

Workshops

Right to Information Workshop at the CPC

Much of the Commonwealth, especially the South, where approximately two thirds of the Commonwealth population lives, needs a strong focus on pro-poor, people friendly laws. The thrust of the seminar on the 12th of November, 1999 at the Commonwealth People's Centre, during the CHOGM at Durban was, that the right to information is a core right, legislating which would enhance the quality of citizens' participation and empower them to have more effective access to basic human rights.

The right in focus

Hassen Ebrahim, of the Department of Justice, South Africa, outlined the nature of the right in terms of transparency and empowerment of the whole polity. Unfortunately, the right is invariably defined by its limitations, instead of its dynamic qualities. The right needs to be implemented vertically, i.e, between citizen and state, and horizontally, between people inter se. Atiur Rehman, an economist and journalist from Bangladesh pointed out the need for government to make transparent all the 'developmental' processes. Nadeem Malik from Pakistan said that government itself tries to suppress information about multinationals such as the setting up of soda factories by the ICL in Pakistan, which were detrimental to health and the environment.

Bureaucracies must change the perception of their own role and there should be a campaign within government to provide information to the people. One way of doing this would be to include it in their contract of service backed by some form of sanctions. This would change the culture from one of 'pension' to one of performance. There should also be a mandatory training requirement provided in the law itself.

Much stress was laid on the language and form of communication. This is especially relevant to societies in Asia and Africa, where literacy rates are low. This aspect was tellingly brought home by a pointed question from Ndombi, a participant who said that she had never been able to get

a copy of the South African Constitution in Zulu. The reply speaks for itself : “ seven million copies were printed in all official languages, and they got over within days after which, four thousand copies were printed and kept in the post offices !” This well reflects on the government’s perception of the task in hand and their keenness to address it. Besides this is the essential element of simplifying information, especially budgetary information so that it becomes available and relevant to people.

Campaigning for the right

Jeannette Minnie, from the Media Institute of Southern Africa (MISA), long associated with the Open Democracy Advisory Forum which has been campaigning very effectively on the Open Democracy Bill of South Africa, said that the idea of access to information was generally accepted by ‘both sides’. The job of the campaign was to get civil society participation in the drafting of the law. Issues raised by the people were of real access. The ODAF consisted of a wide range of organisations- even some seemingly irreconcilable ones like trade unions and big business. As the campaign grew, the interest in its development also grew, even among the government personnel- who very early in the process started pointing out the constraints that the system would be put to for the functioning of the right to information. There was the usual unrealistic apprehension about the kind and quantity of information the public would ask for. The ODAF explained to them, based on research from the world over, that people usually ask for very ordinary and practical kind of information rather than for dramatic or bulky information.

The process of public consultation reflected well in the provisions of the Bill. A statutory duty was cast on the public servant to assist people in formulating the request. The open meeting section was added, applicable from the cabinet downward.

Developments on the Bill eased up after a while. The Task Group wanted to stick to the Bill which reflected the people’s aspirations, no matter how contentious it was. When the Bill came to parliament, the open meeting section was deleted. As of today, if it is not passed in the current (February 2000) session of Parliament, it will lapse. Now there is a feeling that perhaps it is better to have a law- though perhaps not an ideal one- rather than revert back to the ‘need based’ [Constitutional right](#) .

Maurice Frankel, from the Campaign for Freedom of Information, UK, a coalition of 90 organisations, has been spearheading a campaign for Freedom of Information for almost two decades. The campaign started with seeking medical information and negative school records,

issues of local environment such as closure of local schools, etc. FOI is seen as not only an individual's right to access information, but also as a tool for prevention of corruption, inefficiency and malpractice. It may not be a perfect remedy, but will certainly constitute a shift in the equation between a citizen and the government.

Most governments feel that FOI is a nuisance, as was succinctly expressed by Jeffrey Howe who said, "there should be no criticism of the contradiction between what the policy is and how it is expressed"! However, secrecy results in government losing credibility with the public. The Labour Government which came to power in 1997 introduced a White Paper on the right to know, with excellent proposals. However, the minister who had made the White Paper was soon sacked and a watered down version of the Bill is now before the British Parliament.

Abha Joshi from the Commonwealth Human Rights Initiative (CHRI) detailed the experience of the Indian movement for right to information-which is an interesting mix of pressure from sections of media, legal persons and academics, and more importantly, sections of a rural, largely illiterate population agitating against corruption in government. The Indian experience is a mixed one with some successes with the most marginalised groups being empowered through right to information from local bodies, and a Bill in the offing with not much to speak for itself. While the right to information has caught the imagination of people both in government as well as outside it, the general response of government as reflected in successive drafts and some state enactments is to ride rough shod over basic principles for a meaningful Right to Information law.

The basics reiterated

Malcolm Smart of Article 19, UK succinctly articulated the basics for freedom of information legislation, which are perhaps not in any doubt and have been endorsed to some extent by the Commonwealth Law Ministers Conference last year. These include:

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Maximum disclosure, including proactive disclosure

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Narrow test for legitimate denials

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Independent forum for dispute resolution

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Open meetings

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Protection to Whistleblowers

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Sanctions for unreasonable denials and delays.

Coupled with advocating these principles widely, the thrust should be on the adoption of good practices at all levels. This must be supported by a conscious exercise of thinking through the objections likely to be raised and countering the unreasonable ones effectively.