

The right to information

*By Imran Ali in the Fiji Times
Monday August 14, 2006*

REGIONAL civil society organisations recently passed a resolution urging their governments to enact freedom of information legislation in their countries, such as the proposed Freedom of Information bill being drafted in Fiji.

The resolution came at the end of a three-day workshop in Suva organised by the Pacific sub-regional centre of the United Nations Development Programme.

Held to provide training for regional civil society organisations on the right to information, the workshop was conducted by Maja Daruwala the executive director of the Commonwealth Human Rights Initiative in New Delhi.

A barrister actively advocating for human rights, particularly the right to information, she spoke to IMRAN ALI.

TIMES: What is the right to information?

DARUWALA: The right to information is a guarantee given by a government to the citizens that the citizen will be given access to all government-held information except for a narrow band of information which is in the public interest to withhold.

Basically, the right to information is based on three key principles:

The right to every citizen to request access to information from the government about its decisions and activities;

The duty on all government bodies to provide information, unless releasing it would genuinely cause serious harm to public interest; and

The additional duty on the government to routinely publish key information even in the absence of a request.

TIMES: Why is the right to information so important?

DARUWALA: Democracy requires the Government to be open to public scrutiny, instead of operating in secrecy. Right to information is a tool in the hands of citizens for scrutinising the policies and actions of government, fixing accountability of officials and promoting their participation in the decision-making process.

Democracy truly works when informed citizens are able to thoughtfully choose their representatives on the basis of record and performance, rather than on rumours or ethnic, geographic or religious affiliations and when citizens can hold their elected representatives and officials to account for their policies, decisions, and actions while in power.

The right to information enables citizens to check whether the Government acts according to democratic values and constitutional norms.

It also improves public administration by acting as a powerful deterrent to corruption in government. When citizens can access information about government activities and decisions, it is much harder for officials to cover up their corrupt practices and hide poor policymaking.

TIMES: How is the right to information linked to governance and development?

DARUWALA: In a true democracy it is not only the elected representatives, civil or public servants or the bureaucracy and the judiciary who make decisions but the citizens are also allowed to be involved in the decision making process. Governance is supposed to be a consultative process where the citizens elect their representatives into governments and then are consulted and given a chance to participate in policy and decision making.

The practice of governments to routinely withhold information from the public creates "subjects" rather than "citizens".

By informing citizens, governments allow them to be involved in their own governance and in their own decision making.

It allows the people the opportunity to make sure that development funds are used properly. Not only funds, people always emphasise the money portion of the right to information but how do you know what the people want, how do you know that the development will be best targeted where will it go all these things require constant communication between governments and people.

Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. This is a crucial aspect of effective governance without the support and trust of the people, governments will be more likely to face resistance to their policies and programs and implementation will be more difficult.

Experience world-wide has shown that much of the failure of poverty reduction and development strategies to date can be attributed to the fact that, for years, they have been designed behind closed doors.

For example, from the Pacific to Africa to South Asia, the rural poor and indigenous communities, who are to heavily reliant on their local natural resources for survival, have often been excluded from decisions about their use and sale. With assured information, the marginalised groups will be given voice and a powerful tool to scrutinise and engage the development processes being directed at them.

TIMES: What are some of the issues that came out of the three-day workshop that was conducted by you with civil society organisations on the right to information?

DARUWALA: One of the things highlighted during the training was that everybody felt there was not enough information given by their governments. There were 10 Pacific island states in the training and each one felt that they were somewhat excluded from the information they should be getting. So there is a sense of exclusion and because there is a sense of exclusion, nobody has anything firm to go on so rumour prevails and along with that, a perception develops that is distrust for the Government.

This is unfortunate because Pacific island countries including Fiji are essentially very small with small populations and it is very easy to satisfy small populations by giving them timely information.

Ninety per cent of the information available is of such quality that there is nothing to be gained or lost by giving it to the public. In fact, everything is to be gained by giving it to the people so I felt that certainly in places like Nauru, which has a population of 9000, that it seems crazy even to be discussing this issue. The information flow should be so easy and so regular and shouldn't really require anybody to fight for it. It should just be available because when you really think about it, if there is something dead serious and somebody wants to get hold of it the communications network must be so close that your relative your family, your cousin, your sister can easily get the information any way, so what is everybody hiding.

I think it would be an act of great statesmanship to just make sure that everything is given. If you want the Government to be trusted than there seems to be very little case for being secret. You may like to be secret about certain very targeted security issues and with that too, you should be so sharply targeted that in fact it may even require adjudication of the court to say "no, you must hold this information back".

And the person withholding the information should prove why the information needs to be held back otherwise the presumption should be that information should be given as a public good just like water, electricity, air, food, clothing. Information should be available, after all the thing about information is that it is only collected for public purposes, it's not collected for private hoarding.

TIMES: In Fiji, the Government is currently drafting a Freedom of Information Bill. What role can the media, civil society organisations and the public play in order to have a legislation that is beneficial to all?

DARUWALA: First of all, I think it would be wonderful if this process of developing the Freedom of Information Bill was open and consultative. When I say consultative, it does not mean consulting only people in Suva but also people in the rural and outer islands on what kind of information they want and what are some of the difficulties they face in getting that information.

All these thing should then be fed into the Freedom of Information legislation. The civil society and the media can greatly assist the Government in conveying the message to the people and extracting messages from them.

TIMES: What are some of key elements of a good Freedom of Information law?

DARUWALA: A legislation which has got maximum disclosure, minimum exceptions and which makes it very easy to get information. The processes should be very easy and of minimal cost to the people.

The civil servants should be trained to give information and the public trained on the importance of accessing information and ways to access it. The legislation should have penalties for withholding information. There should be an independent adjudicator such as an ombudsman or the human rights commission or any specialist body that understands right to information and adjudicates between government and citizens when there is a problem. There is also a need for protection for whistle-blowers, that is, a person who finds out that there is some wrong doing and wants to tell the Government or the public about it. There should also be sunshine laws these are laws that require the Government to consult with the people and take their views into account before initiating a project in a particular area.

TIMES: Besides law, what are some of the other elements to promote openness in how governments work?

DARUWALA: I think that all government functionaries must declare their assets and they must do it regularly. I think committees of governments like parliamentary committees and public service commissions must be open. The less done behind doors the better. There should be a sharp political message from the Government that we believe in openness rather than okay we will pass this Bill because there is a lot of pressure but we really don't believe in it and we are going to send mixed signals to our bureaucrats.

I think if you have an Officials Secrets Act then it should be removed or at least modified so that it again only works to ensure that real security issues are kept from the public and that too, if it is only in the public interest to keep that. Otherwise everything should be open.

TIMES: How will the Freedom of Information legislation affect the media?

DARUWALA: In robust democracies, the media acts as a watchdog, scrutinising the powerful and exposing mismanagement and corruption. It is also the foremost means of distributing information; where illiteracy is widespread, radio and television have become vital communication links. Unfortunately, this power to reach the masses has often been perceived as a threat by closed governments, which have carefully regulated private ownership of the press and attempted to curb the media's ability to gather news, investigate and inform.

Where the media is unable to get reliable information held by governments and other powerful interests, it cannot fulfil its role to the best of its abilities. Journalists are left to depend on leaks and luck or to rely on press releases and voluntary disclosures provided by the very people they are seeking to investigate.

Lack of access to information also leaves reporters open to government allegations that their stories are inaccurate and reliant on rumour and half-truths instead of facts. A sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and is as much in the interests of government as it is of the people.

I believe that if people or governments insist on high standards of journalism and factual reporting then they should provide the media with the information to do so. We can't say to the media that you won't give them the information and then expect them to report factually. Media should be given access to information.

Openness will also be very useful during contestations where people can always go back to the factual situation because it is open, and make an informed decision on who is telling the truth.

TIMES: If there is one message about freedom of information you wanted everyone to understand, what would that be?

DARUWALA: Make a strong, progressive, liberal Freedom of Information Act, get it passed very fast and even before you pass the legislation put in place all of the other structures that you need to put in place and send a strong political message that this is an open government that has nothing to fear. The people will trust you if you do that. There is absolutely no reason why a confident government should not trust its people with the information that it has collected on behalf of the people and for public purposes.