoid of content. What is proposed here is that there be a construction of partners with the public. Public opinion requires the constitution of actors with speech and the ability to deal with confrontational discourse.
- Today it is necessary to think of the media as memory-builders, especially of cases where there were serious clashes between members of the same society. There is a need to restore the idea that the media can be a source of affirmation for understanding our recent past – for purposes of not forgetting the atrocities of violence and for preserving the notion of society.
- Instead of taking violence as sensationalism, the media must be creators of spaces that provide expressions for resistance that are an alternative to violence, and thereby take up their true place as articulators of public space.

Finally, a big challenge is how to reconcile the long-term benchmark of the major conflicts that our societies are facing, with references linked to the latest journalistic speech. This is one of the structural issues that should encourage reflection and research that seeks a renewal of the concepts and methodologies of journalism.



## Key points from Part 2:

- Community radio growth is correlated to greater democracy.
- Mainstream discourse on human rights and development increasingly recognizes the role of community radio as a means of empowering marginalized people.
- An enabling environment for community radio includes recognition of the sector in policy, law, transparent licensing and access to a diversity of funding sources. Best practice cases exist in regard to these issues.
- Community media will face opportunities and threats in regard to digital broadcasting.
- Journalists' conditions in regard to law and employment are central to media's role in democracy and development.
- In Africa, there is a need to create binding respect for the rights to expression and information across the continent.
- Many African governments persecute the press, and regional courts could be used to counter this.
- There is a need to decriminalize libel and defamation law, and to promote Freedom of Information laws.
- Job security exists in state-owned media, but journalists there often lack editorial independence. Much private media in Africa has a poor record in training, recruitment and working conditions, and this in turn is reflected in poor journalism.
- Collective bargaining agreements and unionization, including on a regional basis, can empower journalists to perform better.
- Freedom of Expression and Freedom of Information are not the exclusive preserve of the media.
- Citizens need to be defended from the media when it is overly influenced by its own or other corporate interests.
- Censorship can work very subtly through self-censorship for economic reasons, and through government public relations, corporate pressure and violence against journalists.
- The Right to Expression is meaningless without access to information.
- Freedom of Information laws, as in Mexico, should be looked at in the paradigm of citizen participation.
- Media should reflect the plurality of contestation, and not marginalize dissident voices.
- Political conflict should not be equated in the media to violence *per se*, but in representing it in a way that lets society understand its character and possible resolution mechanisms.
- Internet offers many possibilities for wide participation, but political culture will be more important than the technology as such.



# PART 3

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## Access to Information

Also drawn from the 3 May UNESCO conference, three contributors here address the lessons of Freedom of Information activism, the battles around access to information in cyberspace, and partnerships in promoting Right to Information legislation. They refer to experience around the passage and impact of Freedom of Information laws, including pro-poor and pro-empowerment vantage points. The significance of blocking of internet portals is discussed, and so is the vital role of civil society in pushing for best practice in law reform and practice.

# Towards a Third Generation of Activism for the Right to Freedom of Information

by Agnes Callamard, Executive Director, ARTICLE 19

“Human rights have shown a remarkable ability to evolve and remain relevant over the last sixty years in a rapidly changing world. If they are to continue to exercise the same influence, they will need to continue to respond and evolve. For activists, the challenge is to uphold the core values of human rights at the same time as they identify where their practice and application must evolve to remain relevant as societies change. This is the test against which a future human rights agenda should be judged. So what’s new?”<sup>18</sup>

## Introduction

Many of us have experienced it at some time: huge disappointment because a Freedom of Information law, which for years we had advocated, ultimately was not passed or got stuck at some level in parliamentary debate or government process. Years of efforts seemingly wasted. Of course, this is not quite the case. No such effort is entirely wasted. But at the time, it does feel fruitless. And frustrating. ARTICLE 19 and its partners experienced such a disappointment in Latin America over the last few years when in Brazil and Argentina the positive signs of the early years of the 21st century did not ultimately materialise into actual legislation, thus demonstrating the rather unpredictable nature of the political and legislative process and commitment.

There were and are many lessons to be drawn from these (temporary) setbacks and with the gusto and energy that ultimately characterises civil society, these can be quickly transformed into learning and strategies for our future work.

This paper attempts to take stock of the recent and past experiences of advocating for the right to Freedom

of Information, and particularly for access to government-held information. By so doing, it also seeks to respond to the challenge raised in the quote above and apply its call for evolution and relevance to our work on Freedom of Expression, and particularly to our advocacy and strategy for Freedom of Information.

Introduced by a short reflection on the right itself, this paper reviews some of the key characteristics of the success of the last 20 years, as far as the right to Freedom of Information and Freedom of Information laws are concerned. It then moves to analyze some of the current trends (the what’s new part of the above quote). In the last section, the paper draws on the various findings and lessons, potential or real, to propose to initiate a new generation of right to Freedom of Information activism.

A quick word about naming: a newcomer to the field may be excused for wondering what exactly we are talking about. Is it: Right to Information (also known as RTI), right to Freedom of Information (not much used), right to know, Freedom of Information (also known as FoI), access to information (also known as AtI), transparency, etc? For the purpose of this paper, I have chosen the terms that most literally describe the concepts: The right to Freedom of Information will be used to describe the right as per Article 19 of the Universal Declaration of Human Rights in all its dimensions: to seek, receive and impart information and ideas through any media and regardless of frontiers. This document focuses heavily on the “seeking” component of the right, particularly as it relates to access to government-held information. The laws which allow for this access are referred to as access to government-held information laws, interchangeably with Freedom of Information or Access to Information laws.

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<sup>18</sup> Human Rights Council, p. 34.

## 1 Article 19, Universal Declaration of Human Rights (UDHR)

From its outset, the *Universal Declaration of Human Rights* (UDHR), which is 60 years old this year, provided strong protection for Freedom of Expression. As early as 1946, at its opening session, the UN General Assembly had declared that “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated.”<sup>19</sup> Article 19 of the UDHR and of International Covenant for Civil and Political Rights guarantees to everyone “the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The right is recognized in largely similar terms by the main regional human rights treaties.

Quite unusually in the field of human rights, the emphasis in regards to this right has been placed relatively quickly on the positive obligations of the state, and particularly on its duty to fulfill. Traditionally, positive obligations and the duty to fulfill have been among the least understood, and the least served: human rights courts and organizations have tended to concentrate on the negative obligations of the states to respect.

In the 1995 ground-breaking ARTICLE 19 report on the Right to Know,<sup>20</sup> Sandra Coliver referred to the right to Freedom of Information as having gone through three main stages of interpretation of the duties imposed on government:

- Duty to respect: Traditionally the right to Freedom of Information has been understood to be the freedom to receive and impart information free from government interference. In this interpretation, the government is under a negative obligation not to interfere with the communication of information and ideas that others wished to impart. This interpretation, however, does not establish a right to receive any particular kind of information from the government or others.<sup>21</sup>
- Duty to protect: Under this approach, which came to the forefront in the 1990s, it has come to be accepted that governments are under a positive obligation to take steps to prevent individuals or private groups from interfering with the lawful communication of information.<sup>22</sup>
- Duty to fulfil: Finally, the Right to Information has been increasingly understood as imposing on governments a duty to provide information, including government-held information. For the last ten years or longer, this particular duty has come to dominate the work of many activists, who have advocated for access to government-held information through the adoption of Freedom of Information or Access to Information laws.

The duty imposed on governments to provide information has not always been interpreted in conjunction with Article 19 or the right to Freedom of Expression. For instance, the European Court of Human Rights has been reluctant to introduce an obligation to provide access to information, in the context of article 10, guaranteeing Freedom of Expression. Instead, it has linked this positive duty to other rights, particularly the right to privacy and family life or the right to life. Other rights that may further justify the Right to Information include the right to health and the right to a clean environment (which itself may be construed as falling under the right to life).

In the field of environment, a number of international or regional standards have been enacted over the years which further enshrine the Right to Information. These have included, for instance, the 1992 Rio Conference (Principle 10), the Council of Europe 1993 Convention on Environmental Liability, and the 1998 Aarhus Convention which includes both a proactive duty to publish certain information along with everyone’s right to access environmental information (the two sides of the same coin also referred to as active and passive access.)

Yet, there are compelling reasons for arguing that the guarantee of Freedom of Expression includes the right

<sup>19</sup> 14 December 1946.

<sup>20</sup> ARTICLE 19, *The Right to Know: Human Rights and Access to Reproductive Health Information*, edited by Sandra Coliver, 1995.

<sup>21</sup> Sandra Coliver, “The Right to Information Necessary for Reproductive Health and Choice under International Law”, in ARTICLE 19, 1995, pp. 38-82.

<sup>22</sup> *Ibid*, p. 61.

to access information that governments hold. For instance, Article 19 of the ICCPR includes freedom to seek, receive and impart information and ideas of all kinds.<sup>23</sup> As Toby Mendell writes: “It is arguable that freedom to receive information prevents public authorities from interrupting the flow of information to individuals and that freedom to impart information applies to communications by individuals. It would then make sense to interpret the inclusion of freedom to seek information, particularly in conjunction with the right to receive it, as placing an obligation on government to provide access to information it holds ... To guarantee Freedom of Expression without including Freedom of Information would be a formal exercise, denying both effective expression in practice and a key goal which free expression seeks to serve.”<sup>24</sup>

The UN Special Rapporteur on Freedom of Opinion and Expression adopted early on such an approach when he stated clearly that the right to access information held by public authorities is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR): “The Special Rapporteur expresses again his view, and emphasizes, that everyone has the right to seek, receive and impart information and that this 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 - including film, microfiche, electronic capacities, video and photographs - subject only to such restrictions as referred to in Article 19, paragraph 3, of the International Covenant on Civil and Political Rights.”<sup>25</sup> These views were welcomed by the UN Commission on Human Rights, as early as 1999.

Finally, in 2007, the Inter-American Court of Human Rights, in *Claude Reyes vs. Chile*, ruled that Freedom of Information is a basic human right implicit in the right to Freedom of Expression.<sup>26</sup> This was a pioneering

ruling which marks the first time an international tribunal has confirmed the existence of a full right of access to information held by government and other public bodies.<sup>27</sup>

This pioneering ruling still needs to be emulated by other courts and came quite late, compared to the national-level explosion of Freedom of Information laws of the last 20 years.

## 2 The 20-year leap: 62 new countries adopting access to government-held information

One can really only talk of the emergence of a movement and advocacy for access to government-held information (Freedom of Information or Access to Information laws or acts) after World War II, although, as is often pointed out, the Swedish Freedom of the Press Act included the principle that government records were by default to be open to the public and granted citizens the right to demand documents from government bodies.<sup>28</sup> According to Ralph Nader, one of the most vocal of Freedom of Information activists then and now, and a consumer rights activist first and foremost, the modern Freedom of Information movement has its roots in the early Cold War period and it was the dramatic evidence of lying and official misconduct emerging out of the Vietnam war and the US “Watergate” scandal that mobilized a generation to demand Freedom of Information and open government laws across the United States.<sup>29</sup> From the 1950s to the early 1980s, nine countries adopted Freedom of Information laws or Access to Information acts,<sup>30</sup> although not always as a result of the agitation of specific movement or campaigning by civil society. Yet, this 30-year-period may be considered as the birth of advocacy for access to government-held information.<sup>31</sup>

<sup>23</sup> Toby Mendel, “Freedom of Information as an Internationally Protected Human Right”, American Civil Liberties Union International Civil Liberties Report (2000, Los Angeles, ACLU) <http://www.article19.org/pdfs/publications/foi-as-an-international-right.pdf>.

<sup>24</sup> *Ibid.*

<sup>25</sup> UN Doc. E/CN.4/1999/64, para. 12., quoted by Toby Mendel, op cit.

<sup>26</sup> For a copy of the brief submitted by NGOs, see: <http://www.article19.org/pdfs/cases/inter-american-court-claude-v.-chile.pdf>. For Press release, see: <http://www.article19.org/pdfs/press/inter-american-court-a19-foi-amicus-brief.pdf>.

<sup>27</sup> [http://www.justiceinitiative.org/db/resource2?res\\_id=103448](http://www.justiceinitiative.org/db/resource2?res_id=103448).

<sup>28</sup> David Banisar, op cit., 2006, p. 18.

<sup>29</sup> Statement of Ralph Nader before FOIndiana, September 21, 1996.

<sup>30</sup> Dave Banisar, “Freedom of Information around the World”, 2006, pp. 18-19.

<sup>31</sup> The right to access information was included in the 1766 Swedish Freedom of the Press Act, and mentioned in the 1789 French Declaration of Human Rights.

For Freedom of Information, the following 20 years have been nothing short of exceptional. For example, there has been an explosion of Freedom of Information or Access to Information laws, adopted in several parts of the world whose primary objective is to strengthen the transparency of governments by ensuring people have access to publicly-held information. In 1987 there were 13 countries with Freedom of Information laws, compared to 75 twenty years just ten years later in 2007.

Much has been written already on the factors responsible for this explosion but it may be worth recalling a few of these.<sup>32</sup>

- The democratization leap of the 1990s, particularly in Eastern and Central Europe and in Latin America, included the enactment of a number of new laws or policies, reflecting the newly-elected governments' commitment to democracy and human rights. Research in Southeast Asia has also shown that dramatic changes in information access resulted from the fall of authoritarian regimes, with the exception of India where state legislation on access to information was the result of grass-root agitation.<sup>33</sup> A UN research document notes: "In the 1990s a wave of UN Summits also sought to place issues of democracy, justice and rights on the development agenda. In the context of the worldwide process of democratic consolidation that characterized the decade, ... issues of democracy, rights and justice were both revitalized and radicalized in this process, as social movements used the language of rights to press governments for social reforms. If the 1990s were an extraordinary period for international policy making and standard setting, they also saw substantial legal and political changes at the national level. These were most evident in post-authoritarian states".<sup>34</sup>
- The growth in number and impact of civil society actors: There is absolutely no doubt that civil society has been instrumental in advocating for

and ensuring that Freedom of Information laws are adopted. According to Ackerman and Sandoval-Ballestros: "There are numerous individual Freedom of Information pioneers within government throughout the world. But government leaders as a group do not favor Freedom of Information laws because it is not in their interest to do so. The picture is totally inverted for civil society ... Civil society has played a significant role in the passage of Freedom of Information legislation in Central and Eastern Europe as well as in Latin America."<sup>35</sup>

- Another dimension of human rights protection which clearly saw major positive changes during that period and has most certainly had an impact on the Right to Information, including Freedom of Information laws, is that of the fight against impunity. The profile of the principle of universal jurisdiction grew considerably. Several international courts were established to sanction war crimes and crimes against humanity, including the International Criminal Tribunals for the Former Yugoslavia (1993) and Rwanda (1994). The Rome Treaty was adopted in 1998 then led to the creation of the International Criminal Court (ICC) in 2002.<sup>36</sup> According to the International Human Rights Council: "Other approaches designed to reduce impunity and achieve 'transitional justice' emerged during the period. Remarkable efforts were made in South Africa, Guatemala, Peru, Mexico, Morocco and several other countries to put past abuses on public record, enable victims to tell their stories and allow perpetrators to acknowledge crimes they committed."<sup>37</sup> The experiences with secrecy both in the Soviet bloc and under Latin American dictatorship and the call for the right to memory and the right to know also fed the movement and call for transparency, the Right to Information and Freedom of Information laws.
- Major catastrophes whose impact was multiplied due to the absence of information are also said to have played a role in strengthening awareness about the importance of information, making it one of the

<sup>32</sup> It should be recalled that article 19 of the UDHR/ICCPR had most probably a limited influence on this explosion, at least as far as the first ten of this 20 years period is concerned. (See section 1).

<sup>33</sup> Sheila Corronel, "Fighting for the Right to Know – Access to Information in Southeast Asia" PCIJ, 2001, p. 10.

<sup>34</sup> [http://www.unrisd.org/80256B3C005BB128/\(httpProjects\)/5F7EC3623063C8D180256B5D00440321?OpenDocument](http://www.unrisd.org/80256B3C005BB128/(httpProjects)/5F7EC3623063C8D180256B5D00440321?OpenDocument).

<sup>35</sup> John Ackerman and Irma Sandoval-Ballestros, "The Global Explosion of Freedom of Information Law", *Administrative Law Review*, Vol. 58, No. 1, Winter 2006.

<sup>36</sup> See International Human Rights Council, "Catching the Wind", 2007, [http://www.ichrp.org/files/reports/4/133\\_Final\\_for\\_web.pdf](http://www.ichrp.org/files/reports/4/133_Final_for_web.pdf).

<sup>37</sup> *Ibid*, p. 12.

central pieces of many campaigns around the world (along with reparations). Again, the International Human Rights Council writes: “Chernobyl and earlier nuclear accidents and the spread of AIDS throughout the world have contributed to the realization that full Freedom of Information is not a luxury but may be literally a matter of life and death. The denial of information vital to health, such as arises from the dumping of unlabelled pesticides and pharmaceuticals in the developing world, for example, is censorship to be opposed just as much as the more classic manifestations of censorship in book banning, radio jamming or the destruction of printing presses.”

- Finally, and probably most importantly, increasing international pressure and emphasis on corruption and good governance have played a major role in this 20-year explosion, coupled with the growth of regional instruments and regional membership which made transparency a criteria for membership. The anti-corruption and transparency movements, led by civil society but also international institutions such as the World Bank, played a major role in strengthening the call for access to publicly-held information and increasingly to privately-held one as well.

There is therefore not just one movement, but many *movements*, such as the transparency movement, good governance movement, openness movement, access to information movement, which have come together to advocate for similar outcomes. The multitude of actors, origins and their approaches is not a problem, at least for now. Indeed, this diversity partly explains the successes recorded over the last 20 years, as far as Freedom of Information laws are concerned.

Freedom of Information laws are not the only element to right to Freedom of Information. Others include stronger protection of freedom of the media and overall guarantees for Freedom of Expression, coupled with greater means of accessing information, including through stronger legal protection, technical changes or access to education and literacy. On these as well, the indicators show that there has been great improvement, some of it taking pretty revolutionary forms such as the Internet, mobile phones, satellite television, digital television, all of which have impacted greatly on people’s capacity to access information.

So all is well. The progress of the recent past has been forwards and upwards. Therefore we should continue working and advocating in more or less the same ways, right?

Well, not quite ...

In the introduction, I made reference to some of the difficulties we have experienced in a number of countries. This is but one among a number of challenges we experience in securing the right to Freedom of Information, including access to government-held information. Some of these challenges may be characterised as “external” or contextual; others are internal and structural.

### 3 Challenges to the right to freedom of information, including access to government-held information

#### 3.1 Large disparities across continents

Across Africa and the Middle East, only a handful of countries have adopted Freedom of Information laws. These are also the two continents where the fewest changes are evident in terms of governmental respect and protection for freedom of the press or Freedom of Expression. This is, of course, not to say that no change has occurred. For these two regions, like the rest of the world, have experienced, and particularly so the Middle East, the IT revolution, the multiplication of independent media outlets, satellite televisions, etc. Nevertheless, activists seeking access to government-held information now face a number of countries that have shown greater resistance to the 1990s democratisation boom than have others, thus auguring difficult change ahead, particularly given that the global environment may not be as conducive to the realization of the right to Freedom of Information as it had been in the earlier years.

#### 3.2 Counter-terrorism and national security

The so-called “War on Terror” and this decade’s associated pursuit of tougher national security are, and will be, driving forces that impact on national and international Freedom of Information and Right to

Information policies. As of now, the impact on access to information is uncertain. With the exception of the USA, there is as of yet little evidence that national security concerns have resulted in increased security-based restrictions to access to government-held information.<sup>38</sup> It is also true to say there has also been no marked difference in the rate of adoption of Freedom of Information laws since the events of 9/11. So these indicators do not suggest a setback to or a regression as far as formal access to Freedom of Information is concerned – namely in the adoption of Freedom of Information law.

However, the right to Freedom of Information, as highlighted earlier, entails more than one particular law or one particular type of information. Whenever media is censored, the Right to Information is violated. From that perspective, many observers and activists across the world have highlighted the negative impact of security and counter-terrorism measures on civil liberties, the media and political expression,<sup>39</sup> suggesting an overall setback as far as the protection of Freedom of Expression is concerned.

State secrecy laws historically and traditionally have constituted the most frequent reasons for preventing access to information and censorship. As such, the increasing importance of national security is likely to pose a significant problem in improving access to information. As highlighted by David Banisar: “In many Commonwealth countries, the original British colonial-era Official Secrets Act remain in effect. In Eastern Europe and Central Asia, Soviet-era policies remain little changed. In Central Europe, nations joining NATO have adopted Classified Information laws replacing the Soviet-era laws with ones that are little better and undermine newly adopted Freedom of Information policies. Once a bastion of openness, the ‘War on Terrorism’ has led to new restrictions on access to information in the United States. The conflict has become pronounced in the past several years. State leaders or senior ministers in Finland, Estonia and Latvia were forced to resign due to misuse or mishandling of state secrets. In Romania, India, Pakistan, Denmark, the UK and Switzerland, members of the

media have been charged with violating secrets acts by publishing information about government activities. In the US, court cases on whistleblowers, illegal surveillance, and the sending of a Canadian citizen to Syria where he was tortured have been stopped due to the imposition of state secrets.”<sup>40</sup>

### 3.3 Overall setback

The evidence tends to suggest that the environment for freedom of the press and other forms of expression has become more cautious, curtailed, and constrained, while self-censorship is said to be on the increase. The Freedom House 2007 report shows reversals in one fifth of the world’s countries, particularly in South Asia, but also in the former Soviet Union, the Middle East and North Africa, and Sub-Saharan Africa. Nearly four times as many countries showed significant declines during the year as registered improvements. The 2007 results marked the second consecutive year in which the survey registered a decline, representing the first two year setback in the last 15.<sup>41</sup> Article 19, along with other Freedom of Expression organizations has noted as well a growing intolerance for certain forms of beliefs, protest or dissent – an intolerance which may or may not yet be backed by laws. Global indicators on freedom of the media are showing that the positive trends of the 1990s are now reversing.<sup>42</sup>

This highlights a rather peculiar situation, whereby protection and respect for FoE (including right to Freedom of Information) are on the decline, while *fulfillment* of the right to Freedom of Information does not seem to have been negatively affected by the overall trend. Or rather the rate of adoption of the laws required for the fulfillment of this right does not appear so far to have been negatively affected. But it is one thing to pass a law, it is another to implement it and to put it to good use.

Indeed, the other challenges – internal or structural, for lack of a better word – do particularly highlight the importance of the distinction.

<sup>38</sup> David Banisar, Privacy International, personal communication, April 2008.

<sup>39</sup> See for instance, WAN, May 3rd, 2007 action. See also Freedom House Press Freedom Annual Report, 2007.

<sup>40</sup> Privacy International, op cit, p. 30.

<sup>41</sup> See Arch Puddington, “Freedom in Retreat: Is the Tide Turning?” Freedom House, 2008.

<sup>42</sup> Freedom House.

## 4 Are freedom of information laws doing their job?

The impact of Freedom of Information laws on the right to Freedom of Information is not straight-forward. It is logical, and certainly intuitive, to expect a law to strengthen respect for, and enforcement of, a right. Most activists (including ARTICLE 19) have argued that a law on access to information is better than a constitutional guarantee or instance. According to an Open Society Institute study, governments were more likely to respect an individual's right to request information and were more likely to deliver the information requested wherever there were Freedom of Information laws than in countries without such a law. At the same time, the data and methodology underlying these assertions are mixed at best. For instance, the indicators for South Africa (with a particularly progressive law) were worse than those for countries without a law. In fact, the results are so ambivalent that a recent study published in the *Administrative Law Review* concluded that the data implied that Freedom of Information laws are not doing their job.<sup>43</sup>

As ARTICLE 19 and many other organizations have experienced and highlighted, there are a number of conditions that need to be met for these laws to play a meaningful role as far as access to government-held information is concerned. There is evidence that they may constitute a potentially effective tool at the hands of an educated elite interested in extending the realm of government openness and transparency and tackling government secrecy. But even in their greatest user-friendly format (such as in Mexico), these laws need some kind of mediators (civil society or journalists most of the time) to ensure that the right of the general public, and particularly the most vulnerable populations, to government-held information, is meaningfully realized. They need to be used and understood by members of the public, civil society, journalists, the private sector, and they need to be implemented by a trained and committed public service, etc.

ARTICLE 19's work in countries across the world has not highlighted so far the existence of major differences in terms of securing access to public interest informa-

tion between countries with Freedom of Information laws and those without. The snapshots provided below do not do justice to the richness of the data and analyzes provided in the various studies. They seek to highlight a few, among many, findings.

In a 2005 study comparing the extent to which media accessed government-held information in **Armenia, Georgia and Azerbaijan**,<sup>44</sup> we assumed that the lack of legal guarantees for the right of access to information in Azerbaijan meant that Azerbaijan was further behind the other two states – a correct conclusion because legal protection must remain a key indicator of a government's commitment to human rights. At the same time, though, the survey conducted with journalists in all three countries concluded that in all three states, the media have little access to various types of information (including information on the state of environment, healthcare, budget, education, contact information of public bodies, and national security-related issues). The survey findings suggest greater understanding of the concept of Freedom of Information in Georgia than in the other two countries. But the survey and other monitoring projects show that many institutions have not established the necessary mechanisms or institutional practices to satisfy the public's right to know, despite the public officials being fully aware of their duty to release information.

Most worrying, though is the finding that after a 'boom' of media liberalisation in the early nineties, governments in all three countries have reasserted their control more recently over the information sector. They have been running state-owned media as their 'mouth-piece', and hindering the development of independent broadcast media. Altogether, this results in the general public in all three countries being ill-informed, and largely excluded from decision-making processes and policy debates. As a result the population is unable to make informed choices during elections. Public bodies have levels of power and control that are open to abuse, and they are largely unaccountable for malpractices and infringements of human rights.

In **Mexico**, where the Freedom of Information law is often considered to be one of the best and most

<sup>43</sup> Ackerman and Sandoval, *Administrative Law Review*, 2006, p. 126

<sup>44</sup> ARTICLE 19, "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan, and Georgia", London, 2005, See particularly chapters 5 and 6, pp. 70-126.

progressive in the world, implementation of access to information remains poor, with only a very small minority actively exercising their right to know. ARTICLE 19 has pointed out on several occasions the role of the government in securing effective implementation through proactively promoting and guaranteeing access to information. In the context of deep social inequality, poverty and disease that prevails in Central America in general and Mexico in particular, it is especially important to promote Freedom of Information as a way for overcoming these social disadvantages. Information regarding public health matters, social development policies and domestic violence must be spread by the government and mass media through special campaigns designed to promote access to information across all communities.<sup>45</sup>

In **Peru**, which also has an Freedom of Information law, ARTICLE 19 undertook a project into access to sexual and reproductive health information with two national organizations. The project included an in-depth research and study which found that there had been improvement in access to information on reproductive and sexual health, including some procedural improvements facilitating greater access, but also a cultural change towards greater openness.<sup>46</sup> Public servants were overall keener to respond to requests. However the unreliability and inaccuracy of information thus provided meant that many civil society representatives began to challenge the very idea of making information requests. Why, they asked, should they waste their time chasing information that they knew would be misleading, incorrect, or so out-of-date that it was of no practical use to them at all?<sup>47</sup> The subsequent evaluation of the project highlighted the lack of capacity within the health ministry as one of the main impediments to accessing information. As one of the women we interviewed said, the conditions for a free flow of information do not exist. That is not only because of a lack of political will on the part of some officials but because of the characteristics of the State itself. It allocates few resources to the organization of information and the disorganization of the State itself leads to instability and untimely changes, which in turn results in a lack of continuity in the implementation of policies

and programs. The evaluators recommended putting greater emphasis on the public service and building its capacity to respond to requests, and on the actual use made of the information received.

In both **Mexico** and **Peru**, work by ARTICLE 19 and its partners showed that public information on reproductive health, including on such issue as women's access to abortion, has been badly disseminated. For instance, the vast majority of women in both countries do not know they may be legally entitled to abortions while the medical professions are deterred from practicing them and delivering the care to which women are legally entitled. In view of the local government's failure to properly inform the population (and the doctors) about their right to abortion, ARTICLE 19 Mexico and its partners are now preparing a public information campaign about the recently passed abortion law, with the view to ensuring the people's right to know and empower them.

In **Brazil**, where there is no Freedom of Information law, ARTICLE 19 sought to strengthen awareness and understanding of Right to Information amongst a broader network of actors. We realized that civil servants and officials within the public educational system in the state of Sao Paulo were not actively participating in the debate on public policies. Part of the problem were legal provisions dating back from the time of dictatorship that prevented professors from talking to the media and freely express themselves about "internal matters", and speaking publicly in negative/critical terms about the public authorities. All these provisions were limiting the professors' rights to Freedom of Expression and inhibiting whistle-blowing in relation to many irregularities. These provisions also violated people's right to receive information on public educational policies from a primary source: these state employee educators. By getting involved in this whole issue and presenting it as a Freedom of Expression and Freedom of Information problem, ARTICLE 19 caught the attention of groups and organizations working on education and secured the commitment of very strong and outspoken new partners for the passage of a Freedom of Information law, including the commitment of one

<sup>45</sup> See ARTICLE 19, Right to Know Day 2007, <http://www.article19.org/pdfs/press/international-right-to-know-day-2007.pdf>. See also, ARTICLE 19, International Women's Day 2008, <http://www.article19.org/pdfs/press/int-women-s-day.pdf>.

<sup>46</sup> ARTICLE 19, Flora Tristan and IPYS Time for change: "Change: Promoting and Protecting Access to Information and Reproductive and Sexual Health Rights in Peru", ARTICLE 19, London, 2006, p. 100.

<sup>47</sup> *Ibid*, p. 107.

of the most powerful unions in the state, the public professors union.

ARTICLE 19 Brazil has also focused on involving in our pro-Right to Information campaign, groups working on communication rights, particularly interested in the democratization of communications and advocating against media concentration. We demonstrated that improved transparency could facilitate their work, because irregularities would become clearer and easier to identify and they could later question these before the courts, as well as shame the government for not monitoring broadcasters' compliance with relevant legislation. A campaign for transparency in broadcasting licensing was launched and we have been using information requests and lawsuits to make sure that the minimum legal provisions already in place (and which could address lack of pluralism and diversity) are fully applied.

In Brazil the government has been voluntarily setting up pro-active disclosure obligations. But because these were not accompanied by training and capacity building programs with civil servants in charge of disclosing information, the data provided is virtually inaccessible to a non-expert.

In **Malaysia** (without a law at the time of ARTICLE 19 project but with a number of Freedom of Information provisions), government-held environmental information provided to local communities has often proved to be wholly insufficient, when not simply inaccurate.<sup>48</sup> Communities and activists relied on informal means to access information (personal relationship with civil servants, media and Internet). Some public departments though, have been more pro-active than others in releasing information. For instance, the Department of Irrigation and Drainage has been praised by local NGOs for conducting thorough research and making it available to the public. Campaigners against the Sungai Selangor Dam, for example, found statistics on water through the Internet, buried in a section of the Public Works Department website. The Broga committee also cited the Internet as an important source of information. New technologies have been essential

in building campaigns, building contacts with national and international NGOs and in disseminating information. One of the earliest success stories in the use of the Internet was the SOS Selangor campaign, which networked with the International Rivers Network, Friends of the Earth Japan and others to help put international pressure on the Malaysian government to halt its dam building program and to access information on water supply and demand projections.

In **Ukraine**, the population is said to be more informed about pollutants and other issues that can negatively impact their health than they were at the time of Chernobyl. However, civil society organizations there are convinced that insufficient in-depth environmental information is made available. Further, such information is disseminated primarily only when environmental emergencies occur. The interviews conducted by the ARTICLE 19/EcoPravo research team demonstrates particularly well that that when people are deprived of information, fear and uncertainty grow, leading to high stress levels as well as misinformation and therefore counterproductive coping strategies. Affected people also have a psychological need to know who was responsible for an accident, and that effective measures have been taken to avoid similar incidents in the future. The implementation of the provisions regarding access to environmental information suffers from many weaknesses, including lack of sufficient resources and trained personnel, or insufficient proactive disclosure. The current legislation does not require public bodies to produce and proactively publish many types of information. But even for those types of information where this is required, there are problems with the delivery of information, including sporadic and non-systematic implementation and long delays in producing reports, meaning that information finally available is usually outdated by the time it is published.<sup>49</sup> Other problems include frequent withdrawing of information without any reason and the use of "secrecy stamps" preventing access.

As in Malaysia, NGOs are an important source of environmental information. They provide specialised services, offering advice on environmental issues to the

<sup>48</sup> ARTICLE 19 and CIJ, "A Haze of Secrecy: Access to Environmental Information in Malaysia", 2007, <http://www.article19.org/pdfs/publications/malaysia-a-haze-of-secrecy.pdf>.

<sup>49</sup> ARTICLE 19 and EcoPravo, "Is Post-Chernobyl Ukraine ready for Access to Environmental Information?", ARTICLE 19, 2008, <http://www.article19.org/pdfs/publications/ukraine-foi-report.pdf>.

general public. NGOs also gather relevant information from members of the public who contact them for advice. They disseminate the information through the media and their own publications. The Internet was also an important means of disseminating information in Ukraine, and public bodies now have websites. However, two related problems remain. Firstly, overall only a small section of the population has access to the Internet. Secondly, the information on public websites is often overly general. The improvement and regular update of Internet sites (including, for example, the publication of reports and the results of Environmental Impact Assessments) and the creation of readily accessible databases would improve access to information and reduce the need to lodge requests.

In **Bangladesh**, a recently launched ARTICLE 19 project is seeking to strengthen access to information in the context of disaster response and climate changes. Our initial study conducted in Bagurna, Barishal and Bagerhat areas sought to investigate why had cyclone Sidr resulted in so many deaths, despite the availability of media attention, campaigns, warning-message dissemination, etc. Some of our preliminary findings highlighted the difficulties inherent in communicating early-warning and warning messages, such as the fact that many people were not convinced that a disaster was on the way, because a calamity predicted some times before had actually not occurred. Some of our recommendations included that none should be excluded from receiving and sharing information and journalists should be given full rights to access government information related to disaster-preparedness and management. Others highlighted many different aspects of the government's obligation to respect and fulfil the Right to Information. For instance, researchers recommended that possessing radio sets should be made mandatory for people living in disaster-prone areas and fishing trawlers. If needed, they may be given easy access to credit to buy radio sets. There should also be regular survey to know the prevailing and changing patterns of peoples' perceptions of, and attitudes towards, messages related to climate change. Altogether, the preliminary study demonstrated the range and scope of governmental duties in relation to Article 19 of the Universal Declaration of Human Rights (UDHR) and others (in this case, for instance, the right to life).<sup>50</sup>

## 5 Towards a third generation of activism for the right to freedom of information?

Freedom of Information laws constitute an essential and necessary mean to the right to Freedom of Information but not a sufficient condition, and certainly not the end. These laws however, cannot be regarded as the magic answer to the realization of the Right to Information. To recap:

- Article 19 of the UDHR sees no barrier or separation between the right to seek and receive and the right to impart information (with the former loosely associated with Freedom of Information and the later with Freedom of Expression): they are sides of the same coin, and most importantly they need each other to be true to their underlying values and if they are to be fully realized. They cannot be divorced, conceptually or legally.
- At the same time, the rights or legal guarantees that give rise to the Right to Information and particularly to government-held information are multiple, such as the right to health, right to a clean environment, right to life, etc. This is an important quality of the right to Freedom of Information, in that it may be called upon by a variety of actors, through a number of means and for several purposes.
- Effective implementation of Freedom of Information laws requires a genuine commitment on the part of all levels of governments and public services to be transparent and open to scrutiny, adequate resourcing, improved records and information management systems and infrastructure and education for the public and State bodies on their rights and obligations under the law. Civil societies, researchers and academics, and the media need to make use of them if they are to play their role of strengthening transparency, including on most sensitive issues.
- The evidence regarding the impact of Freedom of Information laws on the right to Freedom of Information is, at best, mixed. At worse, it indicates they have little to no impact.
- Many countries without Freedom of Information laws may have Freedom of Information guarantees or Freedom of Information provisions in other laws

<sup>50</sup> Shameem Reza, "In Search of Effective Information Dissemination Strategies for Reducing Climate Risks in Bangladesh: Lessons Learnt from Cyclone Sidr", ARTICLE 19 and MMC, Unpublished report, 20 January 2008.

which can be put to use to strengthen access to information.

- Information about matters of general public interest is far more widely available now than it was 20 or 10 years ago. Yet, for the majority of the world population, this is not due to the existence or implementation of a Freedom of Information law. One may also legitimately question whether access to such information is due to governments taking active steps to inform its citizenry, or whether, in fact, the right to know, where it is fulfilled, owes far more to media, civil society organizations and the Internet than to an active policy and commitment of public disclosure and campaigns on matters of public interest.<sup>51</sup>
- Many Freedom of Information laws, and certainly the newest ones, include obligations to publish or for pro-active disclosure. Some include fairly long lists of information which the governments must produce and disseminate. The Internet is often the privileged medium for providing information to the public. However, despite the rise in affordable and global information technologies, vulnerable groups and disadvantaged communities remain too often excluded from information flows, both as users and givers of information. If current trends continue, a number of groups will be increasingly marginalized from vital access to information, and from the means to express themselves.
- In many countries around the world, Freedom of Information campaign will not be successful among civil servants if they know the state is simply not ready to provide information. Civil servants may believe that, if a law is passed, they will be the ones held accountable, despite the fact that the conditions are not there to actually allow them to act in accordance with the law and provide information as requested. Before trying to convince civil servants of the benefits of Right to Information, issues such as filing systems and unnecessary bureaucracy in administrative proceedings must be addressed. The involvement of archiving professionals and associations is very important as of the early days of any pro-Freedom of Information campaign.
- Impoverished communities do not trust the State and are not convinced that access to State-held

information could improve their participation in decision-making. Proving the contrary in countries with low literacy and formal education and extreme inequality rates may be difficult to accomplish.

- How the information is communicated is almost as important as whether the information is made available.
- Pro-active disclosure cannot be *pro-forma*. A hundred tables of raw data will not improve an average person's knowledge of an issue. Those in charge of providing information should be aware of this. Pro-active disclosure should follow an assessment of what kind of information is needed and in which format; language used cannot be technical; etc. Building a system of pro-active disclosure should be an exercise that involves civil society and civil servants, all trying to meaningfully provide information that can be read, reviewed and actually used by citizens.
- The current international and national context is not conducive to greater respect and protection for the right to Freedom of Information. Particularly worrying are existing restrictions on freedom of the media and Freedom of Expression and data on impunity, coupled with the increasing use of, or reference to, national security to curtail Freedom of Expression.
- Politics is particularly complex and unpredictable in countries where democracy is recent and not yet consolidated. The passing of a law may require considerable political leverage, public recognition, and substantial resources.
- The right to Freedom of Information may be protected and respected in the absence of a Freedom of Information law. It may not be fulfilled, but evidence so far does raise question as to whether the existence of a Freedom of Information law actually means that the right is fulfilled. The existence of an Freedom of Information law or of Freedom of Information provisions without a corresponding duty to respect the freedom of the media to impart information, does not amount to the right to Freedom of Information being protected, respected or fulfilled. On that front, the worse case is probably that of Zimbabwe and its Access to Information and Protection of Privacy Act, used mostly to suppress the media.

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<sup>51</sup> Of course, for the public to be informed by and through the media or Internet presupposes that governments have not sought to censor and prevent these medium from imparting the information – clearly a crucial step in ensuring the public right to know.

- The governments of the countries that have not passed access to information laws over the last 20 years (the democratization leap) may be particularly reluctant to do so and it may take more efforts and time to convince them.

## Conclusion

These difficulties and challenges have triggered an important soul-searching exercise amongst activists and a useful rethinking of some aspects of our “sacred approach” to campaigning for the right to Freedom of Information or the right to access public information. Some key questions emerging are:

- 1 Are we, on balance, investing too much effort in advocating for Freedom of Information laws? Given the resources available to most NGOs in our field, should we continue *prioritising* the adoption of Freedom of Information laws in order to secure respect for the right to access to government-held information?
- 2 Should we consider other options which might trigger greater access to government-held information and greater respect and fulfillment for the right to Freedom of Information, particularly in difficult national contexts? For instance, should we *prioritise* making use of existing provisions or guarantees as a way of raising awareness of the right to seek information and demonstrating its use for social change?
- 3 If we prioritise the adoption of an access to governmental information law, and given the conditions required for a law to be meaningful, what kind of strategy can we develop that integrates this knowledge and realization from the first steps onwards? In other words, how do we integrate meaningful implementation in the adoption advocacy?
- 4 What is required for a *culture* of transparency to be realized? Civil society is known for leading on major cultural changes processes throughout the world. Could we not adapt these strategies to bureaucracy and public services?
- 5 Is access to government-held information the priority in view of the accelerated privatization of public services and national resources in the vast majority of countries around the world? Should we not place equal energy in ensuring access to information held by private bodies which perform public functions? What does this require, in addi-

tion to the inclusion of this principle in future or existing laws?

- 6 Should we focus or at least invest equal energy in reforming state secrecy and/or privacy laws and practices which are routinely used to censor and/or deny access to information?
- 7 How can we strengthen the number and impact of pro-active disclosures to ensure that those that that most need it receive information of public interest?
- 8 What kind of steps is required to transform information into actions and empowerment?

The answers to these and many other critical key questions should inform the next generation of activism for the right to Freedom of Information and particularly access to government-held information.

In December 2006, ARTICLE 19 and its Latin American partners met in Argentina to consider answers to such questions and to review the impact so far of our work on access to government-held information and particularly whether and how our efforts to date had strengthened people’s access to economic, or social rights.

The discussion resulted in the first draft of what I later called the “third generation” of right to Freedom of Information activism. Since then, building on the outcomes of its other Right to Information projects, ARTICLE 19 has identified in a number of findings relevant to this next generation of activism.

As we evolve our activism to remain relevant as societies change we could consider the recommendations that follow and others:

- 1 We should always insist that the right to Freedom of Information is an international human right, grounded in international human rights standards, and that it includes as well access to government-held information. Too many governments, legislators or civil society still ignore the fact that the right to Freedom of Information and access to government-held information is a human right. They still believe that this is a concession from the government to the people. The absence of a Freedom of Information law does not mean that the government is not under an international obligation to provide information.

- 2 Advocacy for the right to Freedom of Information, including access to government-held information, should begin with, and focus on, the end-users and beneficiaries of information: what kind of information do *they* need? And in which format? For which purpose?
- 3 International standards on the right to Freedom of Information, constitutional guarantees, Freedom of Information laws and/or other Freedom of Information provisions should be used to address existing and real information problems which may result in violations of other rights, such as right to life, right to health, etc.
- 4 Promoting Freedom of Information is not about legislation, it is about a change in culture: both amongst civil servants and government officials (improved openness), but also among civil society (improved monitoring and participation, enhanced political involvement).
- 5 We should broaden the network of actors involved in the right to Freedom of Information advocacy and access to government-held information. We must reach out to grassroot organizations, those working on a range of non-Freedom of Expression issues, the private sector, etc. We need to link Freedom of Information with the practice of human rights and development more systematically.
- 6 We need to consider working at the *origin* of the information-gathering process – how, where and when is information collected, processed and filed. All evidence so far in many parts of the world highlight the poverty of the information collected and imparted. We need to strengthen the capacity within public services to collect proper data, or else continue collecting ourselves as many NGOS around the world have started doing.
- 7 Civil society is a major provider of information in many parts of the world. This is unlikely to change. We need to strengthen our own capacities to collect, process, file, and impart information and donors need to be supporting NGOs in these exercises.
- 8 Our campaigns for the right to Freedom of Information and access to government-held information must include a stronger, possibly prioritised, focus on pro-active disclosure. We should seek to increase the actual instances of such disclosures and their effectiveness. The vast majority of people around the world rely on information that is distributed and accessed for free and easily. Governments should launch information campaigns on issues of particularly important or urgent national interest, making use of all avenues possible. How the information is imparted is almost as important as whether the information is made accessible.
- 9 We should explore a range of avenues pertaining to access to government-held information: these include, of course, passing a national/federal level law on Freedom of Information. But we should also consider alternative options if the national context is not amenable, such as advocating for the adoption of state and/or municipal laws on access to information, and for the inclusion of access to information provisions in the variety of laws on the environment, health, etc.
- 10 Similarly, we should make use of, and test, all legal avenues to access information, including those at municipal and state level, or Freedom of Information provisions enshrined in non-Freedom of Information related laws (e.g. health, environment, education, etc.). This is the approach adopted in Argentina or Brazil for instance by ARTICLE 19, Asociación por los Derechos Civiles and others, or in Malaysia under the access to environmental information provisions.
- 11 A crucial objective of Right to Information activism should include strengthening the culture of transparency, improved awareness and use of the right to Freedom of Information. Laws run the risk of becoming a “dead text”<sup>52</sup> if there are no sufficient demands and push factors for their implementation.
- 12 Monitoring a government’s respect for the right to Freedom of Information includes monitoring the adoption and implementation of Freedom of Information laws if they exist, as well as all the related laws which impact on the right to Freedom of Information, such as: media, state secrecy, whistleblower and/or privacy laws and others. Consecutively, a campaign on the right to access

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<sup>52</sup> This is how some laws are referred to for instance in Brazil. This is quite common there because post-dictatorship governments tried to build legitimacy by simply adopting an adequate and even progressive legal framework in some areas of law, without much attention to their actual implementation.

information should include campaigning against the various laws and practices that prevent access to information and/or calling for their amendments.

- 13 The right to Freedom of Information should be presented as something practical, and useful to people's life, work and needs. Projects need to see very clearly the benefits that the Right to Information can bring them in order to get involved.
- 14 We should explore the development of pro-poor or pro-empowerment Freedom of Information laws, procedures and culture: if we were to design an information regime targeting those that are most information-starved, what would be its main components?

## ARTICLE 19 – Key benchmarks

- ARTICLE 19 was set up in 1987, and from its very origin, its founders insisted that *“the right to be informed is equally a feature of freedom of expression. Chernobyl and earlier nuclear accidents and the spread of AIDS throughout the world have contributed to the realization that full freedom of information is not a luxury but may be literally a matter of life and death. The denial of information vital to health, such as arises from the dumping of unlabelled pesticides and pharmaceuticals in the developing world, for example, is censorship to be opposed just as much as the more classic manifestations of censorship in book banning, radio jamming or the destruction of printing presses.”*
- In 1987, ARTICLE 19 was particularly concerned with situations in: the UK where it was disclosed that the government had suppressed information for 30 years about the effects of serious fire at a nuclear reactor at Windscale; the Soviet Union which had blacked out information on Chernobyl; and Israel, where Mordechai Vanunu was charged with treason.
- In 1989, ARTICLE 19 successfully challenged the Polish government on their withholding of information on housing, industrial pollution and foreign debt, classified as “Official Secrets”. Such information was subsequently declassified.
- In 1991, ARTICLE 19 submitted a statement to the European Court of Human Rights in the case of *Open Door Counselling and Dublin Well Women Center vs. Ireland* where it argued against the State's right to withhold information from its citizens

about health care facilities, in this case abortion. The court concluded that the Irish court's order violated the right to Freedom of Information.

- In 1993, ARTICLE 19 published *Malawi's past: the right to truth*, where the organization set out its position on the right to truth, which it considered to be guaranteed by article 19 of the UDHR.
- In 1995, ARTICLE 19 published *Right to Know: Human Rights and Access to Reproductive Health Information*, which has become a reference work for campaigners on health's issues around the world.
- In June 1999, ARTICLE 19 published ‘The Public's Right to Know: Principles on Freedom of Information Legislation’, setting out a number of standards in this area, drawn from international and comparative national practice. A primary goal of this document was to help promote progressive and effective Freedom of Information legislation, particularly in those countries currently developing such laws. The ARTICLE 19 standards have already been endorsed by a number of individuals and bodies. The report of the 2000 session of the UN Special Rapporteur on Freedom of Opinion and Expression also backed the standards in the following terms on paragraph 43: “The Special Rapporteur therefore endorses the set of principles that have been developed by the non governmental organization Article 19 – the International Centre against Censorship ... These principles, entitled ‘The Public's Right to Know: Principles on Freedom of Information Legislation’, are based on international and regional law and standards, evolving State practice, and the general principles of law recognized by the community of nations.”
- In 2002, ARTICLE 19 researched and published its review of Right to Information campaigning in Eastern and Central Europe, *“Promoting practical access to democracy: A survey of freedom of information in Eastern and Central Europe”* where it insisted on the need of an assertive campaign to maintain pressure on government to get legislation passed, but also to educate the general public about the significance of the right to access information.
- From 2001 onwards, ARTICLE 19 has been testing in real context its cutting edge research and publications. One of the first such projects was conducted in Peru on the impact of access to information law on sexual and reproductive health rights in Peru. The approach was subsequently applied in Mexico with young women and men, and then extended

to access to information on public services and to the corporate sector. Other projects have included Russia, Malaysia and Ukraine, on the right to access environmental information; in Brazil, to strengthen poor communities' access to public information to improve government transparency; in Abkhazia, to promote the development of consultative and responsive people-centered decision-making, with a focus on issues of particular relevance to women; and in Bangladesh, on access to information in the context of disaster prevention.

Some of the publications have included the following:

- [Freedom of Information: Humanitarian Disasters and Information Rights](http://www.article19.org/pdfs/publications/freedom-of-information-humanitarian-disasters.pdf); 1 May 2005 <http://www.article19.org/pdfs/publications/freedom-of-information-humanitarian-disasters.pdf>
- [South Caucasus: Under Lock and Key](http://www.article19.org/pdfs/publications/south-caucasus-under-lock-and-key-report.pdf); Report on Freedom of Information and the media in Armenia, Azerbaijan and Georgia. 15 Apr 2005
- [Transparency Charter for International Financial Institutions: Claiming our Right to Know](http://www.article19.org/pdfs/standards/transparency-charter-english.pdf) <http://www.article19.org/pdfs/standards/transparency-charter-english.pdf>
- [Russia: The forbidden Zones, Environmental Information Denied](http://www.article19.org/pdfs/publications/russia-the-forbidden-zone.pdf), 2006 <http://www.article19.org/pdfs/publications/russia-the-forbidden-zone.pdf>
- [Malaysia: A haze of secrecy](http://www.article19.org/pdfs/publications/malaysia-a-haze-of-secrecy.pdf), 2007 <http://www.article19.org/pdfs/publications/malaysia-a-haze-of-secrecy.pdf>
- [Abkhazia: A Survey of Access to Information, and its impact on people's life](http://www.article19.org/pdfs/publications/abkhazia-foi-report.pdf), 2007, <http://www.article19.org/pdfs/publications/abkhazia-foi-report.pdf>
- [Access to Information as an Empowerment Right \(jointly with ACD\)](http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf), 2007 <http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf>
- [Ukraine: For internal use only](http://www.article19.org/pdfs/publications/ukraine-foi-report.pdf), 2008; <http://www.article19.org/pdfs/publications/ukraine-foi-report.pdf>

## ARTICLE 19 – Principle 2

### Obligation to publish

### Public bodies should be under an obligation to publish key information

Freedom of information implies not only that public bodies accede to requests for

information but also that they publish and disseminate widely documents of significant

public interest, subject only to reasonable limits based on resources and capacity. Which information should be published will depend on the public body concerned. The law should establish both a general obligation to publish and key categories of information that must be published.

Public bodies should, as a minimum, be under an obligation to publish the following categories of information:

- operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public;
- information on any requests, complaints or other direct actions which members of the public may take in relation to the public body;
- guidance on processes by which members of the public may provide input into major policy or legislative proposals;
- the types of information which the body holds and the form in which this information is held; and
- the content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision.

# Supporting Democracy Requires Combating New Media Censorship

by Walid al Saqqaf, Journalist,  
former Publisher and Editor in Chief, Yemen Times, Yemen

## Introduction

Today and more than ever, there is a pressing need to recognize the growing role of new media in our lives. With a steady increase in the number of mobile phone users, wider Internet accessibility and more dependability, and increasing use of digital technology to receive and disseminate information, new media have established a role in democracy and development across the world.

Trends are telling us that new media will contribute in playing a growing role in our lives particularly in the sense of providing information from multiple sources, of which some may not be in agreement with what governments want citizens to know. News website aggregators are a good example demonstrating how various opinions and perspectives could be gathered in one place for direct viewing by the Internet user without tampering. For many users, news aggregators have helped them realize the discrepancies and differences between their government's account of a specific event and the accounts of others.

Many dictatorships and authoritarian regime quickly jumped into the fray and started manipulating and restricting new media just as they did and continue to do to conventional/traditional media. A typical case where a regime started to practice excessive restrictions targeting new media is evident in Yemen, a poor Arab country suffering from an already harsh media environment.

## Experience of YemenPortal.net

Being a Yemeni journalist and an entrepreneur in the field of new media, I came to experience governmental reactions to a growing influence of the Internet in Yemen. The authorities demonstrated their dissatisfaction with some news/opinion websites by preventing Internet users from accessing them. It was not difficult

for the government to do so given that it has total control over the dominant Internet Service Provider Yemen Net.

When I first developed YemenPortal.net, which is the first Arabic language news aggregator of its kind, my intention was to widen the perspective of Yemeni readers and provide an opportunity to read about the same event from government, independent, and opposition perspectives. I ensured that there were no biases to any side and automated the process of gathering data from news and opinion websites on Yemen to achieve the maximum level of inclusion.

Eight months after YemenPortal.net went online I carried out a research exercise and found that readers were more interested in content coming from opposition and independent websites. This was so despite the fact that government sources produced a much larger volume of content on average.

But as I was continuing my field study in Yemen to learn why and how opposition and independent websites were getting the most of readership online, YemenPortal.net was banned by the government of Yemen by preventing Internet users in the country from accessing the website. In the following days and weeks, the government banned five more domains belonging to YemenPortal.net including the blog freeyemenportal.org dedicated to advocate for the unblocking of the news aggregator website.

Not only did the government fail to provide a justification for the ban, but it disregards the complaints and often denies the ban itself. For me, the ban was an indicator of the growing impact of the site as an aggregator and of news and opinion content on the Internet. My theory was that the government knew Internet users were browsing for content not available in the mainstream media, particularly as the broadcast media are monopolized by the press and newspapers are governed by an excessively restrictive press law.

In Yemen and presumably in many other countries with a tight grip on mainstream media, Internet has become a breathing space for populations lacking free media. Although penetration levels are quite low in the case of Yemen, this ratio is destined to grow as literacy levels increase, and computers and Internet tariffs become more affordable. Governments may be attempting to stop the phenomenon before it grows beyond their control.

## Resisting the ban

Combating government manipulation of new media is essential if we were to allow the people to be aware of news and opinion content without restrictions. Towards combating website censorship in Yemen, YemenPortal.net started a campaign against website censorship with the goal of minimizing the impact of the ban on the readers' right to access websites and to expose this human right violation of Freedom of Expression and the right to access to information.

A web-proxy was established on YemenPortal.net allowing readers to access all news/opinion websites blocked by the Yemeni regime. Furthermore, a special page was created on which content from banned websites became accessible. Furthermore, a special plug-in called 'Access Yemen Portal' for Firefox was created to allow Internet users in Yemen to bypass the ban and access the website and the web-based proxy despite the ban. Finally, links to banned stories were set up automatically to allow Internet users to bypass the ban and access these stories directly on their original websites through the web-proxy.

Those steps were supplemented by continuous pressure through conferences and events to focus on the

problem of online censorship in Yemen. I have personally participated in several conferences and events to focus on this phenomenon in a broader scope calling for ending website censorship globally.

## An Arab anti-censorship initiative

To replicate the successful experiment of YemenPortal.net, I am currently in the phase of preparing a pan-Arab news/opinion aggregator called ArabiaPortal.net to expand the service of YemenPortal.net to all Arab countries. This would constitute a revolutionary initiative through which Internet users in the Arab world would find a way to learn about news and opinions about their countries or regions without censorship and be informed about issues that relate to their lives.

Furthermore, such an aggregator could serve to be the first conclusive portal that connects people and creates networks in the Arab world and educate Internet users about their fundamental human right of accessing information freely.

I sincerely hope that the international community could assist efforts to combat censorship of websites in particular and manipulation of new media by governments in general. I hereby also thank UNESCO for its efforts to focus more on Freedom of Expression on the Internet. The final declaration of the World Press Freedom Day Conference in Maputo, Mozambique on the third of May 2008 included a statement calling upon governments to stop acts that jeopardize Freedom of Expression online. Although that is not enough, it is certainly an important step in the right direction.

# Access to Information

by Edetaen Ojo, Executive Director,  
Media Rights Agenda, Nigeria

Information is central to human existence. As humans, all the decisions we make at personal, professional and political levels are usually based on the information available to us. The quality of such decisions often depends on the quality of the information that we have. If we have no information, we probably will not be able to make decisions and even if we attempt to make decisions in our ignorance, the quality of the decisions that we make would probably be very poor.

This is probably an overly simplistic way of trying to underscore the importance of access to information. But for me, it helps to demonstrate how totally dependent on information we are and why the right of access to information is a fundamental right. I believe it also helps to illustrate the fact that in terms of information held by public bodies, citizens will never be able to play any meaningful role in governance if they do not have access to reliable and quality information.

In reality therefore, without frameworks and structures which enable citizens to access information held by government bodies, they have no hope of effective participation in the governance of their countries.

This is the fate of citizens on this continent as most African governments have failed to empower people through access to information. By the most generous accounts, four countries in Africa out of the 53 members of the African Union have adopted access to information laws. But no one seriously considers Zimbabwe's Access to Information and Protection of Privacy Act 2002 a Freedom of Information law, despite its pretentious title.

Uganda adopted its Access to Information Act in April 2005 and it was to have come into force within six months, upon the promulgation of regulations for its implementation. Three years after the adoption of the law, there appears to be no progress towards the promulgation of the mandated regulations and as a result, citizens continue to be denied their right of access to information.

Angola also adopted its Access to Official Documents Law (Law 11/02) in 2005. This law appears to have been adopted with no input whatsoever from civil society and is widely regarded as weak in providing access to information for citizens. Its impact is further diminished by other laws such as the State Secrets Law. South Africa adopted the first access to information law on the continent in February 2000 with the passage of the Promotion of Access to Information Act, 2000. Despite the challenges of implementation, it seems to be most credible effort on the continent to empower citizens through access to information as a matter of right.

In three of Africa's sub-regions – West, Central and North – there is no single country with an access to information law.

The African Commission on Human and Peoples Rights has laid a strong basis for Freedom of Information laws in Africa and set standards for such laws with the adoption of the Declaration of Principles on Freedom of Expression in Africa at its 32nd Ordinary Session held in October 2002. Article IV(1) of the Declaration provides in part that:

*“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.”*

A number of countries in Africa have taken concrete steps towards adopting access to information laws, the some examples being Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Nigeria, Sierra Leone, Tanzania and Swaziland, where draft laws have been developed and are undergoing various stages of consideration. However, the issue of Freedom of Information is at best merely a topical subject at the moment in a few Francophone countries such as Mali, Togo, Senegal, Benin Republic, Burkina Faso, and Cameroon.

In most of the countries above where there are substantive moves towards the adoption of Freedom of Information laws, the process is being led or driven by civil society organizations and coalitions. Yet, in many of these and other African countries, civil society has been severely weakened by long histories of military dictatorships and other forms of authoritarian rule and it needs to be empowered to effectively engage with authorities.

In most of the countries, democratic law-making processes are only a very recent phenomenon. During the long periods of dictatorship which many of the countries witnessed, parliaments and legislatures were either non-existent, having been abolished – or where they existed, they were very weak institutions which did not really conduct proper legislative processes that citizens and civil society organizations could engage.

Thus, while there is considerable interest and enthusiasm among them, the present crop of civil society organizations which are in the forefront of the advocacy for Freedom of Information laws in their countries are simply not sufficiently empowered to engage the authorities on these issues.

It is against this background that in September 2006, Media Rights Agenda in collaboration with the Open Society Justice Initiative (OSJI), organized a two-day regional workshop on Freedom of Information in Africa. Held in Lagos, the workshop was attended by representatives of 30 civil society organizations from 16 countries, most of them in West Africa.

The main objectives of the workshop were to:

- Strengthen the momentum behind campaigns to promote and implement Freedom of Information laws in Africa through greater networking and collaboration among civil society organizations campaigning for the adoption or implementation of Freedom of Information laws.
- Enable civil society organizations in Africa to share experiences and strategies in promoting and monitoring the implementation of Freedom of Information laws and to enhance their capacity to carry out effective advocacy and monitoring strategies as may be appropriate for their contexts.
- Assess the feasibility of establishing a regional mechanism through which networking and collaborative

activities among concerned civil society organizations could be coordinated.

There was consensus at the workshop on a number of issues, including the fact that:

- There is a huge deficit in collaborative activities among civil society organizations in the region on the issue of access to information.
- There is too much dependence on non-African frameworks which, though useful and important, frequently lack proper appreciation of the context.
- There is some relevant expertise in the region in the areas of drafting access to information laws, advocacy, monitoring, implementation and litigation that are not being sufficiently tapped and utilized.
- Much of the relevant experience garnered by civil society organizations in the region has not been sufficiently documented and shared.
- Civil society organizations in the region working on access to information issues need to upscale networking and collaboration within the region.

In the “*Lagos Declaration on the Right of Access to Information*” adopted at the end of their meeting, the participating organizations expressed concern that Africa was lagging behind in the global drive towards the adoption of Freedom of Information Laws and agreed to establish a regional centre, where experiences garnered in the different countries can be pooled and shared among civil society activists and which will provide a platform for cooperation and collaborative activities among civil society organizations in the region.

It was also observed that many organizations in the region working on access to issues require assistance:

- With drafting good access to information laws.
- With reviewing or analyzing their draft access to information laws.
- With developing context-specific advocacy strategies.
- With developing monitoring mechanisms.
- With developing implementation strategies.
- With developing litigation strategies.
- They also need a platform to share ideas, experiences and best practices on Freedom of Information advocacy, monitoring, implementation and litigation.

- They require a framework to initiate and coordinate joint advocacy campaigns, especially at regional levels.
- They require a framework for mobilizing regional and sub-regional solidarity in specific country situations.

It is expected that the Africa Freedom of Information Centre will help organizations to meet these needs.

The Centre is run by an eight-member Steering Committee with representatives from different regions of the continent and plans to maintain an online resource centre which will provide up-to-date information about the state of access to information in all countries in the region and contain the texts of Freedom of Information Bills and Laws in various African countries as well as the texts of standard-setting documents in Africa, other regions and internationally. The online resource centre should be up and running within the next month following approval from the Steering Committee.

Other specific activities of the Centre will also include:

- Assisting civil society organizations in different countries to develop and implement Freedom of Information advocacy, litigation and monitoring strategies.
- Building the capacity of civil society organizations engaged in Freedom of Information work through training and awareness-raising activities, to improve their skills in research, legislative drafting, advocacy and lobbying, litigation, monitoring, and fundraising.
- Providing support and solidarity for national-level activities and efforts in these areas.
- Building linkages and networking Freedom of Information advocates across the continent and, in particular, documenting Freedom of Information advocacy strategies and experiences in countries where advocacy has been successful and sharing best practices with other countries.
- Establishing a database on Freedom of Information in Africa and other parts of the world to facilitate comparative knowledge and experience; and
- Facilitating collaborative action to introduce regional and sub-regional mechanisms and standards on the Right to Information in Africa.

From April 21 to 23, 2008, the Centre collaborated with the Open Society Justice Initiative and the World Bank to organize an East African Conference on Freedom of Information. The conference, attended by 78 participants from several African countries as well as India, Indonesia, Hungary and the United States agreed on a set of strategies to advance the right of access to information in Africa, including through advocacy for the adoption of more laws, media action and public awareness raising activities, litigation and coalition strengthening.

The Centre hopes that many more African organizations would join this initiative and that through this process, we can contribute to improving the state of access to information in Africa.

### Key points from Part 3:

- The explosion of Right to Information laws over the last 20 years is linked to the coming together of movements for transparency and good governance and other diverse forces.
- But disparities persist and momentum for Freedom of Information has run into setbacks in many places in the past two years.
- Where laws exist they are often not being meaningfully realized, which highlights the challenge of cultural change amongst both the public and civil servants.
- The Right to Information implies a positive obligation by the state, as confirmed by international jurisprudence.
- Information about public matters is more widely available nowadays, though not necessarily as a direct result of Right to Information laws as such. However, practical access to it is still an issue in many places and for many people.
- Activists should decide whether to focus on getting Right to Information laws passed, or on using existing legal provisions to secure information access and reform of state secrecy.
- There needs to be attention to the capabilities within both the state and civil society to collect and manage information.
- Freedom of Information needs to be monitored, with a view to whether it is pro-poor and pro-empowerment.

- The Internet can be a “breathing space” for populations lacking free media.
- It is necessary to campaign against governments seeking to block portal sites that aggregate information which can include some that is critical of the authorities.
- Technology “work-arounds” are possible where there are *de facto* bans, such as in Yemen.
- To access information held by governmental bodies, frameworks and structures are needed for citizens.

- Most African countries exclude citizen participation in governance because there are no mechanisms in place for people to access state information.
- Thirty civil society groups from 16 countries have created the African Freedom of Information Centre to promote advocacy, litigation, monitoring and information resources.



# PART 4

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## **Freedom of Information and Sustainable Development: Sealing the Link**

**Report of the UNESCO Experts Meeting,  
held in Paris on 17-18 March 2008,  
drafted by Caroline Millet**

This Experts Meeting brought together 17 international experts, participants from civil society, the UNESCO Secretariat as well as representatives from UNESCO Member States. The objectives were as follows:

- 1 Explore the link between Right to Information, sustainable development and empowerment
- 2 Analyze regional specificities of Right to Information laws and the link to specific development contexts
- 3 Brainstorm strategies as to how Right to Information can be made more visible on the development agenda
- 4 Share challenges faced by Right to Information advocacy campaigning
- 5 Share challenges faced in the implementation of Right to Information laws.

# Introduction to “Freedom of Information and Sustainable Development: Sealing the Link”

The overarching priority for the United Nations and the international community at large is achieving the Millennium Development Goals. The difficulties of doing so are apparent. At this time, development stakeholders are broadening the discussion as to what elements of the development process need to be more closely focused upon. This can be seen with the increasing inclusion of human rights and governance into the development agenda, which have become more widely incorporated within the development dialogue in recent years. In this context, the fundamental right to Freedom of Expression, and its corollary of Freedom of Information, is pivotal for the achievement of sustainable and human development, poverty eradication, good governance, peace and reconciliation, environmental sustainability, and respect for human rights. Therefore, UNESCO, as lead UN agency for the promotion of free flow of information and Freedom of Expression, in recent years has been organizing a series of advocacy and research activities to explore, and to “seal”, the link between Freedom of Expression, Freedom of Information and sustainable development.

This report is an outline of a two-day meeting of experts on the relationship particularly between the realization of Freedom of Information and the achievement of sustainable development. The meeting, organized by UNESCO at its headquarters in Paris, brought together 20 international experts as well as other participants and observers from the civil society, UNESCO Member States and the Secretariat. By sharing specific experiences from around the globe, the participants aimed to draft strategies which would make implementation and advocacy more effective in this area.

The meeting was divided into three sessions at which the participants made presentations, followed by a day of group work and ensuing presentation that was open to the wider public. What follows provides a summary of all the contributions made by the participants in each of the three panel sessions, as well as some of the points raised during the open floor discussions. These insights helped to inform the conference for the celebration of World Press Freedom Day 3 May 2008 in

Maputo, Mozambique, which focused on Freedom of Information, Access and Empowerment.

The first panel looked at how the Right to Information can advance the development process and be used to make the development agenda “pro-poor”. The session also explored what information would be useful and the potential benefits of the Right to Information for marginalized communities. It was agreed that whilst a good law is essential for implementation, the involvement of a wide range of bodies including local communities and civil society groups is key. The importance of proactive disclosure within the law was stressed and it was agreed that this was one of the most important elements of any policy on the Right to Information.

The second panel examined what have been the challenges for advocacy for the Right to Information and implementation of legislation, with a special focus on developing countries. This provided an opportunity to detect common problems shared by many countries, which is especially interesting given that the adoption of many access to information laws is a recent phenomena. This section of the meeting focused on the importance of getting governments to incorporate access to information within the development process, including providing adequate training to civil servants. Indeed it is not just a Right to Information law which has to be passed, but rather a cultural change within the authorities from a culture of secrecy to one of openness.

The third panel addressed the issue of promoting the visibility of Right to Information on the development agenda. It was widely agreed that this was an essential component when discussing the practicalities of aid effectiveness and one which has sadly been overlooked by many donors and international organizations. It was agreed that if international organizations are to have any credibility in pushing the Right to Information on their agenda then they must lead by example and be more transparent in-house. In order to really make the development process participatory, citizens should also be included within the very process of deciding what information is important to them rather than

simply having certain types of information handed down to them.

The last part of the report below summarizes the findings of the two working groups. The first group examined the barriers confronting the Right to Information process and whether they are going to have an impact on sustainable development. These include low levels of literacy, poor info-structures and infrastructures and lack of political will in applying legislation and making information available.

The second group based its recommendations on the lessons learnt from implementation of Right to Information legislation. It also laid out future strategies for development actors to strengthen advocacy around the Right to Information. These include the role and necessary engagement from governments, civil society and international organizations. Also stressed is the importance of partnerships with the private sector, especially those bodies engaged in collecting public information.

## Opening Remarks

by Mogens Schmidt, Deputy Assistant Director-General for Communication and Information, and Director of the Division for Freedom of Expression, Democracy and Peace, UNESCO

The very notion of “free flow of information by word and by image” is at the core of UNESCO’s Constitution – it is indeed at the heart of our mandate. The right to access information held by public bodies is a pillar for putting into practice “free flow of information”, as well as working towards the fundamental human right of Freedom of Expression.

The overarching priority for the entire UN family is the achievement of the Millennium Development Goals. Several studies have analyzed and validated the link between on the one hand, citizens’ and journalists’ access to information, and on the other hand good governance, transparency, the fight against corruption, environmental sustainability and many other preconditions for sustainable development. Nonetheless, it

remains a problem that only very rarely has this link been highlighted on the development agenda. Donors tend to ignore the role that media and information provision can play, and even UN Country teams could pay more attention to this area.

Three years ago, Resolution 55 of UNESCO’s 33rd General Conference stated that Freedom of Expression is a fundamental condition for good governance, for human rights-based development and for the prevention of violent conflict – all of which are key contributors to poverty eradication. These synergies were further examined during the World Press Freedom Day Conference in Colombo on “Media, Development and Poverty Eradication” on 3 May 2006.

However, there is still a lot to be done. UNESCO has a clear responsibility to deepen and widen this discussion, and honour the specific request which was formulated by the participants at the World Press Freedom Day Conference in Dakar in 2005 on “Media and Good Governance” whose final declaration called for UNESCO to “promote the adoption of national access to information legislation and to develop international principles on access to information”.

There is no doubt that the first edition of Toby Mendell’s book comparing Freedom of Information laws had a considerable impact, not least in its translations into several languages such as Arabic, Farsi/Dari, Nepali and Bangla. However, the rapid developments in the sector of Right to Information legislation have made it necessary to update this book. I am therefore extremely grateful to the author who agreed to write a newly revised and updated edition. New countries have been added to the comparative analysis, such as Azerbaijan, Jamaica and Uganda; all the sections have been updated and a new introduction has been written. A translator is already working on the French version, while the Arabic translation is also in the pipeline. UNESCO hopes that this book will continue to serve as a tool for “living” information to support the development of legislation enabling Freedom of Information. In the meeting today and tomorrow we want to pick your brains; to listen to you and to learn from you in order to sharpen our knowledge about how Freedom of Information, and how free access to public information, can actually contribute to social and human development. We are interested in hearing your views on this and collecting and sharing some best practices for advocacy, drafting and implementation.

# Presentation

by Toby Mendel, Law director,  
ARTICLE 19, and author of  
“Freedom of Information:  
A Comparative Legal Survey”

*(In presenting the second revised and updated edition of his comparative study, the author took the opportunity to take a closer look in the field of access to information after the trend of Right to Information legislation gained momentum around the globe.)*

There have been several key developments in Right to Information since the first edition of the book was published five years ago. At the time, recognition of access to information as a fundamental human right was just beginning to emerge. However, today it is fair to say that its recognition as a human right is embedded, and that it is referred to not just by activists in this field, but also by civil society more generally and even by governments.

The claim made by some that the pace of adoption of new laws is slowing down is incorrect, given that four of the 14 laws analyzed in the book were passed after 2002 and another three were adopted in 2002. Indeed the importance of this concept has now been acknowledged in every region of the world, with the adoption of the Jordanian law last year. At the time of the first edition, there had been some statements on this right from courts around the world, but the seminal *Claude Reyes and Others v. Chile* case, decided in 2006 by the Inter- American Court of Human Rights, was the first to provide clear and unequivocal recognition of the Right to Information as a human right founded in the right to Freedom of Expression.

Most of the Right to Information laws in place today provide for proactive disclosure of information even in the absence of a request. This is becoming a more important element in more recent laws and, over time, this may become the most important component of these laws, ensuring widespread access for all members of society, especially the marginalized. This system does, however, impose high implementation costs.

Another subject of debate concerning Right to Information laws has to do with the obligation that they place on private bodies to disclose information.

So far, South Africa is the only country which imposes that obligation. However the problems experienced with the implementation of this in South Africa show what a potential Pandora’s Box this could be. The difficulties lie in deciding how to delimit what bodies should disclose information to the public and what information the law should cover. In this matter, as indeed in all matters concerning the implementation of Right to Information laws, we are reminded of the value of an independent oversight body.

To date, a number of other areas have proved problematic, both in the content and implementation of Right to Information laws:

- The list of exceptions remains too broad in scope.
- Most Right to Information laws do not overwrite secrecy laws, so that existing secrecy rules remain in place.
- It is essential both to train civil servants in the ways in which they should respond to information requests and to protect them for good faith disclosures.
- The difference between disclosing documents and information is misleading and must not be used as an excuse for non-disclosure.
- Promotional measures, including communicating to citizens as to how they may use Right to Information laws, is something that governments need to take greater responsibility for.

There are still some questions which need to be answered in terms of how much effort is required in the area of producing/extracting information. How much processing of data are public bodies supposed to engage in? Access to raw data will not facilitate the participation and empowerment of most citizens, therefore to what extent should the data be rendered consumer friendly? A related question is whether public bodies are expected to create information which they do not already possess. This would entail additional manpower or perhaps software. Put differently, what information should public bodies be required to maintain?

## Points raised in the discussion

Three categories should be examined when assessing the impact that Right to Information laws can have within any particular context. (These categories were

referred to throughout the meeting and were used as a tool to pinpoint problem areas.)

- 1 **Legal content.** What are the provisions made in the law itself and will they facilitate access to information? The omission of certain key elements such as an independent oversight body can severely limit the impact of a law. Subtle legal problems can fundamentally undermine the implementation of Right to Information laws. For example, Thailand lacks timelines, which has led to an effective collapse of the information request system.
- 2 **Political will.** Do governments, public bodies and administrations engage positively in implementing the law? Do they provide the necessary training and resources for their officials? Often the very culture which has been nurtured within administrations has to shift from a culture of secrecy to a culture of transparency.
- 3 **Civil Society.** A law could in theory be excellent, but if it is passed in a vacuum and there are no actors willing to put it to good use for the benefit of citizens, then it serves little purpose and will likely wither and die.

When the link between sustainable development and Freedom of Information was introduced there was consensus that the very actors engaged in the development process had to lead by example. Development agencies and donors should be more

transparent about their actions, budgets and administration if they expect this from other actors. The Global Transparency Initiative is currently working towards promoting this idea among international financial institutions.

The meeting's participants also noted with disappointment that the UN system has not issued more statements on the importance of the Right to Information. This should be examined and the UN be urged to play more of a leading role on this issue.

It was also observed that the Council of Europe in its recent bid to harmonize principles on Freedom of Information stipulated that disclosure of documents did not apply to those that were stored electronically. This was seen as a potential loophole in the standards and one which could undermine the breadth of the documents accessible to the public.

The question of records management was raised. Usually Right to Information laws authorize a central figure to set record management standards. In some more sophisticated laws such as in Mexico, the record managing institutions are specifically mentioned within the law, even if the actual management of the records is not in itself stipulated. Ultimately it was commented that "fireproofing" a law is impossible. But as long as the mechanisms for appeal exist, some problems will be ironed out through usage.

## Session 1

# Right to Information and Sustainable Development

Activists are intuitively convinced that there is a link between development and the right to access information through the empowerment that it creates. The challenge, however, is in demonstrating that the Right to Information is a key contributor to development, and in mobilizing the international community into understanding and endorsing this.

The culture of secrecy that exists in many countries forces us to examine how we look at human rights. While international jurisprudence stipulates that human rights are indivisible, interdependent and non-hierarchical, sometimes there is an attempt to establish a “de facto” hierarchy within the rights. In some cases socio-economic rights do not have the same place as civil, political or human rights. However, increasingly a consensus has developed that the interdependence implies that all these rights should be considered together.

Further, the Right to Information should be recognized by all actors as having the significance of being a facilitator in the actualization of all human rights. What also needs to be considered, in establishing the link between access to information and development, is: what would a pro-poor Freedom of Information law look like?

## Remarks

by Steve Buckley, President,  
World Association of Community  
Radio (AMARC)

Over the last 10 years there has been a close parallel between the adoption of Right to Information laws and the development of policies and laws that enable community broadcasting. It is perhaps not surprising that these have been concurrent trends since they are two sides of the same coin.

As Right to Information legislation comes into practice, a plurality of independent media, including community broadcasting is needed to ensure that information is actively disseminated. Indeed a lack of media pluralism will seriously reduce the benefits and the impact of Right to Information legislation.

Access to information legislation can assist in reducing the information asymmetry between citizens and governments, and contribute to public accountability by enabling the watchdog function of the media. Although combating corruption and promoting good governance have been a primary focus of Right to Information legislation, it is also important to consider the wider benefits of enabling people to make better informed social and economic choices – that is, the knowledge function of this right.

When we consider Right to Information legislation, the primary focus is often at a national level. However, the international and local levels should not be overlooked. Access to information can also contribute to improved local governance and to local knowledge for development. At the international level, we need the UN and other intergovernmental bodies to set a good example by becoming more transparent in their own processes, including mechanisms to ensure information disclosure.

From the perspective of sustainable development, we also have to be conscious of the many other obstacles to access to information for people experiencing poverty and marginalization. Right to Information legislation is necessary, but by itself it is not a sufficient remedy. The obstacles include low levels of education and literacy, poor communications and transport infrastructure, cultural and language barriers and discrimination based on gender, caste, class, ethnicity or other factors.

## Remarks

by Helen Darbishire, Executive  
Director, Access Info Europe, and  
Chair, Freedom of Information  
Advocates Network (FOIANet)

How can we make Right to Information a tool for ensuring economic justice so that it works towards the pro-poor agenda? In essence, being pro-poor translates into being proactive. Many access to information laws contain generic lists of information to be disclosed proactively without the need to file requests. Although these serve as guidelines as to what types of information should be available, it is difficult to come up with an exhaustive list. In some specific sectors, such as the environment, more detailed lists have been developed. For example, the Aarhus Convention establishes the types of information which should be collected by governments from private bodies in order to assess the impact of their activities on the environment. Proactive disclosure of information is part of the Right to Information and should be incorporated into all access to information and sector specific laws.

The right of access to information applies to all information held by public bodies, and this includes information collected from private bodies. International and comparative standards have not yet defined the extent to which the Right to Information applies directly to private bodies. In the meantime, the onus is on governments to collect sufficient information from the private sector so that people can have the information necessary for defending other rights. This information should be collected in sufficient detail so that it can be of use to the public.

For example, there was concern recently in the USA that the Environmental Protection Agency was reducing the amount of information which companies were obliged to provide about their emissions and waste. The failure to collect such information would have had a direct impact on the people's ability to access information on pollution in their environment.

It is also not enough to simply require that information should be available. It has to be made available in a timely fashion so that people can put that information to use and participate in the decision-making processes. The Right to Information cannot

be simply about facilitating a retroactive exercise in accountability.

Another key element of pro-poor transparency is information about international aid flows. National access to information laws can be used to access some of this information, but much aid does not go through the government. Therefore, if we want to develop aid transparency, one should require aid agencies (including multilateral organizations), as well as other actors in the field to disclose their information. Such transparency should not be seen as a threat, but as a way of securing participation from stakeholders and ensuring effective and pro-poor aid delivery. The “Publish What You Fund” campaign is working towards this goal of increasing aid transparency.

## Remarks

by Issa Luna Pla, Professor, Legal Research Institute, Autonomous National University of Mexico

Access to Information legislation in many countries around the world has been passed with the aim of contributing to anti-corruption and good governance objectives. A recent survey of over 2000 Mexican civil servants showed that most saw the 2002 Right to Information Act as benefiting the government rather than civil society. The Act was perceived as a way of keeping themselves accountable and not as benefiting their own citizens. Clearly there is a need for government agents to understand the benefits of this law for the people.

Because requesting information often requires a certain level of knowledge about the government, proactive disclosure of information could be achieved which better targets the poor. This implies knowing more about the poor's information needs, in order for the Right to Information to have a more direct impact on their lives.

Development is a process aiming to expand the freedoms that people enjoy, and information is a way of enabling people to live better lives through empowerment. To achieve this there should be a special focus on the sectors whose information will most affect people, such as information on education, health, labour opportunities, land property and social programs.

Bearing these in mind would help in drafting legislation which targets poor communities with strong proactive targets regarding information policies. There is a need to correct information asymmetries and really focus on local communities by providing them with information on their rights and opportunities in order for the impact on development to be real.

## Remarks

by Manju Menon, Kalpavriksh, Environmental Action Group, India

The Right to Information should be regarded as a right to life. The availability of relevant and timely information is essential for individuals and communities in exercising this right, and in protecting their lives from harmful and threatening situations and events. For example, this was articulated by the Supreme Court of India in *Oleum* regarding a gas leak case that took place in a fertilizer plant in the city of Delhi in 1986.

The process of law-making is as important as the text of the law itself. In India, the access to information law was the result of a widespread movement, which included citizens from different walks of life such as doctors, media professionals, teachers, historians. Their inputs during the law-making process helped to develop a robust law and importantly one that would benefit ordinary people.

However, problems still exist with the implementation of the law. Our experience has been that a significant number of requests go into first appeal. The Information Commissioners in charge of ensuring the implementation and redressing grievances are mostly ex-bureaucrats who continue the bureaucratic culture of withholding information.

The use of Right to Information in India has increased public availability of information such as the extent of ecologically sensitive land (such as Protected Areas) which has been diverted for mining and other industry/infrastructure etc. It has also increased the availability of information regarding the levels of compliance by project developers to conditions for mitigating environmental impact.

The Act has also enabled environment groups and civil society to get access to and understand the workings of experts committees which advise government departments and ministries. This has exposed the fact that these committees in fact are disconnected from land struggles and other critical realities on the ground. Their reliance on scientific data alone, to address questions of equitable resource use, has resulted in mitigation-based approaches rather than preventive ones when dealing with environmental problems.



### Salient points focused on in Session 1

A good law is essential for successful implementation. The process of law-making is a crucial step, rendered most useful and effective when it involves the communities themselves.

In Right to Information laws there is a consensus that proactive disclosure is not only essential but perhaps even the most important element of the legislation. However, defining proactive disclosure is a difficult process which should involve end-users.

In order for a successful implementation of Right to Information, a wide range of bodies, including private bodies, should be involved.



### Points raised during the discussion

Even if compliance information makes it feasible for civil society to monitor whether companies adhere to certain standards, in practical terms it is difficult for citizens to take on a monitoring role, even if the information is available. Perhaps the focus should be on extending the obligations of compliance and information disclosure to include not only governments, but also private companies who undertake public functions or whose activities impact on the natural resources of a country.

The role of national courts should be examined with regard to their potential role for obliging governments to produce certain types of information. Indeed, the role of courts is crucial since in some instances, such as the draft convention on the Council of Europe, there is no binding right forcing disclosure; merely the possibility of re-submitting the request.

Right to Information laws should advocate a balance between forcing and encouraging disclosure. The idea is not to constantly penalize the administration but rather to encourage a culture of openness and to convince governments and civil servants that openness is good for them.

## Session 2

# Challenges for Advocacy and Implementation of Right to Information Laws

Despite fears voiced in the past that the Right to Information would make governments collapse, it is clear from numerous examples that this is not the case. Of course the extent to which governments should process and gather information is still debated given that processing enables access and use of the information by the public, whilst simultaneously carrying significant costs.

When envisaging passing Right to Information laws there are many other factors which have to be considered, which will have a direct impact on the successful implementation of that law. Especially within the context of developing and transition countries, one has to take into account that the existence of a law will not have the same implications as it would in stable democratic environments in developed countries. Therefore, one has to accept that Right to Information is neither the start, nor the end point. Civil society and political will are key in building a culture of access to information.

## Remarks

by Cece Fadope, Africa  
Programme Officer, ARTICLE 19

The recent election and ensuing unrest in Kenya showed us what happens when information is hidden and manipulated. In this instance the role of the media was key to the events which occurred in the country. In Kenya there is as yet no Right to Information law, which means that mechanisms for implementation are also as yet unclear.

In general, African leaders have acknowledged that Right to Information laws are necessary, but there is a resistance to passing them. We have to ask ourselves whether these laws will be passed to improve the quality of life for the people or whether they will be mainly focused on promoting the policing, power and security aspects.

One could argue that even though African governments have conceded that democracy and development are worthwhile objectives, they have not accepted the changes necessary to put these into practice. This is why they may not see the adoption of Human Rights, such as Freedom of Information and expression, as critical to the democratisation and development processes. Activists need to convince African leaders that Right to Information is crucial to development and that it is not a problem but a solution to their problems. The idea is not to coerce them but to sell them the very idea of the Right to Information.

One hopes that both Sierra Leone and Kenya whose presidents have talked about promoting transparency will be true to their word and promote the Right to Information. So far South Africa is the only Sub-Saharan country that has a definitive Right to Information law and even so, 70% of requests submitted remain unanswered.

## Remarks

by Virginie Flores, Secretary, Group  
of Specialists on Access to Public  
Documents, Council of Europe

The European Convention on Human Rights indirectly offers a certain degree of protection with regard

to environmental matters, as demonstrated by the evolving case-law of the European Court of Human Rights in this area. The Court has established that public authorities must observe certain requirements with regards to information and communication.

Concerning the right to receive and impart information and ideas on environmental matters, the Court has found that there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest (*Steel and Morris v. the United Kingdom*, judgment of 15 February 2005). On the other hand, freedom to receive information under Article 10 cannot be construed as imposing on public authorities a general obligation to collect and disseminate information relating to the environment (*Guerra and Others v. Italy*, judgment of 19 February 1998).

Concerning access to information, public authorities may be under a specific obligation to secure a right of access to information in relation to environmental issues in certain circumstances. The Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's Right to Information (*Öneryıldız v. Turkey*, judgment of 30 November 2004). Public authorities must provide information to persons when their rights to life under Article 2 and rights to respect for private and family life and the home, under Article 8, are threatened (*Guerra and Others v. Italy Case*).

## Remarks

by Hisham Kassem, Journalist,  
Former publisher of Al Masry  
Al-Youm ("The Egyptian Today")

Egypt does not deserve its Transparency International rating which states that it is in the process of trying to implement access to information. For example, to this day any reporting on the military can easily lead to being court-martialed.

There is a case to be made for certain changes to take place within the country before a Right to Information law could feasibly be passed and/or make a change. One

argument is that it would be preferable for civil society to strengthen itself before a Right to Information law is passed, thereby ensuring that implementation would follow the law.

Second, the current inefficiency of the administration means that even obtaining a birth certificate can be a lengthy process. This means that other information requests will be funnelled into an already slow process. There is a strong case to be made here for improving Information Technology usage within the government's administration.

Finally, one could argue that certain strong business entrepreneurs will never allow information to be accessible on how much they pollute, for example, even if a law comes into place. Therefore, one could argue that the overall power balance and democratization process within the country needs to change.

Advocacy groups in Egypt should currently be focused on preparing a "good" Right to Information law and not on passing any law at all costs. If civil society is not strong enough to use that law once it exists and if the law contains too many loopholes, then it will not facilitate the changes that one would hope for.

## Remarks

by Eva Moraga, Legal Director,  
Access Info Europe, Spain

Access to information depends on a certain level of efficiency within a public administration. In Spain, a culture of secrecy is prominent, whereby civil servants are not used to giving information. The current criminal code also contains two chapters that enable sanctioning of civil servants who disclose information improperly. At present, only 40% of requests are answered.

In order for access to information proceedings to be efficient, one has to move beyond the issue of having a law, to civil servants being able to answer information requests. In order to make this happen, one needs politicians to believe that access to information is a person's right. It is telling that many politicians from the Spanish socialist party did not even know that the right to access information was within their own manifesto,

showing the degree to which this issue lacks priority on the agenda.

The Right to Information is not just dependent on the technical capacity to access information, but more on the political will to communicate information. Holding public meetings in which people can be given information and participate is an important asset, especially in developing countries where people do not have access to the rights or services which normally enable participation.

## Remarks

by Priscilla Nyokabi, Policy  
Research and Advocacy  
Programme, International  
Commission of Jurists, Kenya

"People do not eat information but without information they will starve to death"

The situation in Kenya has been evolving in terms of both economic and legal amendments, which can facilitate development. However, laws that allow the repression and concealment of public information are still in the statute books: the Books and Newspapers Act, Criminal Libel, the Penal Code and the omnibus Official Secrets Act. These criminalize disclosure and access to information held by government. This only highlights that the culture of secrecy remains alive within government. The Right to Information should not just be the business of the Ministry of Information and Communication, it applies to all Government departments.

The Right to Information is part of many laws that would contribute to supporting good governance. In general, the web of laws drawing from years of authoritarian regimes is not pro-access to information and in the case of Kenya over 30 pieces of legislation impede access to information. A few examples where Freedom of Information is omitted or overridden:

- The Constituency Development Fund Act of 2003 and amendments in 2007 are thin on transparency and access to information from the public.
- The draft Judicial Services Bill 2007 does not make for provision of access to information even as the

new draft Freedom of Information Bill, 2007, seeks to repeal the Official Secrets Act.

- The constitutional backing for a Right to Information Law in Kenya is very weak as the constitution only implies protection of Freedom of Expression.

The difficulties faced by the Right to Information campaign are numerous, including capacity building for key agents including new Members of Parliament and funding both awareness-raising and publicity. There needs to be a broad based coalition for the changes to become effective. One way of making the campaign seem relevant to other actors would be to have updated surveys which illustrate the difficulties of doing business in Kenya without access to information.

## Remarks

by Roberto Saba, Executive Director, Asociación por los Derechos Civiles (ADC), Argentina

In Latin America, the main focus of the Freedom of Information discourse has been the role it could have on promoting transparency and weeding out corruption. However, changes in the political environment on the continent mean that many governments in power got there through democratic processes and have backing from large sectors of society. This means that one can currently focus on the other benefits which access to information engenders.

The focus should not purely be on access to information, but also on the collection, organization, production and provision of that information; as well as its instrumental value in producing new legislation. The legal structures which protect governments also have to be in place, otherwise there will be no disclosure. Within the administration there should be protection of civil servants who fear the repercussions of disclosing information. Training interventions for civil servants, lawyers and judges are also crucial elements to a working access to information regime.

Civil society needs to realize that access to information is important and that it is a government's duty to provide that information. They often lack the resources

to go through the legal proceedings which would be necessary to extract that information.

One needs to draw links between tangible situations, such as the economic collapse in Argentina and the role which access to information could have during these situations. Indeed after the economic crisis in Argentina, several NGOs became interested in the Freedom of Information problems. It is only if we succeed in drawing links between other development issues and the importance of access to information that the advances will really take place.

## Remarks

by Martin Tisné, Programme Director, Tiri, United Kingdom

If there has been some talk of increasing transparency of aid funds from multinational donors this has not been the case with bilateral aid flows, where the focus has traditionally been on quantity of aid. It is hoped that the 2008 Accra aid effectiveness summit will address this issue. The lack of transparency and ensuing accountability is especially true in conflict and post-conflict countries where the government sees return to stability as a priority. It is in this setting that the role of local development networks can come into play.

The key challenges in these situations of post-conflict are:

- The risk of conflict returning, and the necessity and difficulty for communities of accessing information in a volatile environment.
- There is a small window of opportunity in which aid flows are abundant, usually the first four years. Multi-donor trust fund mechanisms could help to spread out the aid money over a longer stretch of time.

More generally, the lack of information coordination in the aid world, where few systematic mechanisms of data collection exist, and the lack of specificity of the format that the data is collected in, limits its usefulness with other actors.

Often there is a conflict of interest arising from the dual accountability of development projects both to donors

and to recipients. Lastly, even if the countries receiving aid do not have access to information laws, often the donor countries themselves do, and they should therefore apply their own principles to their aid work in other countries. Legislation on foreign aid should include minimum standards which donors should put into practice.



## Salient points focused on in Session 2

Governments should be encouraged to accept that the Right to Information, in helping to realize the Human Right of Freedom of Expression, contributes directly to the development process.

Passing a Right to Information law should not be the sole focal point in addressing access to information issues. Wider legal and civil contexts are key, as are obtaining the cooperation and training of government administrations.

The potential users of Right to Information laws represent various interest groups within society who would use this law in different ways. This makes it essential for the law to be user-friendly, so that it becomes a tool for self-governance.



## Points raised during the discussion

When pushing for a Right to Information law, it might be more attainable to work on promoting Freedom of Information in one sector. This is because in many developed countries a Right to Information law took years to come into place and was the end result of several milestone points. This could be done both through individual sectors by using areas where legislation was already in place for information transparency, such as the environment. Or it could be achieved locally by using community information sharing mechanisms in the absence of a state regime.

However, many participants felt that a law needed to be an ultimate objective and that it would be a major instrument for improving the situation. But, to pass the law, it was not necessary to wait until there was a functioning information regime in place.

## Session 3

### Freedom of Information Visibility on the Development Agenda

One of the challenges of the Freedom of Information discourse is how to stimulate public interest in the topic of the Right to Information. In other words, what are the obstacles being faced in putting the Right to Information on the development agenda? The visibility and means of communication surrounding this topic are also of equal importance.

## Remarks

by Kulan Amin,  
Programme Manager, Poverty  
and Development, Transparency  
International

As implementation of the Right to Information lags behind and corruption keeps increasing, one has to think about different interest groups, power and incentive structures that could change the status quo. Both national governments and political parties indebted to private business for their campaigns do not have an inherent interest in driving or enforcing the Right to Information. While actors seek a political mandate, citizens are well positioned to demand detailed information on political commitments, including the commitment on access to information. At the same time, political representatives gain credibility by increasing their commitment to Right to Information. Increasingly, within development programs *pro-forma* efforts are being made to ensure that investments are guided by the needs of citizens and to engage them in participatory approaches. Linking the access to information campaign directly to strengthening the accountability of development programs can reinforce common objectives.

Transparency International's approach to corruption in development is based on the understanding that informed citizen participation in decision-making prevents corruption. This is enshrined in Article 13 of the United Nations Convention against Corruption (UNCAC). By default, in order to participate, citizens need to be informed. At the same time, citizens should have a role in defining which information and evidence informs development visions and policies. This links into the fundamental principle of ownership contained within the Paris Declaration.

Many donors aiming to engage citizens and civil society do not include them pro-actively in an informed, institutionalized and inclusive manner in the design, implementation and monitoring of development cooperation programs. Often access to documents that are necessary to participate meaningfully is missing or not available. Providing access to forums and information from development agencies, political representatives and administrations needs to be emphasized. Right to Information campaigners have

scope to be more pro-active in driving this process and using existing frameworks such as Poverty Reduction Strategy Papers, sector consultations, etc. Finally, campaigns on the Right to Information could capitalize more strongly on the need for political representatives to convince citizens of their credibility and obtain specific commitments on access to information legislation and implementation.

## Remarks

by Sebastian Bartsch, Policy Analyst,  
Governance, Development Co-  
operation Directorate, Organisation  
for Economic Co-operation and  
Development (OECD)

The Development Assistance Committee (DAC) of the OECD has a key role in the implementation of the Paris Declaration on Aid Effectiveness (PD), which marks an unprecedented level of consensus and resolve to reform aid and to make it more effective. Its implementation is spurring ambitious reforms in the aid system. Key principles of the paradigm of effective aid, that the PD helped establish, include: partner country ownership; alignment of donor support with partner countries' national development strategies, institutions and procedures; harmonization of donor actions; managing for development results; and the idea that both donors and partner countries are mutually accountable for development results.

Human rights has risen on the DAC's agenda recently, as was reflected in the Committee's approval of a policy paper on human rights, affirming the importance of integrating human rights more systematically into development (DAC Action-oriented Policy Paper on Human Rights and Development, 2007). It was the first time that any specific policy document on this issue came from the DAC.

The Right to Information is not specifically focused on within the DAC's work. However, there are important implicit links particularly to key aspects of aid effectiveness. While barely mentioned explicitly within the PD, access to information is crucial to the implementation of its commitments. For instance, without access

to relevant information, partner-country actors cannot exercise leadership in developing and implementing their national development strategies. Nor can civil society stakeholders fulfill their roles in the broad consultative processes that are an essential element of the PD's understanding of ownership. Likewise, sharing of information is crucial for harmonization of donor policies and actions on the ground.

Donors' commitment to providing timely, transparent and comprehensive information on aid flows enabling partner country authorities to present comprehensive budget reports to their citizens, is a key element of the PD's concept of mutual accountability. However, the 2006 PD Monitoring Survey revealed that donors are not always attentive to getting information on intended disbursements to the budget authorities in good time and in a usable format. Lack of information and/or the poor quality of information often limit stakeholder access and this in turn limits the potential improvement of decision-making.

## Remarks

by Shushan Doydoyan,  
President, Freedom of Information  
Centre, Armenia

The lessons learnt from the implementation of the Freedom of Information law in Armenia show that if there is no demand from society to put that law into practice, it remains on paper.

In other words, people need to understand how their lives can be improved by using the Right to Information law. Measures such as informative billboards or municipal information desks are practical ways of allowing implementation to take place; however people may rarely use them or understand why the Right to Information is important for improving their own lives. Another difficulty is the type of information disclosed, where community budgets and expenditure reports may not mean much to people or seem relevant to their own life.

The education and training of public officials is crucial to a successful application of that law. In Armenia, 50% know how to apply the law and although many want to work in a transparent way, they don't know

how to do this in practice. There is a lack of management of the information available which leads to problems facing the collection, preservation and use of that information for development. Another problem is how to ensure a constant flow of information from the government. But the government is not the only sector where information needs to be shared more:

- The media is one of the most secretive sectors in the country.
- The NGO community receives funds without the public knowing how efficiently they have been spent.
- Political parties are not disposed to sharing their expenditure figures.

## Remarks

by Nepo Malaluan, Action for  
Economic Reform, Philippines

Often when one country experiences difficulties in a particular area, this is shared by the experience in other countries.

There are certain areas of policy and politics where the information is not necessarily shared with the wider public:

- The budget process.
- The regulation of public utilities.
- The availability of background used for policy reform such as the politics of privatization.
- Bilateral and multilateral agreements
- The infrastructure and development projects, and the financing of these projects

There should be some standard setting for bilateral agencies, so that they can increase their transparency. Even OECD countries are not immune from corruption. There has to be some alignment in terms of the transparency charter, such as that promoted by the Global Transparency Initiative. It would be useful in order to make this happen concretely to have a fund that would support activism in this area. It is essential to have the government's support and focus in promoting access to information, otherwise policies will not lead anywhere.

## Remarks

by Juman Quneis, Media Institute,  
Birzeit University, Palestinian  
Authority

The current political situation in Palestine makes this particular context complicated. In practice, the right to access information means having access to the media. Palestinians often watch international media in the absence of their own.

Press, publication and audiovisual law means that it is easy to ban certain issues and in effect this leads to recurrent censorship. Under the pretext of endangering national unity or of affecting the peace process, the control over the circulation of information is ever present. There is an absence of criticism of political parties and the goals and vision of the Palestinian media remain unclear. The media has a tendency to be revolutionary or tactically orientated.

The Palestinian Authority receives a fair amount of funding from donors annually but there are big problems of accountability and transparency with donors being extremely concerned by their reputation. Problems are also present within the agenda of each donor which is sometimes removed from meeting the Palestinian people's needs.

## Remarks

by Andrei Richter, Director, Moscow  
Media Law and Policy Institute,  
Russian Federation

There is a general trend in most post-Soviet countries asserting an individual's right to seek and receive information. However, a variety of omissions or implementation realities mean that the current realities of access to information within these countries are more complex.

For example, some of the countries do not explicitly guarantee to everyone the right to seek information – even if they do entitle people to receive and disseminate it. Some statutes give general principles for information policy rather than precisely formulating the Right to Information and the procedure

for accessing it. For example, Kyrgyzstan formally guarantees Freedom of Information, but does not list the legitimate exclusions or provide an appeals procedure.

Members of the public say they are unfamiliar with the Right to Information law, whilst state officials add that they lack the resources to handle requests promptly and efficiently. Statistics show an actual compliance rate of 15-20 per cent for information requests in the post-Soviet states.

Consequently, many regard the Freedom of Information statutes as ineffective.

Often media statutes retain special privileges for journalists to access information. If it is important that these should remain during the transition period until mechanisms for all members of the public to access information are implemented in full measure, this special right places an obligation on the media to provide the public with accurate coverage.

Even if provisions exist within the laws which would punish actions such as the concealment or distortion of information, such provisions are rarely used. Members of the public are also either unaware of their rights or unable to exercise them properly. The main issue is the lack of any real liability for withholding information. The Right to Information should include simplified access to public information, a right that should be extended to all persons without exception.



### Salient points focused on in Session 3

Access to information should be a key component for achieving aid effectiveness and it should be more widely focused on by donors.

Citizens should participate in the process of deciding what information is important and not simply have information handed down to them by public bodies.

It would be a good idea to showcase examples where the Right to Information has had a tangible impact on

the development process. UNESCO may gather these positive case studies in a follow-up publication.

Information is the nexus which should bring communities, civil society and governments together in achieving their development goals.



## Points raised during the discussion

Improving their own transparency mechanisms should be prominent on the donor agenda when discussing aid effectiveness. It was hoped that donors will examine this issue more carefully at the High Level Forum on aid effectiveness to be held in Accra in September 2008. It was generally agreed that even though donors may be reticent in making their choices public for political reasons, they have to set the lead in promoting transparency which they would wish for from other development actors.

Only when the Right to Information is visible and integrated into development processes, will it hold its own on the development agenda. But until its importance is fully recognized on that agenda, it will not be as visible as one would hope. This highlights the importance of having a certain group of actors, such as development organizations, take the lead in this matter.

## Round up of the discussion from Working Group 1

### Ensuring the relevance of the link between Right to Information and sustainable development

A recurring concern over the course of the experts meeting was to explain the links between the Right to Information and sustainable development and empowerment. The Right to Information has a direct impact on the way that individuals are able to lead better lives, by enabling individuals to have access to all kinds of information, including general basic information on how to improve their lives. It is of inherent instrumental value that citizens are able to learn more about their own rights – be these political, civil and economic.

If the Right to Information is to be upheld and referred to as fundamental for sustainable development, one needs to analyze this link and the resulting benefits more concretely by contextualizing them into practical uses. Many of the same problems are common throughout the world, which means that numerous priorities are shared by different countries. These include:

- Alleviating poverty.
- Fighting corruption.
- Increasing people's awareness of their rights.
- Ensuring a secure environment.
- Encouraging civil society participation.
- Ensuring viable electoral processes.

The recurrence of these concerns enables us to deduce the kinds of information that would be necessary in understanding and addressing these issues. In this way, the Right to Information must translate into access to relevant information that will improve the condition of people's lives. Therefore, as well as focusing on passing a Right to Information law, one needs to look at all the legal mechanisms which would ensure timely and useful disclosure of that information. To this end, the accuracy and communication of that information are crucial.

Kenya is an example of how open information disclosure is beneficial to politicians:

Recently a constituency development fund initiative was set up in Kenya. It was allocated by the central government and managed by Members of Parliament (MP) and local governments. Some MPs chose not only to share information about the fund – how to apply, what it could help finance- with their constituents; they also consulted them as to what they saw as development priorities in their locality. In contrast, other MPs did not share the information or simply chose to decide for themselves what they saw as priorities for their constituents. The lesson to be learnt for politicians worldwide is that those who were open about the information were re-elected because they were transparent about the information available to them and were seen as representing the interests of their electorate.

## What are the barriers and challenges facing sustainable development through access to information?

People living in poverty face systematic barriers to access to information and yet such access is the precursor to having a voice and participating in their own development.

The most common barriers include:

- Low levels of education.
- Lack of literacy.
- Poor transport and communication infrastructures.
- The unavailability of information in local languages or overly technical language.
- Discrimination in term of gender, income, “caste”, or disability, etc.
- The lack of political will to make the information available.

All these barriers are compounded in fragile states which are often in conflict or post-conflict situations.

Although Right to Information policy, law and administrative procedures are fundamental components of enabling Right to Information access, other factors are also essential. These include adequate communication infrastructures including access both to the Internet and to a plurality of media outlets.

However, perhaps the most important factor is the need for a broad cultural change in the way that communication and information is understood. Countries need to undertake a transition from a culture of secrecy to one of openness – a culture that actively consults the public in decision-making. However, the initiative and responsibility of increased openness does not solely come from governments. It should also be heralded by international organizations, who are well placed to lead by example. Such a transition is underway, but many governments and international organizations have not fully incorporated the idea that civic participation and empowerment are essential in achieving sustainable development.

## Recommendations from Working Group 2

### Lessons learned in the implementation of Freedom of Information legislation in developing countries

Lesson 1: Freedom of information is a requirement for participation and development.

- 1 Governments and legislators must promote and secure economic and social development. The culture of secrecy within governments and state institutions is a breach of that obligation. In order for governments to meet their development objectives, a Freedom of Information regime is required.
- 2 Local groups need access to relevant information in order to voice their perspectives in the process of public decision-making; particularly regarding the development process.
- 3 Different kinds of information are required as a precondition for varying types of citizen participation. The Government must provide the public with a full scope of information regarding its work, no matter whether the evaluation is positive or negative.

Lesson 2: Passing a Right to Information law is fundamental, but insufficient. The implementation of the regime is crucial.

- 1 It is necessary to develop broad public support to access to information (as has been the case with Freedom of Expression). However, broad public support does not mean that every citizen will or should request information. Rather it is the belief that its very existence is a fundamental human right.
- 2 There is a need for Right to Information activists to stress the instrumental value and benefits of access to information for people’s empowerment.

Lesson 3: A good access to information regime requires civil society engagement

- 1 If civil society is not engaged, the law will very probably fail. In order to get civil society engaged, it is necessary to establish the connection between the Right to Information and people's basic everyday needs.
- 2 In order to implement a Right to Information regime, there needs to be a strong civil society backing the process of implementation. In order to ensure this support, it is important to involve civil society in the process of law-making.
- 3 There is a challenge in how to sustain civil society interest even when the expectations on the law and its benefits are not fulfilled in the short term.

Lesson 4: Government is responsible for the implementation

Strong political will and leadership within the government is required for the implementation process to take place correctly. Governments need to understand that transparency and access to information is good, because it improves the development process. Concretely, governments need to:

- Establish a strong and independent oversight body.
- Train officials in Right to Information procedures.
- Identify and support those who make Right to Information a priority.

Lesson 5: Government should provide targeted information for participation

- 1 The right of access to information includes the government's duty to proactively provide information that enables people to participate in the decision-making process and development initiatives. There exists information that only the government can produce. This information should be relevant to particular sectors and groups and should be communicated to them.
- 2 Provision of information should be timely in order to allow effective participation in the implementation of development policies.

## Strategies for strengthening Right to Information advocacy and regimes

- 1 Ensure political will and capacity building in state institutions and governments.
  - (a) Right to Information activists need to change attitudes within government and emphasize that the right (to information and communication) is also good for the government. This should include officials and politicians themselves and their perception of the benefits of the Right to Information.
  - (b) Different public agencies in government should share information and best practices. Free flow of information within the government and among different levels of government is key for good governance and a successful development policy.
  - (c) Incentive structures need to exist within the information system in order to improve openness.
  - (d) There should be a strategy to improve the Right to Information regime as affected by a whole raft of different laws in a particular country.
- 2 Strengthening partnerships in order to build capacity
  - (a) It is necessary to broaden the network of supporters of Freedom of Information in civil society and to identify and build strong links with all relevant actors at the global, regional and the national level including international governmental organizations. More coordination is necessary between international and local groups. Right to Information language and institutions should become integrated within different networks.
  - (b) It is equally important to involve the private sector in the development of an access to information regime. Building up support from the business community is key because it is a natural ally which is sometimes removed from the Freedom of Information movement, especially in developing countries.
  - (c) It is necessary to strengthen advocacy by documenting our knowledge about the benefits of Freedom of Information, in order to cement the links between access to information and development.

- 3 Getting a good law and the recognition of the right at all levels.
  - (a) A good regulation should go along the lines of universally agreed standards.
  - (b) Openness needs to become a part of the development process at all levels, including amongst donors. Aid effectiveness cannot be measured if there is no openness and access to information.
  - (c) NGOs should be more open and transparent.
  - (d) UNESCO should take the lead in the promotion of the Right to Information as well as coordinating with other international actors for pursuing the same goal, specifically within the UN system.

## Closing remarks

by Mogens Schmidt

I am very pleased with the outcome of the discussion, which has proved that the connection between Right to Information and sustainable development is a real and fundamental one. The nexus at which these two components intersect needs to be stressed both to civil society actors and to governments.

UNESCO stands by its mandate, which seeks to ensure the free flow of information, and to this end commits to promoting access to information as a means of achieving sustainable social and economic development.

## Key points from Part 4:

- International jurisprudence around the Right to Information is making strides, such as the 2006 ruling of the Inter-American Court of Human Rights.
- A law is a valuable means to ensure the Right to Information, but it must define exemptions narrowly and should include an appeal mechanism.
- It cannot thrive in the face of other laws that enshrine secrecy and curtail Freedom of Expression.
- In addition, if the legislation is to be pro-poor, there should be provision for pro-active disclosure, and not only reactive systems to applications.
- Law should encompass collection, co-ordination and provision of information, and protect whistle-blowers.
- Law also needs an active civil society to prevent it from being a mere paper-document, and the process of law-making is also important in this regard.
- Civil servants need training to shift them away from a culture of secrecy.
- The UN system, international aid bodies and the media should practice information transparency.
- Environmental issues that could pose a public danger may oblige states to collect information from private parties in this regard.
- The development and anti-corruption agendas should pay more attention to the Right to Information, especially as regards local issues.
- Freedom of Information can be ineffective if citizens do not know about it, and if state compliance is poor.
- Information disclosure such as in Kenya can be of benefit to politicians and they need to be sensitized to this.
- Aid effectiveness cannot be measured if there is no openness and access to information.

# PART 5

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## **Impact of Right to Information on Development:**

### **A Perspective on India's Recent Experiences**

**By M. Ansari, Information Commissioner,  
Central Information Commission, New Delhi**

This paper was delivered as part of a lecture series on Potential of Information and Communication Strategy for Development, organized by the Communication and Information Division, and delivered at UNESCO Headquarters, Paris, France, on 15 May 2008.

# Preface

It is almost six decades that all the member countries of United Nations resolved to promote Freedom of Information as a fundamental human right. Since then, the progress made by different countries in providing legal framework for effective implementation of Freedom of Information widely differs for different reasons, including lack of functional democracy. There are, therefore, pronounced differences in socio-economic benefits derived from freely available ideas, knowledge and information for exploring and exploiting opportunities for personal and professional development.

At the outset, I propose to briefly make a mention of the factors that have led to the passage of the law on right to know in India. In the backdrop of salient features of the Right to Information Act, I shall subsequently present an assessment of the impact of the Act on good governance and development. This would enable us to ascertain whether or not the objectives of the Act are being realized. Finally, I shall discuss the ways and measures for democratization of knowledge resources with a view to ensuring people's empowerment for development as well as to enhance their options for raising and maintaining a decent standard of living.

## 1 Introduction

Until 2005, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision-making process that affected or harmed him. Without access to relevant information, it was not possible for a common man to participate in a meaningful debate on political and economic options or choices available to him for realizing socio-economic aspirations.

The Constitution of India (u/s 19) has guaranteed the Freedom of Expression and speech. Even then a citizen had no legal right to know about the details of public policies and expenditures. And, therefore, it was not possible for a common man to observe and scrutinize public actions with a view to providing feedback for rectifying the deficiencies in policy planning and the execution of programs.

Under the Official Secret Act, 1923, the entire development process has thus been shrouded in secrecy. The people who voted for the formation of democratically elected governments and contributed to the huge costs of financing public activities, had no legal rights to know as to: what process has been followed in designing the policies affecting them; how the programs have been implemented; who the concerned officials are who are associated with the decision making process and execution of the schemes and why the promises made for delivery of essential services to the poor have not been fulfilled?

Not surprisingly, the culture of secrecy beginning from the colonial rule and continuing up till the first six decades of Independence fuelled rampant corruption, in which large amount of public money was diverted from development projects and welfare schemes to private use through mis-use of power by the authorities. Lack of openness in the functioning of the Government, provided a fertile ground for breeding inefficiency and lack of accountability in the working of the public authorities, which, in turn, has perpetuated all forms of poverty, including nutritional, health and educational. In order to rectify the deficiencies in the mechanisms for ensuring the reach of entitlements, particularly the basic human needs, the people in general and NGOs, in particular, demanded greater access to the information held by the public bodies, which was acceded to by the Government in 2005.

Against this backdrop, the Right to Information Act 2005 was enacted by the National Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. The major concern of the Act is to allow for greater probity in the functioning of the government departments, so as to promote transparency and accountability in the working of the public bodies and contain the scourge of corruption, which are critical for ensuring good governance.

## 2 Right to Information: A response to paradigm shift in development approach

Of the major forces which have, of late, led to a re-thinking on issues that affect economic development, at least three of them are most important.

These are: the sharing of knowledge and communication strategies for dissemination of information; the involvement of NGOs in designing of policies and implementation of schemes; and the adoption of citizen-centric approach to development. We may briefly outline the significance of these factors, particularly in the context of the emerging development scenario.

## 2.1 Democratization of information and knowledge

Information and knowledge are critical for realizing all human aspirations, such as an improvement in quality of life. In the knowledge society, in which we live today, acquisition of information and knowledge and its application have intense and pervasive impact on productivity gains. People who have access to information and who understand how to make use of the acquired information in the processes of exercising their political, economic and legal rights become empowered, which, in turn, enables them to build their strengths and assets.

In view of this, almost every society has made efforts for democratizing knowledge resources by way of putting in place the mechanisms for free flow of information and ideas so that people can access them without asking for it. They are thus empowered to make proper choices for participation in development process.

The efforts made thus far to disseminate information and knowledge through the use of communication technologies such as radio and television, have yielded positive results. Sharing of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender biases, etc., have, overtime, made significant contributions to the well being of poor people. Every individual or section of the society, whether working in farm, industrial or services sectors, requires a wide range of information to be able to effectively function in the knowledge and technology driven economy.

Democratization of information and knowledge, by way of creating conditions for sharing among the people, who are partners in development, is critical to the task of equalizing opportunities for development.

In view of this, the Right to Information seeks to set up a facilitation process for free flow of information, which forms the basis for a healthy debate on issues of vital importance to every section of the society.

## 2.2 Increasing demand by NGOs for participation in development activities

Seen against the backdrop of inefficient implementation of development programs, the NGOs/self-help groups have demanded at various forum, for creating conditions for democratic governance. It has been alleged, and that not without a basis, that the implementing agencies have frequently indulged in corrupt practices leading to diversion of resources from public use to private purposes. And, that the entitlements of the poor have not been assured, mainly in respects of food grains, jobs, health care facilities, basic education, etc. Poverty of all forms has thus been perpetuated, which is a major drag on the overall development of the country.

There are umpteen numbers of cases which demonstrate that the role of NGOs in exposing corruption and in providing necessary feedback for designing policies and effective implementation of the programs has been commendable. For instance, NGOs have exposed the inclusion of fictitious names in the list of beneficiaries, under the schemes like subsidized food grains, employment guarantee scheme for poor, domestic gas, medicines, reservation of seats in private schools for the children from the poor families, etc.

Prior to the implementation of Right to Information Act 2005, at least eight Indian States had enacted laws on Freedom of Information since 1997. People in these states took recourse to the various provisions of transparency norms to obtain information held by the public bodies. The NGOs also conducted social audits of the schemes, particularly the poverty alleviation programs, the outcomes of which have resulted in appropriate reforms in governance of the projects. This forms the basis for replicating these experiences throughout the country.

In view of commendable contributions of NGOs in carrying out the programs in partnership with the public bodies, the Right to Information Act envisaged

providing a framework for promoting interface between the citizens and the government, such that informed decisions could be taken at all levels by the functionaries of the governments. And, the projects should be executed 'under the sunshine' to allow for reasonable scrutiny by the citizens.

### 2.3 Citizen-centric approach to development

An equally important concern of the development planners has been to evolve a citizen-centric approach to development. As people live in diverse socio-economic and geographic conditions, the approach to fit for all sizes, particularly in respect of poverty alleviation programs, has failed. Without obtaining necessary feedback from the people about their socio-economic aspirations and the manner in which the accepted goals are to be realized, it is not possible to design and implement schemes that may eradicate poverty and liquidate illiteracy. The Right to Information therefore empowers every citizen to take charge of his life and make proper choices, on the basis of freely available information and knowledge, for effective participation in political and economic processes or activities.

Briefly, the Right to Information has been implemented in response to the major challenges of development, mainly the urgency for democratization of information and knowledge which are vital for equalizing opportunities for development, increasing NGOs participation in decision making and democratic governance, and for evolving citizen-centric approaches for addressing the concerns of every member of the society.

In the following paragraphs, an attempt is made to present the salient features of the Act and to examine the extent to which its stated objectives are realized.

## 3 Salient features of Right to Information Act, 2005

The Right to Information is inherent in democratic functioning and is a precondition to good governance and realization of all other human rights, including education and health care that have intense and pervasive impact on all the human activities. Specifically, the main objectives of India's law on Right to Information

are: to operationalize the fundamental Right to Information; to set up systems and mechanisms that facilitate people's easy access to information; to promote transparency and accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision-making.

The Right to Information is based on the following key concepts: the right of the public to access the information and the corresponding duty of the government to meet the request, unless specifically defined exemptions apply; and the duty of the government to proactively provide certain key information even in absence of a request.

The Act promises to make the Right to Information more progressive, participatory and meaningful, as it encourages the common citizen to enthusiastically participate in the whole process of governance. The citizens are not only free to ask for information from the Government, but also have the right to get it. The scope of the Act extends to all authorities and bodies under the Constitution or any other law, and inter alia includes all authorities under the Central Government, State Governments and Local Bodies. The non-governmental organizations (NGOs) substantially funded, directly or indirectly, by the public funds also fall within the ambit of this Act.

A duty has been cast, in section 4 of the Act, on every public authority to *suo motu* provide to the public with the information as prescribed therein, so that the public has to take minimum recourse to the use of this legislation for obtaining information. The procedure of securing information as provided in section 6 of the Act, prescribes a procedure which is very simple. A citizen has to merely make a request to the concerned Public Information Officer (PIO) specifying the information sought by him. The fee payable is reasonable and information is to be provided free of cost to citizens living below the poverty line. To assure that the information sought is provided quickly, section 7 of the Act, makes it mandatory for the PIO to provide the information within 30 days. If the information requested concerns the life or liberty of a person, it has been made mandatory to provide it within 48 hours of the receipt of the request. The Act provides for penalties in case of failure to provide information in time, or for refusing

to accept an application for information, or for giving incorrect, incomplete or misleading information, or destroying information, and so on. In addition, the Information Commission has also been empowered to recommend disciplinary action against offending government servants.

The Act establishes a two-tier mechanism for appeal. The first appeal is to an officer within the organization who is senior in rank to the PIO. The second appeal is to the Information Commission. The jurisdiction of the lower court is barred under section 20 of the Act. The categories of information exempted from disclosure in this Act are kept to a bare minimum. Even the exemptions are not absolute if disclosure of the information outweighs the harm to the public authorities.

Even in the case of security and intelligence agencies and organizations, which are exempted from the provisions of this Act, if there were cases of allegation of corruption and human rights violation, such exemption would not be available. In cases of allegations of violation of human rights, information would be made available after the approval of the Information Commission. Thus, this Act paves the way for an empowered citizen, as well as an alert, efficient, responsive, transparent and accountable government.

The Central/State Information Commission has a major role in enforcing the implementation of the provisions of the Act as well as for educating the parties, mainly information seekers and providers. The Commission is vested with the power of a court. Under Section 20, the Commission may impose a penalty on the concerned officials for denial of information and recommend disciplinary action against the errant officials who do not comply with the requirements of the Act. Moreover, under Section 25(5) of the Act, the Commission may also advise the appropriate Government in the matters of maintenance and preservation of records and the norms for disclosure of information with a view to enabling the people to observe and scrutinize the decision-making process. The powers vested with the Information Commissioners, who are appointed by the President of India/Governor of a state, ensure effective implementation of the Act.

#### 4 Assessing the impact of Right to Information on the elements of good governance

The Right to Information Act was implemented in October 2005. Though a period of less than three years is too a short period to assess its success, it may be worthwhile to analyze some evidences, for developing an understanding on how it works and what it does or does not do. We, therefore, propose to find an answer to the question: whether the objectives of the Act are being realized?

It must be admitted that the assessment of the Right to Information on good governance and development is indeed a daunting task, since data are lacking to permit methodological rigor of analysis. However, reliance is made on:

- the responses of the Right to Information Act requesters and the activists, particularly during the course of hearings conducted by the Author in the cases listed before the Commission to resolve the disputes between information seekers and providers;
- media reports on the issues pertaining to Right to Information matters;
- and preliminary research studies and publications of results, mainly those relating to corruption and accountability of public bodies.

The assessment of impact is proposed to be made in terms of the stated objectives of the Right to Information Act, which are outlined in its preamble, as under:

*An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.*

It is stated furthermore that:

*Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

In addition to the above, the Prime Minister of India, while piloting the Bill for its passage by the National Parliament, stated on May 11, 2005:

*I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man's concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.*

Evidently, the major objectives of the Act are to achieve a *greater transparency* in the functioning of public authorities, improvement in accountability and performance of the Government, promotion of *partnership between citizens* and the Government in decision making process; and a *reduction in corruption* in the Government departments.

All these parameters are critical elements of good governance. An attempt is therefore made below to examine the extent to which the Right to Information has been successful in influencing the above factors in a desirable direction.

#### 4.1 Greater transparency

With a view to ensuring maximum disclosure of information regarding government rules, regulations and decisions, every public authority is mandated to *'maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act'*.

The public authorities are therefore required to make pro-active disclosures through publication of relevant documents. Besides, the public authorities are also required to *'provide as much information suo motu to the public at regular intervals through various means of communication, including Internet, so that the public have minimum resort to the use of this Act to obtain information'*.

In compliance of the above provisions of the Act, all the levels of the Government – the Centre, States and Local Bodies, including Village-level and Panchayats

– have put records in public domain, through publications as well as Internet in the regional languages. And, to facilitate the access to information, a citizen has the right to:

- inspection of work, documents, records;
- taking notes, extracts or certified copies of the documents or records;
- taking certified samples of material;
- obtaining information in electronic form, if available.

Thus, all the public authorities have duly placed the information in public domain, and a citizen has the right to observe as to what is going on inside an organization. In the cases where the information sought for is not provided within the stipulated period of 30 days or the information furnished is incomplete, misleading or incorrect, a requester is free to file a complaint or appeal before the Information Commission (IC), for necessary directions to the parties as per the provisions of the Act.

The Commission has the mandate, *inter-alia*, to impose a penalty and/or to recommend disciplinary action against the information providers, if they are held responsible for obstructing the free flow of information. Accordingly, information seekers and the NGOs have put pressure on the public authorities for promoting a culture of openness in the functioning of the government. A large number of PIOs have already been fined for violation of the provisions of the Act, which has, in effect, created conditions for providing information to a requester.

Due to perceived benefits of transparency and accountability, Right to Information Act applications have annually increased by 8 to 10 times. There is thus massive use of the right to know. Of the millions of applications for information, less than five per cent have been denied information under various exemption categories.

In effect, thus, there is greater transparency than before in the working of the public bodies. In a large number of cases, the Commission has ordered the provision of the details of decision-making processes, which include file notings, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure,

the lists of beneficiaries of the Government's subsidized schemes, such as, food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls under employment guarantee schemes, etc. The disclosure of vital information, such as above, has thus resulted in checking corrupt practices in delivery of services and ensuring the reach of entitlements to the poor. The disclosure of information relating to the use of funds allocated to rural employment guarantee scheme, MLA/MP local area funds, etc. has contributed to advocacy in favour or against the policies and/or political leaderships.

## 4.2 Greater accountability

The Right to Information provides people with a mechanism to access information, which they can use to hold the government to account or to seek explanation as to why decisions have been taken, by whom and with what consequences or outcomes. In addition, every public authority is required *'to provide reasons for its administrative or quasi-judicial decisions to the affected persons'* u/s 4(1)(d) of the Act.

Until the implementation of the Right to Information Act, it was not possible for an ordinary person to seek the details of a decision-making process, which was found most often, to be ineffective in terms of its outcome. It was, therefore, not possible to hold a free and frank discussion on issues of common concern of people or to fix responsibility for any action. Such an era of darkness in policy planning is over.

The information regime has, in effect, created conducive conditions for every person to have a better understanding of how the government works or how a particular decision was reached. Such a chance given to people empowers them to make appropriate choice of leadership and the policies that affect them. This has begun to happen with salutary effects on delivery of socioeconomic services, particularly for the poor.

For instance, being full aware that the records pertaining to the decision-making process, including file notings, are required to be put in public domain, the concerned officials at all levels objectively record the reasons for the observations made by them. Attempts are also made to effectively implement the programs as

the relevant details are proactively disclosed. In effect, thus, the quality of decision making and delivery of services has duly improved.

Also, due to effective implementation of the flagship programs for alleviation of wide-spread poverty, the mis-match between planned targets and actual realization has been minimized. Specific mention may be made about the following schemes, which have been provided necessary financial wherewithal as well as administrative support by the Centre and the States for effective implementation of the programs:

- National Rural Employment Guarantee Scheme (Assured jobs);
- Sarwa Shiksha Abhiyan (Education for all);
- Mid-day Meal Scheme;
- Drinking Water Mission;
- Integrated Child Development Services;
- National Rural Health Mission;
- Bharat Nirman (Rural Infrastructure, mainly road, electricity, drinking water, sanitation etc.);
- Indira Avas Yagna (Shelter for poor).

All these programs and several other similar schemes covered under the MP/MLA Local Area Development Fund aim at providing basic human needs for maintaining a decent standard of living. These schemes, moreover, enable people to build their strengths and abilities to realize their socioeconomic objectives.

Even before the enactment of the Right to Information, similar programs were implemented but the achievements were always below general expectations. The lack of a legal right to know, to scrutinize the public action and to question the authority are the main explanations. With empowered citizens and free flow of information, there is significant quantitative and qualitative improvement in the delivery of services and realization of benefits of the programs designed and implemented for the poor.

For instance, disclosure of information relating to:

- the attendance of staff in schools has helped in checking teachers' absenteeism and students' drop out;
- the attendance of doctors and nurses at primary health centers has led to improvement in health care facilities in rural areas;

- the details of supplies and distribution of food grains through ration shops has assured the reach of entitlements to the beneficiaries;
- the supply and demand for petroleum products, such as domestic gas, has reduced black marketing;
- muster rolls and beneficiary of employment guarantee schemes has exposed corruption and ensured effective delivery of services to the poor; and
- the allotment of retail outlets (petrol pumps) and agencies for distribution of LPG gas has ensured fair play and objective decisions, as reflected in a substantial reduction in litigation cases on the matter.

As a result of increased governmental accountability in delivery of services, rural to urban migration has, of late, decelerated, as widely reported in the media. This is also corroborated by the findings of a national level survey (forthcoming), jointly conducted by the Transparency International and the Centre for Media Studies. The survey has revealed that in the opinions of 40 per cent of respondents (all below the poverty line), corruption and malpractices in implementation of poverty alleviation programs have declined due to the government and its functionaries at various levels being made accountable induced by the Right to Information Act.

The Right to Information route has generally been followed by a large number of people for resolving disputes between the parties on the issues pertaining to the decisions on administrative and commercial matters. Disclosure of information regarding the process of decision-making or the grounds for action taken, has helped resolve disputes on such issues as claimed for refund of taxes paid by the individuals/companies, settlement of insurance claims, payment of dues of contractors, process of sanction and recovery of loans, etc.

Since a reply is to be given within thirty days, disputes have been resolved faster. A large number of grievances pertaining to service matters, mainly promotion and pension benefits have also been redressed due to openness and promptness in taking action on requests made under the Right to Information.

As a result, the filing of appeals in the courts has substantially declined, as reported, for instance, by the oil companies, which grant dealerships for distribution

of petroleum products. The courts have also advised the petitioners to obtain information under the Right to Information before filing the cases before them. It thus shows a strong and positive impact of Right to Information on transparency and accountability of the Government.

#### 4.3 Promotion of citizen-government partnership

The Right to Information Act provides a framework for the promotion of citizen-government partnership in carrying out the programs for the welfare of the people. The principle of partnership is derived from the fact that the people are not only the ultimate beneficiaries of development, but also the agents of development. Stakeholders' participation leads to better projects and more dynamic development.

Under the Right to Information regime, citizens' participation has been promoted through (a) access to information and involvement of affected groups/communities in design and implementation of projects; and (b) empowerment of local government bodies at village level through the involvement and cooperation with NGOs or self-help groups.

The pro-active disclosure of information has enabled the beneficiaries, mainly through NGOs, to assume a central role in design and execution of projects. The Right to Information Act has instilled a wider sense of ownership in the development activities.

Besides this, access to information has enabled the people to participate in economic and political processes through a dialogue between people and government officials or public campaigns on public policies.

For instance, information obtained under the Act, in respect of utilization of funds allocated under rural employment guarantee scheme, has been used by NGOs for campaigns in favour of, or against, political leaders during recent elections in some states, with a desirable impact on political process. Almost all the welfare projects, particularly at Village and Panchayat levels, are being designed and developed in cooperation and support with the NGOs or affected persons, with a view to raising the satisfaction level of people.

## 4.4 Reduction in corruption

Lack of transparency and accountability encourage government officials to indulge in corrupt practices, which result in lower investments due to mis-use or diversion of funds for private purposes. As a result, the government's social spending yields no worthwhile benefits, because, for instance, the teachers do not teach, doctors and nurses do not attend health centres, ration card holders do not receive subsidized food grains and the promised jobs are not provided to the people. In the process, this perpetuates poverty and harms the poor. It creates an environment of distrust between the people and the government, which impinges upon development and jeopardizes democratic governance.

Under the Right to Information regime, there is unprecedented transparency in the working of public departments. As a result, there is better understanding of the decision-making process and greater accountability of government. This has led to a reduction in corruption in the country as evident from the following:

- The Transparency International (TI) has consecutively reported in the last two years that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the Right to Information Act.
- The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programs that have been implemented for poverty alleviation. At least 40 per cent of the respondents have reported that corruption has declined.
- It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is very low.

## 5 Future of the Right to Information Act: tasks ahead

A major challenge is to develop capacities for access to information. The capacities of both the public authorities (i.e. the duty – bearers) and the citizens (i.e. the claim holders) may have to be enhanced, for which a two-pronged strategy would be needed.

First, a comprehensive information management system (IMS) should be developed by each public authority for storage and retrieval of data and information that may be shared with anyone who seeks to inspect and use the information for development purposes. Not only the institutional capacity-building is needed, however. The individuals associated with various public activities also need to be trained and equipped with facilities to cope with the demand for sharing of information.

Second, in order to properly manage the demand for information from the NGOs in general, and the citizens in particular, a concerted effort would be needed to create mass awareness among the people to promote information literacy. A multimedia approach should be adopted to educate and train people as to how to decide and select what information should be sought for, from where and how. Besides, they should be educated as to how to make best use of information for effective participation in economic and political processes. This alone can ensure cost-effective use of the provisions of the Right to Information Act.

The Right to Information Act provides a broad framework for government and citizens' interface to design and monitor relevant projects, contain corruption, ensure accountability and to mutually share the responsibility for development. Under the Act, the public authorities are required to adopt open and transparent procedures and methods of delivery of services. They ought to reveal what they do, how they do and what are the outcomes of the policies, programs and public expenditures. In a democratic society, the citizen, NGOs and media have the right to know as to how they are governed and they also have right to exercise their options to indicate how they ought to be governed and served by the Government. It is important, therefore, to ensure the following:

### 5.1 Proactive and suo motu disclosure of information

Under Section 4 of the Act, all the 'Public Authorities' are required to make proactive disclosure of information. Almost the entire gamut of their activities and the manner in which they are executed are to be disclosed. The issue is how to present and capture the relevant information that can be of use to the stakeholders for

realizing their rights. The computerization of records and use of IT resources to ensure transparency in functioning of different departments should be accorded high priority. The information should be disclosed on suo motu basis so that a citizen does not have to resort to the provisions of the Right to Information Act. Almost all the Ministries and Departments have put up information on their websites, which needs to be examined to assess the adequacy of their details for analysis and use of information.

## 5.2 Promote information literacy

The Act empowers every citizen to seek information and to gain ideas and acquire new knowledge to improve quality of life as well as to participate in the effective governance of public authorities. The issue is how to promote information literacy among people to enable them to decide what to ask for, how to ask and how to make good use of information, so that they can effectively participate in the process of development, including control of corruption.

The issue of promotion of information literacy among both educated and not so well educated citizens is critical, because the people and the government functionaries share the responsibility of expediting the process of development. Accordingly, under Section 26 of the Act, provisions have been made for advancement of understanding of the public through education and training programs. A multimedia strategy for promotion of information literacy should be designed by all the public authorities, including educational institutions, in collaboration with media agencies so as to ensure a greater interface between the stakeholders. The task is challenging, as less than ten per cent of the poor have some awareness about the law on Right to Information and the manner in which it could be used by them to claim for their entitlements. The potential of IT resources and widespread educational institutions of all types and levels should be exploited to promote information literacy.

## 6 Concluding remarks

The Right to Information has a significant bearing on good governance and development. India's economy in the last three years has grown at unprecedented high

rate of 8 – 9 per cent per annum, which also coincides with good governance induced by the Right to Information Act, as discussed above. The implementation of the law on the right to know and setting up an information regime therefore augurs well for strengthening the knowledge society as well as for increasing the accountability of public bodies.

The trend in improvement in delivery of services, due to the perceived good governance, provides sufficient indication for alleviation of poverty and liquidation of illiteracy in a much shorter duration than envisaged for the realization of Millennium Development Goals (MDGs).

The Right to Information Act has enabled people to participate in the process of development, which has resulted in reduction of corruption. It has just begun to happen for the first time for establishing an open and participatory governance system that protects and promotes the socio-economic interests of every citizen, particularly the poor, who are receiving the benefits of development as per their entitlements.

As the functioning of public authorities becomes more transparent and ensure proactive disclosure of the policies, programs and their outcomes, there will be greater participation by people in every sphere of development. It is important therefore to enhance the capacity of public authorities as well as the citizens to develop awareness and understanding of information, to ensure its effective use for the benefits of citizens. In effect, endeavours should be made to increase the effective demand for improvement in delivery of services.

Only about ten per cent of over 300 million population of the poor are aware of the Act, as a tool for reaping the benefits of assured entitlements. This percentage calls for making concerted efforts by the Government, NGOs and media for creating mass awareness among the people, and particularly to educate them, as to how to seek information and how to make the best use of such acquisitions of wealth of knowledge in every day's life.

The role of NGOs is critical in respect of both to constantly exert pressure for maximum disclosure of information relating to public activities and to participate in the design and implementation of socio-economic programs.

The task is challenging but easy to cope with provided of course mass media like radio and TV channels are utilized to reach the target population.

In view of diversity of situations in which people live in different parts of the country, a multimedia approach should be adopted to promote information literacy and to democratize knowledge. These in turn, are vital for people's empowerment, ensuring the reach of entitlements to the beneficiary groups and for equalizing opportunities for sharing the benefits of development.



### Key points from Part 5:

- India's Right to Information Act 2005 ended decades in which development processes had not been transparent.
- The previous culture of secrecy had fuelled rampant corruption.
- Before the 2005 Act, eight Indian states had enacted laws on Freedom of Information.
- The 2005 Act exempts certain types of information from disclosure, but it also provides for disciplinary action against civil servants who illegitimately refuse requests.
- The legislation provides for rapid and easy access, and free of charge requests for the very poor.

- It also requires public authorities to provide information proactively, including through the Internet, so as to reduce the need for citizens to resort to requests.
- An Information Commission enforces the Act and educates the stakeholders.
- Civil society is now able to participate in development, which becomes a citizen-centric process.
- Many state structures are complying with putting records into the public domain, and a large number have been fined for not doing so.
- Greater transparency as a result of the Act has checked corruption in delivery of services and benefits.
- There is greater accountability with officials having to record reasons for decisions.
- Among the results are reduced absenteeism by educators and medical personnel, and improved distribution of entitlements to beneficiaries.
- Citizen-government partnerships have been promoted in terms of design and implementation of projects at the local level, especially by means of pro-active disclosure of information.
- Various bodies report declining corruption in India since the Act.
- Improvements still needed are in the realm of information management, and training of officials.
- Intensified information literacy efforts are needed with civil society and citizens. Only 10 per cent of the poor are aware of the law.



# Annexes

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## Annex 1

### Maputo Declaration: Fostering Freedom of Expression, Access to Information and Empowerment of People

We, the participants in the UNESCO conference on “Freedom of Expression, Access to Information and Empowerment of People,” meeting in Maputo, Mozambique, on World Press Freedom Day, 3 May 2008,

**Recalling**, on the commemoration of the 60th anniversary of the Universal Declaration of Human Rights, Article 19 of that Declaration, which states: “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”,

**Reaffirming** that freedom of expression is a fundamental right, and essential to the realization of other freedoms set forth in international human rights instruments,

**Acknowledging** the **Declarations of Windhoek**, of **Alma-Ata**, of **Sana’a**, of **Santiago**, and of **Sofia**, which stress that establishment, maintenance and fostering of an independent, pluralistic and free press is essential for democracy and for development,

**Recognizing** that the commitments in the **Millennium Development Declaration** require two-way communications that foster dialogue and allow citizens and communities to speak out, express their aspirations and concerns, and participate in the decisions concerning their development.

**Underscoring** the provisions of the **Medellin Declaration** of 3 May 2007 on Safety of journalists and Impunity, the **Colombo Declaration** of 3 May 2006 on Media and Poverty Eradication, the **Dakar Declaration** of 3 May 2005 on Media and Good Governance, the **Belgrade Declaration** of 3 May 2004 on Media in Violent Conflict and Countries in Transition,

**Recognizing** that freedom of expression and access to information are essential to democratic discourse and open and informed debate, thereby fostering government transparency and accountability, peoples’ empowerment, and citizens’ participation,

**Noting** the contributions of free, independent and pluralistic media to sustainable and human development, poverty eradication, good governance, peace and reconciliation, sound environments, and respect for human rights,

**Aware** that technological advances make possible increased and more pluralistic information flows within and across borders,

**Stressing** the need for affordable access to Internet connectivity and ICT for information-sharing, as well as the need to promote media literacy,

**Emphasizing** the particular contribution that all three tiers of broadcasters – public service, commercial and community – make to media diversity and, in particular, the role of community broadcasters in fostering under-represented or marginalized populations’ access to information, voice and participation in decision-making processes.

**Honouring** those journalists and other media workers who seek, through the dissemination of accurate and fair reports, to nurture freedom of expression and access to information;

**Reaffirming** the condemnation of violence against and harassment of journalists and other media workers,

## Call on Member States:

To foster the free flow of information through policies founded on the four key principles of inclusive knowledge societies: freedom of expression, equal access to quality education, universal access to information, and respect for cultural diversity;

To vigorously implement commitments to freedom of expression through a legal and regulatory environment that respects press freedom and independence, and enables media diversity;

To recognize access to information as a key contribution to the effectiveness of development aid, both from the donor and recipient countries' perspectives;

To provide legal guarantees for the right to information which reflect the principles of maximum and facilitated disclosure, protection of whistleblowers, limited scope of exceptions, independent appeals mechanisms and strong proactive disclosure rules, as well as to ensure proper implementation in practice of these guarantees;

To ensure that public bodies respect the principles of open government, transparency, accountability and public access to information;

To promote broad awareness of legislation and of policies on access to information held by public bodies, among civil servants and officials as well as by the media and the general public;

To foster an environment in which new communication and information technologies are used to narrow the digital and knowledge divide in developing countries and to provide a plurality of media options and access to news;

To prevent measures that hinder freedom of expression on Internet, particularly website censorship;

To include information and media literacy in school curricula and promote such skills to ensure greater public access to information useful in peoples' daily lives through Internet and other IT resources and thus enhance citizens' participation in public debate;

To create an environment which promotes the development of all three tiers of broadcasting and, in particular, to improve conditions for the development of community media and for the participation of women within the community media framework.

To abolish insult laws that impose drastic restrictions and penalties on journalists;

## Call on media outlets, professional associations and industry:

To raise public awareness about human rights, especially the right to freedom of expression and the right to information;

To publicize the availability of, and work to broaden, free access to information as a contribution to participation by citizens in public debate;

To commit themselves to report fairly and to develop and respect the highest journalistic standards;

To facilitate the participation in media of under-represented or marginalized populations and linguistic minorities;

To encourage inclusion of young people in the media and to developing their media and information literacy skills;

To utilize fully the potential of legislation on the right of access to information held by public bodies, for investigative reporting as a means to reinforce the media as public “watchdogs” of the interests of the citizenry;

To promote best practices in community and associative media as well as in national and general interest media outlets;

To improve journalists’ and other media workers’ safety and working conditions;

## Call on UNESCO:

To sensitize governments, legislators and public institutions on the importance of freedom of expression, including freedom to access, to produce and to share information;

To promote freedom of expression as a universal human right and to facilitate development of general principles and best practices on access to information;

To foster measures for media and information literacy;

To facilitate access to information and communication technologies and infrastructure in developing countries, as well as the development of all media, including for and by local communities;

To raise awareness among civil society organizations, governments and regulatory bodies, and the general public on the importance of sustainable and pluralistic broadcasting environments;

To use this Declaration as a reference for activities reaffirming UNESCO’s status as the United Nations lead agency in communication and information and to promote the Declaration’s principles and recommendations in the United Nations system.

## Annex 2

### Speech by Lydia Cacho Ribeiro at UNESCO World Press Freedom Prize 2008 Award Ceremony

Mr President, Mr Director General of UNESCO, Ministers, Ladies, Gentleman and fellow colleagues:

I feel honored to be with you tonight.

This award may not protect me from death threats or from death itself. But it certainly helps to protect my written work and to enable a broader audience to know and understand the Mexican reality and the impact of the global crimes of trafficking in persons and of child pornography.

By honoring me tonight you are recognizing the talent of my teachers, and of the hundreds of women, men and children who have trusted me with their personal histories, their tragedies and their triumphs. Somehow they knew I would honour their trust by doing my job as a journalist.

When I was tortured and imprisoned for publishing the story of a network of organized crime in child pornography and sex tourism, I was confronted with the enduring question of the meaning of life. Should I keep going? Should I continue to practice journalism in a country controlled by 300 powerful rich men? Was there any point to demanding justice or freedom in a country where nine out of every ten crimes are never solved? Was it worth risking my life for my principles? Of course the answer was... yes.

Mexico, my homeland, is a country of 104 million people, a land of great landscapes, of magnificent rivers and unending green fertile mountains. Nonetheless Mexico exports 400 000 people every year – men and women – who flee to the United States to escape hunger, poverty and violence.

I grew up in a middle class neighborhood in Mexico City. My mother, a feminist psychologist, took me to the slums around town and told me that those kids – kids who were just like me – had no food and no chance to get an education. In this way she prepared me to be a citizen and what is now called a human rights activist.

I was born a woman. I found in feminism a philosophy based on equality and peace. It led me to view life from a gender perspective. For years I have lived and moved between two worlds: being a feminist advocate against violence is the way I act as a citizen; being a journalist is the way I practice my profession. Every day I try to enlarge my ability to listen, to understand, to feel empathy, to question, to be truthful, to be ethical. By listening to peoples' stories I learn ways to add insight and perspective to my coverage of human tragedy and human development.

And also I test – as many of my colleagues do – my ability to stay alive.

I am 45 years old, and I have spent most of my life trying to understand human nature. What makes us able to survive, to change, to evolve, to save or to harm each other? I have been watching the news and reading newspapers most of my life. I thought I understood the macro structures of oppression. I knew how the political system works to protect the rights of the elites, at the expense of the majority. But I was not aware what it felt like to be the subject of repression myself.

When the mechanisms of state repression were used against me, I found myself in the strange position of being seen as a heroine simply for exercising – with some dignity – my right to freedom and justice. Thousands of people marched on my behalf. Most of the Mexican media covered my case for almost two years, until the powerful were finally able to buy the silence of some of them.

Millions of citizens echoed my demand for freedom of the press and for the rights of the child victims I wrote about. I stood before the Supreme Court with a heart full of hope that they would defend our constitutional right to tell the truth without being tortured or incarcerated. Many thought there was so much hard evidence in this case that there would be no room for corruption. It seemed all of Mexico was hoping for a chance to believe that change was possible.

Standing against us was a handful of well-dressed lawyers in dark blue suits who defended the politicians I had accused of an unsavory relationship with pedophiles. But this handful of men was able to lobby the majority of Supreme Court judges to dismiss my freedom of the press case relating to child pornography and organized crime. And so I lost and so did my country.

But here I am. I was lucky enough to elude death. I had the opportunity to report my own case, to live inside the story of an orchestrated campaign to protect the marriage between organized crime, businessmen and a corrupted government. But most of all I had the chance to keep my promises to the little girls who were abused by pedophiles and child pornographers, and who asked me to tell their stories.

We journalists tend to believe that the shock provoked by reading such stories cannot fail to unite people of good will. That is one of the reasons we keep going against all odds. We know the power of compassion. As journalists we should never become messengers of the powers that be. Nor should we surrender to fear and self censorship.

And that is why we are here in Mozambique. We know there is something wrong with a world that favours a war economy instead of education, and that favors silence instead of freedom and truth. A world in which millions of child orphans of the HIV-AIDS pandemic are unimportant to the rest of the world. There is something wrong in a world where racism and sexism separates us from each other. This gathering symbolizes our determination to keep on going...with cool heads and warm hearts...and to keep on writing. To keep on living with hope.

## Annex 3

# Universal Declaration of Human Rights

### Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **Article 3**

Everyone has the right to life, liberty and security of person.

### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article 6**

Everyone has the right to recognition everywhere as a person before the law.

### **Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

### **Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### **Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

### **Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

### **Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### **Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### **Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### **Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

#### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### **Article 19**

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.

#### **Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### **Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### **Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### **Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

#### **Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### **Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



UNESCO

Communication and Information Sector

Division for Freedom of Expression, Democracy and Peace

1, rue Miollis

75732 Paris Cedex 15, France

<http://www.unesco.org/webworld>

<http://www.unesco.org/webworld/en/freedom-expression>

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