

A NEWS SERVICE FROM TRANSPARENCY INTERNATIONAL-KENYA

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FREEDOM OF INFORMATION IN KENYA SHROUDED IN SECRECY

by Andrew Bauer

Modern democracies are founded on the principle of choice – people walking to the nearest school, marking an 'X' next to the candidate of their choice's name, and placing that venerated piece of paper into the big box. Each person living in a country where such an event can occur is blessed with the ability to choose those who are obligated to serve their needs. This ability is not a gift bestowed by the State on its citizenry, it is a right owed to the people by the State.

Elected officials are civil servants, employees of the people as all loyal taxpaying citizens are shareholders of that monumentally powerful but nonetheless public and accountable employer- the State.

As shareholders, the citizens of a country deserve the same respect offered to the owners of a company, and implicit within respect is duty which it owes its shareholders- its citizens. Besides running free and fair elections – in effect choosing the managers of the company – it has the duty to be honest, forthright, open, sincere and humble.

Unfortunately, this is not always the case. Often the State is dishonest, deceptive, closed, insincere and arrogant, believing itself to be greater than those it is meant to serve. The State sometimes defends this behaviour, arguing that decision-making is hampered by public criticism since it weakens the nation's image in the eyes of the world and is hence a threat to national security.

Under closed and corrupt regimes, those with time and money always win out, increasing the gap between the have and have-nots.

The result of this view has been lack of accountability, policies that favour politicians over people, general feeling of powerlessness, and unresponsive government. Other times it argues that since people are ill informed, it must make decisions on their behalf. Being ignorant, it is argued, the people can't make choices that are in their own best interest. Herein lays the contradiction: Keep information

from the public because it is not well informed enough to make competent decisions.

Access to government information is not only necessary for the proper functioning of a modern democracy in order for people to make informed choices, but is also a right owed to all its citizens. Moreover, it is a duty of the State to provide information.

Access to information is not enough. Pro-active dissemination of useful information by State agencies must be encouraged if people are expected to make informed choices. It would be easy for government to grant access to any and all

information in law and then mix up all the files or destroy essential archives. The right to information requires that information be readily accessible and useful to the public.

Information is the grease that oils the wheels of democracy. Perhaps more importantly, it is a prerequisite for development and social equity. In all vestiges of social inequity, from stock markets to governments to the village bazaar, one of the main conduits of stratification is access to information, or lack thereof. Economists call it asymmetric information; others simply call it unequal access. Those with access to it have a distinct advantage over those who don't, giving information a very real price.

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In this issue...

This is the first of a series of three issues focusing on the value of Freedom of Information and its impact on governance and transparency in the conduct of national affairs.

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What is the price of access to information? Just ask a firm making a bid on a public contract, or a journalist attempting to retrieve a government file. The bribe paid for information about the tender (lowest offer, government

Information is the grease that oils the wheels of democracy... it is a prerequisite for development and social equity

requirements, etc.) and the time it takes to receive the document are the prices of access. Under closed and corrupt regimes, those with time and money always win out, increasing the gap between the have and have-nots.

Given its importance, non-disclosure or insufficient disclosure by government departments should be made violations of the law and openness should be made common practice.

Such action would inform and create trust between the people and their government. It could also lead to economic growth through greater investment, as the risk to investors would decrease with the availability of accurate information about government policies. Markets don't function well in secret. Finally, it goes without saying that an open policy would decrease the incidence of corruption by illuminating government transactions and building the capacity of the media to investigate crooked deals and crooked politicians.

What would a comprehensive open access to information policy look like? *Open Sesame: Looking for the Right to Information in the Commonwealth*, a new publication from the Commonwealth Human Rights Initiative (CHRI), a New-Delhi based NGO, sets out at least six key principles of such a system.

1. Maximum disclosure: The maxim of disclosure is that all information should be disclosed unless the harm caused by the disclosure is greater than the public interest in disclosure. The report points out that many documents that governments struggle to declare exempt from disclosure, claiming that exposure would harm the public interest, are actually protected only because of the harm they might cause the government.
2. Pro-active disclosure: Compulsory publication of records, activities and names of employees of government agencies and departments remains the ideal legal mechanism by which to retrench the right to information. Not only does it encourage accountability and help to create a freer press, it also habituates government to public scrutiny. Part of the battle is between a culture of secrecy and a culture of openness. A culture of openness must be nurtured.
3. Proper records management: Information is only useful if it can be located and distributed in a

timely and efficient manner. A system where minutes of cabinet meetings are mixed up with traffic accident reports is detrimental to an open access regime. 'Fishing expeditions' should be avoided.

4. Limits on disclosure: Perhaps the most important aspect of any open access policy is the range of information protected. Limits on disclosure could negate any efforts to provide access to governmental documents. The CHRI report offers several suggestions on the components of a reasonable system of limitations and what should not be limited. First, the maxim of disclosure, that all information should be disclosed unless the harm caused by the disclosure is greater than the public interest in disclosure, should be applied by an independent body, for example an Ombudsman. Second, broad, blanket exceptions to disclosure should be avoided. Exceptions should be made on a case-by-case basis. Finally, under no circumstances should disclosure be subject to discretionary veto. This would amount to being judge in one's own cause.
5. Legislation: Any access to information pledge on the part of a government is only as valuable as its dedication to the cause. However the advantage of legislation is two-fold. First, it legitimizes the edict that government should be open and accountable. Second, it entrenches the right to information. Government employees feel more obligated to be transparent and it contributes to a culture of openness.
6. Enforcement: Powerful independent and impartial bodies must have the authority to mandate release of information. Furthermore, penalties must be administered to those who choose to subvert the system either through untimely disclosure or by outright non-compliance.

These principles are not exclusive of non-governmental organizations or international institutions. The UN, IMF, World Bank and WTO should be as open as any national government, while civil society should be expected to lead by example.

But civil society's role goes well beyond that of providing an example. It must lead the charge in creating a more open society as representative of those without the time, resources or ability to fight for their rights.

The media are encouraged to join with civil society for these ends. After all, it is in the media's interest to do so. Civil society and the media should not be seen as competing in the campaign for the right to access to information, they should be seen as partners. The CHRI report gives numerous examples of media and civil society working together in this common goal, like in the case of Zambia where the Zambian Independent Media Association joined a coalition of NGOs to propose an alternate Freedom of Information Bill. Or Sri

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Lanka, where the Free Media Movement and the Editor's Guild of Sri Lanka combined forces to develop that country's Freedom of Information Bill. Coalitions are always stronger than separate parties.

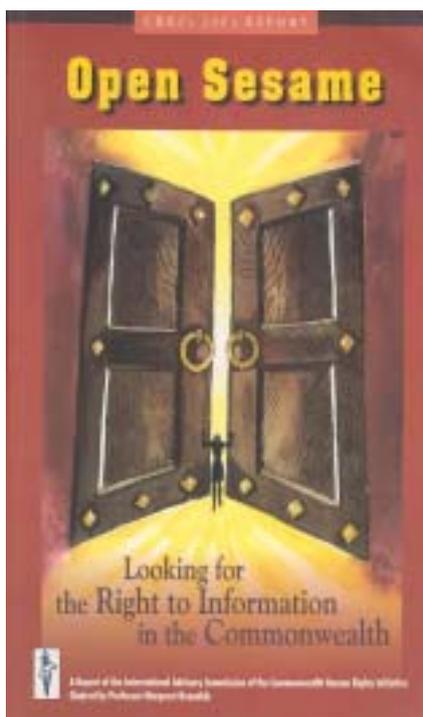
The major question then is: how easy is it to access information in Kenya and how is Kenya perceived internationally with regard to openness?

The simple answer to the first question is that it is exceedingly difficult to access information in Kenya, especially when that information pertains to government planning, the impact of government spending, and information on prospective jobs or needed services required to issue a public tender. As the International Commission of Jurists' (ICJ) recent publication,

'Without Borders'... has strongly criticized the Kenyan government and judiciary for restricting press freedom, having made several arrests of journalists and attacked the press for making seemingly negative reports about the government.

The State of Freedom of Information in Kenya, notes, the Kenyan Constitution does not overtly guarantee the right of access to information. Instead, freedom to communicate information without interference is secured under Article 79, leaving the onus to collect and disseminate information being placed squarely on the public or other interested party.

Moreover, the numerous exceptions to the right as stated under Article 79 and the enactment of the Official Secrets Act have both curbed those limited rights offered under the Constitution. In practical terms, most public information is shrouded in secrecy and any requests for such information are either ignored or are subject to long and unnecessary delays.



These facts have not gone unnoticed by the international community. The CHRI makes several references in their report to fear of the consequences of asking for or giving information, information-hoarding and unreasonable secrecy restrictions.

An anecdote is recounted whereby, "a file full of nothing more than newspaper cuttings was marked 'very

confidential' and access to it denied without the permission of the Permanent Secretary."

While some international observers are soberly amused by the poor standards in freedom of information, others are more upset. Reporters Without Borders for example has strongly criticized the Kenyan government and judiciary for restricting press freedom, having made several arrests of journalists and attacked the press for making seemingly negative reports about the government.

Still, both Reporters Without Borders and CHRI are optimistic about the Kibaki administration's commitment to greater freedom of

expression and about Kenya's progress towards a deeper democracy.

The CHRI report applauds groups like the ICJ who drafted a Freedom of Information Bill in 2000. Along with Human Rights Watch, it also gives special attention and shows genuine surprise at the inclusion of a pioneering set of articles, those covering Freedom of Expression, Freedom of the Media and Access to Information, into the Draft Constitution. These efforts are viewed as the torches that will carry the flames of transparency and democracy for Kenya in the future.

If shareholders were to be refused information on how their money is being spent, there would be an uproar, or they would pull out of the company. Of course the latter cannot happen in Kenya. Citizens cannot just stop paying their taxes.

There are two reasons for this. First, the State is defined by its coercive power – those that don't buy shares in the 'Big Company' get locked in the basement.

The second is nationalism. People love Kenya, and rightly so. The land is as beautiful and diverse as the people. From the steps of Parliament in Nairobi to the shores of Lake Turkana, those who work and live in Kenya want to see her thrive and to reach her full potential. No one wants to starve or witness starvation, all want to see substantial development, and everyone wants to be respected. Inclusive is the respect by the government of one's rights and respect for each and every person's ability to make good choices.

If people felt that all their rights were being respected, few would complain about paying taxes and most would freely contribute to the national cause. At this point in its history, the State is being given the choice to respect the right of access to information or give up the democratic experiment.

BUILDING A BRIDGE IN KENYA: THE IMPORTANCE AND VALUE OF THE RIGHT TO INFORMATION

by Katherine Hayes

In a government ... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... have a right to know every public act, everything that is done in a public way, by their public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

The right to information is the bedrock of all other human rights. The United Nations recognised this in 1946 when the General Assembly resolved: "Freedom of Information is a fundamental human right and the touchstone for all freedom to which the United Nations in consecrated."¹ In its most basic form, a right to information ensures the people of a democracy: they have the right to demand and receive information from their government and places an additional obligation on the government to pro-actively disclose key information to the public. More progressive freedom of information legislation allows people to secure information from private bodies as well, where it is necessary for the protection or exercise of their rights.

Kenya's International Commitments to the Right to Information

As a member of the United Nations, Kenya has a commitment to the *UN Principles on Freedom of Information*, enacted in 2000. In support of these principles, the United Nations Special Rapporteur has clarified that freedom of information under Article 19 of the *International Covenant on Civil and Political Rights* 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."²

In addition to its UN obligations, Kenya has other international and regional commitments to freedom of information legislation. Kenya's membership in the

Commonwealth requires a practical commitment to democratic principles, including transparency and accountability in government. Notably, in 1999, the Commonwealth Law Ministers specifically recognized the importance of access to information and set out the *Commonwealth Freedom of Information*

- Justice K K Mathew, Supreme Court of India

Principles, which serve as minimum guidelines to Commonwealth countries for enacting legislation. The Principles recognize that "there should be a presumption in favour of disclosure and governments should promote a culture of openness."³

Kenya also has regional commitments to entrenching the right to information regime through its membership in the African Union. In 2002, the African Commission on Human and Peoples' Rights adopted the *Declaration of Principles on Freedom of Expression in Africa* which recognises that 'public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information.'⁴ This is a welcome statement as it sets the tone that governments may not hoard information in secret – they have a duty to the people who elected them to justify their decisions and provide adequate information so that the citizenry may draw their own conclusions.

The *African Charter on Human and People's Rights* went one step further and explicitly recognized the necessity of a right to information as a cornerstone of another human right i.e. freedom of expression. The Charter recognises that: "Every individual shall have the right to receive information. Every individual will have the right to express and disseminate his opinions within the law."⁵ This statement not only demonstrates a commitment to a right to information but also recognizes the value of the right in ensuring good governance by aiding media scrutiny and allowing people the freedom to express their views.

The Practical Value of the Right to Information

Kenya should not only take action to legally entrench the right to information because of its international commitments, but also because of its inherent value and importance. The right has the potential to be of enormous benefit to the people of Kenya. It is a strong tool in the fight against corruption and provides a mechanism for deepening the public's engagement in development activities and strengthening democracy.

Taking ownership of development

Access to information ensures that people can participate more effectively in national development activities. The right to information can be used to ensure that people know what development projects are planned for their area, can review plans and proposals, check contracts to find out specifically what work is to be done and how much it will cost and can assess whether work is done incorrectly or worse, never completed, and take action accordingly.

Access to Information: Ensuring Development Funds Reaches Beneficiaries

In Uganda, the right to information translated into ensuring grants intended for primary schools did not line bureaucrat's pockets. After an expenditure tracking survey found corruption was keeping funds from reaching primary schools, the Ugandan government began advertising grant disbursements, while on the other end, schools were required to post notices on the receipt of funds. With these inexpensive changes and access to information, parents were able to ensure accountability at the local level. In five years, corruption dropped from 80% to 20% and enrolment more than doubled.¹



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Without access to information, development projects are too often planned, implemented and completed without those most affected being active participants.

As rapidly developing nations like Kenya are aware, development is rarely only a domestic project. Too often, activities are designed and managed by international organisations which are thousands of miles away from the country, let alone the people. These international organizations themselves should be active in ensuring access to information so that people in-country are involved in all processes affecting their development. While some international bodies such as the United Nations Development Programme have strong disclosure policies, others like the World Bank and International Monetary Fund lag behind. These bodies need to improve their own information disclosure policies in the interests of the public who are so often affected by the decisions and policies they develop behind closed doors.

Combating Corruption

The right to information provides an excellent tool to fight corruption, a battle many African countries are struggling to win. Transparency International estimated in 2000 that over US\$30 billion in aid to Africa found its way to foreign bank accounts.⁶ Kenya itself is far from being immune to this phenomenon. In Transparency International's Corruption Perceptions Index 2003, Kenya's rank was one of the worst in the world. On a scale of one to ten with ten being very clean, Kenya received a score of 1.9 and was ranked 122 out of the 133 nations surveyed.⁷

Recognizing the rampant corruption problems in Africa, African nations developed the *OAU/AU Convention on Combating Corruption*, which was ratified in 2003. The

Convention recognizes the need to "establish the necessary conditions to foster transparency and accountability in the management of public affairs."⁸ This objective requires public input and involvement. The most practical, least expensive and most empowering tool for realising that objective is an effective access to information regime.

The Convention goes on in Article 10 to state that nations should "allow and encourage the full participation of the media and civil society."⁹ The right to information also supports this objective, by forcing secretive governments to open up inquiries from civil society and the media. In particular, with an entrenched legal right to access to information, the media can serve as a policing body, analysing governmental decisions, exposing mismanagement and generally keeping the public aware. This becomes a self-perpetuating cycle ensuring honest governance- those in power know their decisions will be scrutinized and made public, making them more likely to make good, honest decisions in the first place.

Reclaiming Democratic Institutions

Access to information enables voters to meaningfully participate in democracy. Only with information can citizens meaningfully exercise one of the most fundamental of their democratic rights, that of the vote. Unfortunately, the 'secret society' brand of rule- a hold-over from colonial days when foreign governments would contain a people and ensure their own political power by withholding information – is still in evidence in many countries. Kenya provided one of the most obvious examples of this approach: "During the Moi era, fear of the consequences of asking for or giving information culminated in power being consolidated around the presidency to the extent that serikali (the Kiswahili word for government) became synonymous with siri kali (top secret)."¹⁰ Without

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information, citizens cast their votes based on what little they know about candidates - tribal affiliations, place of residence, or perhaps a family history of governance. This type of system is a far cry from informed citizens exercising their democratic rights.

Right to Information and International Financial Institutions

Greenwatch Limited, an environmental NGO, successfully used the open government clause in the Ugandan constitution to obtain the release of a key document about a controversial dam project that the Ugandan government and the World Bank had previously declined to release. The Ugandan High Court ordered the release of the document, whose very existence the Ugandan government had denied during the court proceedings. A subsequent analysis of the document, commissioned by the International Rivers Network assessed that "Ugandans will pay hundreds of millions of dollars in excessive power payments if the World-Bank-financed Bujagali Dam proceeds according to plan." The funding for the dam was later suspended.⁶

Only when citizens have a right to information can they regain the participatory power that should be rightfully theirs in a democracy. Elections alone do not make a society democratic. Rather, substantive democracy requires informed participation by the people. In this case, the old adage "knowledge is power" is all too true. An open government with an access

to information regime allows the people to be participants in their own governance, not just bystanders who cast their ballot every few years. In fact, in 2002 the Commonwealth Law Ministers recognised that 'the right to access information was an important aspect of democratic accountability and promoted transparency and encouraged participation of citizens in the democratic process.'¹¹

Currently, a divide exists between the Kenyan government and the people it should serve. The right to information can help build a bridge between the two. Access to information can keep the government honest, allowing the people to act as their own best watchdog. It can also foster participatory development, allowing literal bridges to be built with input from those most affected throughout the process. Finally, it will encourage participation in governance from an informed public who can hold their leaders accountable for their decision-making failures more than once every few years.

While a constitutional provision is an encouraging beginning, well-drafted legislation is important to ensure the right is effectively operationalised. Kenyans must then remain vigilant to ensure proper implementation. Although the bridge to a meaningful access regime will be a long one, it is one well worth building. As Kofi Annan, Secretary General of the United Nations has recognised: "*The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed.*"

Kathrine Hayes is in the 'Right to Information Campaign' at the Commonwealth Human Rights Initiative

BENCHMARKS FOR EFFECTIVE FREEDOM OF INFORMATION LAWS

by Grace Wakio

Many democratic countries have embraced government openness and transparency in public affairs as a core value. They have realised that the culture of secrecy is no longer feasible and that to be more effective and responsive, they must provide information and be open to public scrutiny.

Over fifty countries in the world have constitutional provisions guaranteeing their citizens access to information held by the government and laws to facilitate this access. About thirty more countries are in the process of enacting freedom of information laws¹. There are certain benchmarks that these laws have adhered, or should adhere to for maximum effectiveness.

Maximum disclosure

Freedom of information (FOI) laws have the principle of maximum disclosure as their basic rationale and objective. This principle establishes a presumption that all information

held by public bodies is subject to disclosure, save for limited exemptions. Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. The exercise of this right does not require individuals to demonstrate a specific interest in the information. The onus of justifying refusal to disclose information is on the public authority, which must show that the information it wishes to withhold comes within the scope of the exemptions.

A good FOI law should have broad definitions of 'information' and 'public bodies' to ensure that a variety of records kept by a wide scope of public bodies can be accessible. The law should define public bodies to include all branches and levels of government i.e. local government, elected bodies, bodies which operate under a statutory mandate, public corporations, judicial bodies and private bodies which carry out public functions. There is a trend towards bringing private bodies

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that hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health, within the scope of freedom of information legislation.

The principle of maximum disclosure should take precedence in that, other laws should be interpreted in a manner consistent with the provisions of the FOI law and where there is inconsistency, the FOI law prevails. There should be a provision that all laws be reviewed within a given time to ensure that they are in line with the principles of freedom of information. Another best practice is that there should be provisions stating that obstruction of access to, or the wilful destruction of records is a criminal offence.

Minimum standards for maintenance and preservation of records by public bodies should be expressly set out in the law.

Pro-active publication of information

Public bodies should be under an obligation to pro-actively publish and disseminate information. More recent FOI laws set out specific categories of information that should be published, including, the organizational structure, activities, internal rules and decisions, annual reports, guidance on how the public can input into policy and legislative proposals and other information of significant public interest. Recent laws also state the means by which the information should be disseminated, bearing in mind the different literacy and civic awareness levels within the country. Tied to this is the obligation some FOI laws place on public bodies to educate the public on how they can access the information these bodies hold, train their employees on FOI and related issues such as records management, retrieval and archiving.

Exemptions

All laws have exemptions to disclosure, mainly covering national security, commercial and other confidentiality, personal privacy, law enforcement and public order and effectiveness and integrity of government decision-making processes, which are expressly set out in the law. These exemptions should be narrowly defined.

All requests for information from public bodies should be met unless the public body can illustrate that the information sought falls within the scope of exemptions. Exemptions do not create a blanket cover for whole departments or agencies even if their functions fall within the exemptions. Non-disclosure of information must be justified on a case-by-case basis and should be applied on the basis of the content and not the type of information. Most laws require that the public body seeking to withhold the information must show that disclosure will cause harm to the legitimate interests being protected under the exemption. Some laws require simple harm to be proved while others require substantial harm to be shown. The

'substantial harm' test will ensure that public authorities do not unduly invoke the exemption provisions and is more effective than the 'simple harm' test

Even where the public body can show that disclosure will cause substantial harm to a legitimate interest, there should be a public interest override, in that, the information can be disclosed if the benefits of disclosure outweigh the harm. Where the public interest in having the exempt information made public is greater than the harm that will be occasioned to the legitimate interest, the law should provide that the

information should be disclosed. For instance some information may be exempt as it pertains to protecting the integrity of the Government decision-making process but if disclosed will expose high-level corruption within the Government, then the public interest in having the

information will be greater than withholding the information under the exemption, thus it can be disclosed.

Rapid processing of requests, appeals and oversight systems

The law should provide strict but reasonable time limits for the processing of requests for information. Most FOI laws provide for a process for deciding upon requests at three levels: within the public body, appeals to independent administrative bodies and appeals to courts. Some laws have provisions enjoining public bodies to facilitate full access to information for certain groups of the public, such as illiterate people, those who do not speak the language the record is written in, and those who suffer from disabilities such as blindness. They also require that refusals to process requests be accompanied by written explanations.

The first level of appeal should be, and in most countries is, internal review where the person requesting the information can appeal against the withholding of the information requested to a higher authority within the public body. Most FOI laws provide for an appeal to an external independent body if the internal appeal mechanism affirms the decision to withhold the information.

In many countries an Ombudsman Office or a Human Rights Commission acts as the external independent body. Though in some jurisdictions they cannot make binding decisions, in most instances their findings are influential and are followed. Other jurisdictions have independent Information Commissioners to which further appeals from the internal review mechanisms can be made. They are quasi-judicial bodies, with powers to investigate appeals, compel witnesses or require the public body to provide it with any information for its consideration. Most have powers to dismiss appeals, adjust any charges levied by the public body to disclose the information, fine public bodies for obstructive behaviour and impose costs on the public bodies in relation to the appeal. Some have the power to refer to the

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Courts cases which disclose evidence of criminal obstruction of access to information or destruction of records. In other jurisdictions, Information Review Boards perform these functions.

In addition to handling appeals, some jurisdictions empower the independent appeals bodies to oversee the effective

The Courts should be the final level of appeal against public agency decisions to withhold information

implementation of FOI laws through public education and training of public officials on FOI. These oversight bodies are in most jurisdictions required by law to submit annual reports, in most cases to Parliament, on implementation of FOI law generally and in relation to specific Government Departments

Some laws provide that the courts can review the merits of the case while others provide that the courts can only address matters of law. In the United States and Bulgaria, the courts

are the only external points of appeal. Due to the costs and delays in bringing the cases, most people do not pursue the matters that far, thus hindering the implementation of the Act. Generally, jurisdictions that have strong external appeals and oversight mechanisms have more effective FOI laws.

Regime of fees

The ideal situation is where no costs are charged for processing requests. Most FOI laws require that those requesting information should pay a certain amount to facilitate the processing of the request. Some jurisdictions have a two-tier system that has flat fees for a request and graduated fees pegged on the actual cost of retrieving the information². In other jurisdictions the costs charged for commercial requests are higher, to subsidize the requests made in the public interests. In other cases the costs have been so high as to deter potential applicants.

Retroactivity

The law should provide that information that should have been in the public domain prior to the enactment of FOI law, but was not due to official secrecy, can be accessible after the FOI law comes into force.

Protection for whistleblowers

FOI laws should have protections from legal, administrative or employment-related sanctions against individuals who release information on wrongdoing³. The laws should provide protection for whistleblowers as long as they act in good faith and in the reasonable belief that the information is substantially true and discloses evidence of wrongdoing.

In some jurisdictions only whistleblowers on government-related activities are protected, others like in USA grant equal protection to corporate whistleblowers, while in others, like Japan, only private sector whistleblowers are

protected⁴. On enforcement, in the UK and US, the whistleblower can initiate a claim of victimisation, while in other jurisdictions such as Australia, the laws are predominantly enforced by criminal or administrative actions brought against the authorities. An emerging trend is to use the whistleblower provisions as a double-edged sword whereby if the whistleblower can substantiate claims of threats or retaliation by officials of the body whose conduct is under scrutiny, the court may make relevant punitive orders against the officials making the threats.

The importance of having whistleblower protections in place is illustrated by the fact that had there been no such protections in the USA and Guangdong Province in Southern China, the world would never have known about the Enron Corporation scandal⁵ and the extent of the Severe Acute Respiratory Syndrome (SARS) outbreak in China⁶ respectively.

An FOI law that adheres to these benchmarks will effectively facilitate people's exercise of their right to information.

¹ David Banisar, Freedom of Information and Access to Government Records Around the World. May 2004. <http://www.freedominfo.org/survey.htm>

² This provision can be used by bureaucrats to raise costs, as they can take their time in processing requests.

³ In this context includes, corruption, serious maladministration of a public body, miscarriage of justice, serious threat to public health, the environment, commission of a criminal offence. Such disclosures are usually made in the public interest where the benefits of disclosure outweigh the harm that will be occasioned by the disclosure.

⁴ The cultural and social pressures for corporate loyalty in Japan are very high thus it is likely that these provisions will be needed more in the private than in the public sector

⁵ One of the biggest corporate finance scandals in the year 2002, which brought down Enron Corporation, a top Fortune 500 company, precipitated by the whistle blowing of Sherron Watkins, one of the company's employees. At the end of the year 2002, Ms. Watkins was named *Time* Person of the Year along with two other whistleblowers.

⁶ A Chinese Dr. Jiang Yanyong, blew the whistle on the cover-up of the SARS outbreak by Chinese authorities and saved thousands of lives in the process as the Chinese government admitted the extent of the outbreak, thus facilitating an adequate and effective international response to the outbreak. For this action, Dr. Yanyong won the *Time* Asian Person of the Year Award for 2003/4.

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PARTICIPATORY GOVERNANCE AND ACCESS TO INFORMATION: HOLDING GOVERNMENT TO ACCOUNT

by *Elphas Ojiambo*

Participatory government, consultation and transparency are today's public policy buzzwords. It is time they became more than that. Key pillars of participatory governance are the existence- in spirit and practice- of the following principles: democracy, public participation, access to information, accountability, transparency and the rule of law.

Strengthening the relationship between a government and its citizens might seem to be such an obvious priority for democracies that it hardly needs spelling out. Yet the Kenya government has been criticised for being remote from the people, not listening enough and not seeking participation. Street protests as witnessed during the dark days of the Moi regime and recently over the constitution review process may have attracted most of the headlines, but less spectacular developments have included a steady erosion of voter turnout in by-elections and general elections (safe for 2002) and declining confidence in key public institutions.

Engaging citizens in policy-making allows governments to tap new sources of ideas, information and resources when making decisions. This is all fine in theory, but where to start in practice? Within the principles of participatory governance, the citizens have an increasing role to play and are supposed to shape the manner in which they receive any service from the state. Indeed, the fact that they are citizens gives them certain rights and puts upon the state certain obligations that it must accomplish for its citizenry. In this respect, citizens are seen as partners to the state rather than as mere beneficiaries who can't choose the manner in which any service from the state is to be delivered.

The starting point is clear. To engage people effectively in policy making, governments must invest adequate time and resources in building robust legal, policy and institutional frameworks. They must develop and use appropriate tools, ranging from traditional opinion polls of the population at large to consensus conferences with small groups of lay persons. Experience has shown, however, that without leadership and commitment throughout the public administration, even the best policies will have little practical effect. Kenyan experience in policy making is replete with many examples of top-down policy making processes that have over the period failed to provide opportunities for citizen participation.

The key ingredients for success in engaging citizens in policy making are close at hand, including information, consultation and public participation. Information provided has to be objective, complete, relevant, easy to find and easy to understand. And there has to be equal treatment when it comes to obtaining information and participating in policy making. This means, among other things, governments doing all they can to cater for the special needs of linguistic minorities or the disabled.

The respective roles and responsibilities of the government (making a decision for which it is held accountable and on which its performance may be judged) and the citizen (providing input for the decision-making process) must be clear too.

Citizens are not government; they elect it and want to be served by it. But if they are to participate more than just via the ballot box, then they need proper access to information, meaningful consultation and opportunities to take an active part in policy making. These are essential ethos of a participatory government system yet we have continued to fall below expectation in this respect.

Efforts to put the principles that would allow citizen participation in governance are seen within the draft constitution of Kenya. It is through the implementation of a devolved structure and enactment of the citizen right to access public information that the citizens of Kenya will be able to increasingly hold the various institutions of governance to account.

Whereas there have been certain policy initiatives that have made attempts at addressing the current gaps in policy implementation, the implementation of the very policies have ended up leaving the citizens more confused.

Through the Local Government Reform Programme, a definite step was taken to improve the level of service delivery in all local authorities. It is now close to three years since this shift in thinking in local authority governance came to being. To-date, there is no tangible change particularly on the part of citizen engagement with the local authorities.

Through this initiative, substantial amount of money is allocated to the local authorities every year under the Local Authority Transfer Fund (LATF). These allocations are meant to cater for only three things: improve service delivery to the public, improve financial management and reduce public debt. In order for a local authority to qualify for these resources they are supposed to submit a budget estimate for that financial year; a statement of receipts, expenditure, cash and Bank balances; and a statement of debtors and creditors; abstracts of accounts for that financial year, a revenue enhancement plan and a Local Authority Service Delivery Action Plan (LASDAP).

Of all the eligibility criteria, it is the development of LASDAP that is supposed to espouse the principles of participatory governance. It is expected that through this process citizens will be able to present their priority projects that would then be funded in their wards by funds from LATF. These priority projects and proposals of how to improve on service delivery are what form the LASDAP. In theory this sounds fine but in practice little takes place in all local authorities.

Whereas citizens are supposed to participate in this process, they are not aware and little time and resources have been put aside towards sensitising them on their role in ensuring accountability at the local authority level. It is no wonder that whereas the Ministry of Local Government advertises every year in the local print media all the LATF

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allocations for all local authorities – a commendable practice – and notifies the citizens to demand to know how these funds are utilised, very few (if any) respond to the advert. But even those who respond and seek to get information from the local authorities find it increasingly difficult to access this information.

For example during the financial year 2004/2005 alone the LATF fund allocations to all local authorities in Kenya is Ksh.4 billion with Nairobi receiving Ksh.415 million for service delivery and Ksh.277 for performance. This huge amount of money require the crucial citizen monitoring and audit.

Close to the LATF process is the growing amount of resources that are now being channelled through the constituency. Some of the allocations going directly to the constituencies are through the Constituency Aids Committee, Constituency Bursary Committee, and Constituency Development Committee. The management of rural access roads have also been decentralized to this level. It is through these committees that responsibilities for the management of the funds rest. For example, it is envisaged that over Ksh.20 million will be allocated to each constituency as part of the Constituency Development Fund in financial year 2004/2005. Already a total of Ksh.1.6 billion was disbursed during the previous financial year.

But have the constituents been made aware of this? How many constituencies have development, bursary and HIV/AIDS committees? On what basis were they constituted? It is clear that some constituencies indeed do not have such committees. And wherever they exist, they were constituted in the most undemocratic manner, with MPs filling them with their cronies.

Some of the arguments that have been put across to justify these allocations include the need to promote democracy because it provides better opportunities for local residents-read constituents- to participate in decision making and the need to increase efficiency in delivery of public services as delegation of responsibility avoids bottlenecks and bureaucracy. It is also assumed that this process will lead to higher quality of public services, because of local accountability and sensitivity to local needs and increase transparency, accountability and the response capacity of government institutions.

Whereas these reasons are very justifiable one cardinal question that arises is how much the citizens know about these processes. The lack of information as far as these policy changes are concerned to the wider majority of the citizenry makes it completely impossible for the citizenry to hold those charged with responsibility to manage these resources to account. The politics behind these initiatives

are too much and complicated for the common citizen to unravel. The absence of information in-as-far as what is expected of them and what happens around them is concerned is a serious impediment to realize their human rights.

Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. But information is not just a necessity for people – it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption

to thrive. As Amartya Sen, the Nobel Prize-winning economist has observed, there has never been a substantial famine in a country with a democratic form of government and a

relatively free press. Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions

Our government, however, prefer to conduct its business in secret. It is no wonder we hear “*serikali ni siri kali*” (fierce secret). Even democratic governments would rather conduct the bulk of their business away from the eyes of the public. They always find reasons for maintaining secrecy – the interests of national security, public order and the wider public interest are a few examples. In Kenya our government treat official information as its property, rather than something, which it holds and maintains on behalf of the people. Try seeking for information and the first question you are bound to face is “why do you want to know?”

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. In this realm, one would expect that all allocations that are now being channelled through the constituencies are made public and so the manner in which they will be put to use. Imagine having constituency offices with notice boards on all financial allocations and plans. Imagine that you can access all the audited accounts of these funds and even the ones that have been allocated through the LATF process.

Informing the public of their rights and promoting a culture of openness within government are essential if the goals of freedom of information legislation are to be realised. It is ironic that we do not have a requisite legislation in Kenya as far as access to public information is concerned. Experience in various countries shows that a recalcitrant civil service can undermine even the most progressive

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legislation. Promotional activities are, therefore, an essential component of a freedom of information regime. This is an area where the particular activities will vary from country to country, depending on factors such as the way the civil service is organised, key constraints to the free disclosure of information, literacy levels and the degree of awareness of the general public. The law should require that adequate resources and attention be devoted to the question of promoting the goals of the legislation.

The right to freedom of information (FOI) is being increasingly accepted as necessary adjunct to participatory democracy the world over. Currently, it is estimated that as many as 40 countries provide a right of access to state-held information either through discrete legislation or Codes of Practice on the subject; a few more countries are in the process of enacting such legislation. Kenya is still left far behind as far as access to information is concerned.

Why is freedom of information important? Can we achieve participatory governance without it? Should the current allocations at Local Authority and Constituency remain secret? The response to these questions is found in the rationale for freedom of information.

The rationale for this right is rooted simply in the concept of open and transparent government. Freedom of Information has been seen as capable of advancing a number of desirable objectives in any society. In the first place, it helps to make the government more accountable to the people being governed. Holding governments to account is a crucial part of creating public trust in government. If governments are forced to publish annual reports and accounts, and if their files are open so that we as the people of the society can see what that government has been doing, we can make accountability a real and effective source. Through achieving accountability we achieve trust. This is because trust is a two-way relationship. It is not just about people trusting in the government blindly, it is about the government trusting in the people, by allowing the people to have the information that governments are obliged to provide. Just as in any relationship between two people- trust is a two-way process.

Secondly, by facilitating the acquisition of knowledge, freedom of information encourages self-fulfilment. Just try seeking information from the public bodies and experience the joy when such information is provided to you. This self-fulfilment is a core element of a society. A society where everybody knows what happens around him or her is a powerful one and can never be taken for a ride. In such a society, people become assertive and development is realised first enough since everyone is aware of his/her stakes in the society.

Thirdly, it acts as a weapon in the fight against corruption and abuse of power by state functionaries. Corruption is one of the major forces that is damaging a whole range of national and international economic activity and distorts economic and physical activity. Corrupt practices in Kenya need not be mentioned and it cannot be assumed that the allocations

through the constituency and Local Authorities are corruption proof. The secrecy that surrounds these funds makes them fertile grounds for corruption to thrive. But if secrecy is the disease, then sunshine is the best disinfectant. If all these activities have to take place in public, if accounts have to be published, if the nature of business deals and business arrangements have to be fully disclosed, and if people who organise those deals know that one day every detail may be exposed in the public arena, then one has a fighting chance of dealing with corruption. Without that openness, tackling corruption is an impossible uphill struggle.

Fourthly, it contributes to improving the quality of official decision-making. Openness of information is important because it is essential to the development of a society. Through this process issues are debated and argued making the final decision that is arrived at to be of high quality and reflective of the situation obtaining in the society. It provides an opportunity to grapple and analyse the real facts and use them to make an informed decision. It is essential therefore to have a completely open and transparent regime of information- a regime where people have the right both to access the information and to discuss and argue that information amongst themselves.

Fifthly, it enhances the participatory nature of democracy. In any democracy, if you don't have access to information it is impossible to have informed political debate. It is impossible to discuss the range of political options that are freely open to you, it is impossible to vote in accordance with ways that are in your best interests, or in accordance with your own beliefs and values. Furthermore, is also impossible to have meaningful consultation about the public policy options that are available to government. One can't have meaningful debate, participation, or public role in the shaping of public policy unless you have full access to information.

Sixthly, it goes some way in redressing the inherent balance in power between the citizen and the state, and strengthens the hand of the individual in his/her dealings with government. Secretive societies bring with them a political culture of rumour and conspiracy that makes healthy debate very difficult to achieve. Once a culture of rumour and conspiracy infects a secretive society it is tremendously hard to shift. It inhibits the growth of progressive, open and constructive politics.

For the citizens of Kenya to realize effective development, they must be at the centre of it and be given the responsibility of taking charge of their own development. Participatory governance cannot be realized when there is no access to information. A number of problems currently bedevilling Kenya could be addressed when people have access to information as a right for it enables them to realize their other human rights.

Elphas Ojiambo is the Programme Officer- Research and Advocacy at the Kenya Human Rights Commission

THE ROLE OF MEDIA IN THE FIGHT AGAINST CORRUPTION

by Lisa Karanja

The media must be an effective watchdog on behalf of the public by monitoring the government's performance, revealing corruption and ensuring promotion and protection of human rights. The media has a dual role to play: it not only raises public awareness about corruption but also investigates and reports incidences of corruption thus aiding other oversight (and prosecutorial) bodies. The press can serve the public by monitoring and investigating the actions of those who are granted the public trust and who may be tempted to abuse their office for private gain.

The media acts as a force against corruption in tangible and intangible ways. Readily identifiable ways include those in which visible outcome can be attributed to a particular news story or series of stories e.g. the launching of investigations; the elimination or adoption of laws or policies; the dismissal of corrupt officials; and the launching of judicial proceedings. Intangible effects are characterised by social change: enhanced political pluralism; enlivened public debate; and heightened sense of accountability among politicians.

The press contributes to the fight against corruption by presenting the public with accurate information about efforts in anti-corruption reform. Analytical articles present diverse viewpoints of reputable experts on legal and economic matters. The press lets the public read debates and arguments of our politicians and high-ranking officers concerning issues of key importance. It publishes the strides and setbacks in anti-corruption reform so that the public is informed and encouraged to join the struggle. It facilitates increased attention to draft laws passed by Parliament and carry out an analysis and calculation of their prospects for the future.

By disseminating detailed findings of public anti-corruption bodies, the media reinforces public scrutiny, the legitimacy of these bodies and limits the capacity of counter-reformists. There is need for independence of such bodies from vested interests within the power structure that might otherwise be tempted to interfere in their work. Additionally, such reporting encourages people to blow the whistle on corrupt activities they may have witnessed.

Society itself facilitates corruption in all spheres of life. The media should provide our citizens with full and reliable information and the opportunity to learn the various viewpoints on different issues of public life. Hard-hitting, independent journalism acts as an indirect check on corruption by presenting a variety of points of view and thus informing public debate in a way that enhances political and economic competition. This in turn enhances accountability and creates incentives for reform.

Freedom of the Press is the cornerstone of democracy and demands adherence to the highest journalistic standards. But when stories are written without corroboration, are unsubstantiated and amount to nothing more than name-calling, then a noble profession is tainted and the public

trust in the media and authentic reporting on corruption is undermined.

While greater accountability from public officers is important, the media itself has to be accountable to the people and the State for its actions. Journalists who aim at defending the constitution and the validity of its democratic principles must, at the same time, adhere to its rules. Self-discipline, self-consciousness and the code of ethics that members of the profession accept are all critical elements of media accountability. The burden of ensuring a responsible media must be shouldered primarily by the media practitioners. They must demonstrate their independence, objectivity and professionalism in order to earn public trust and confidence. Journalists must acquire the capacity to make sound and balanced political and social judgments. Failure to do so would jeopardize the reliability of their work.

The media should be as clean as the people it watches over. When the media is corruptible, it discredits itself in the eyes of the public who will treat journalists as they treat corrupt officials. Further, mistrust can lead to the search for other, often misleading sources of information.

Due to its vast impact, the media should recognize and support sector reform, such as the judiciary. The judiciary stands at the apex of legal sector reform, which is why the government started its anti-corruption reform activities with a wholesale cleansing of the courts. Laws declaring "freedom of expression" require support and enforcement from the courts. An independent judiciary is the protector of a free press. A prerequisite for building a free press, therefore, is a legal system that is independent of political influence. Press freedom and press investigation is daily threatened when judges are either the pawns of politicians, or when judges themselves have ample opportunity to engage in corrupt practices through conspiracies with government leaders and businessmen. The efforts of the press against corruption must be complemented by an independent and honest judiciary.

Collaboration between the media and government officials is also an important ingredient. Some corrupt acts by political leaders and businessmen are excellently investigated and exposed by the media. Often, the media finds it exceptionally difficult to obtain basic information unless there are honest public prosecutors and official regulators (such as central bank personnel, supervisors of banking systems, commissioners of securities' exchanges, etc.) who emerge as critical partners in the detection of corruption. A basic rule in investigative journalism is to follow the money. The reality is that rarely do journalists have the chance to look at confidential bank records, to obtain financial information that is private to a corporation or a politician. When such information does emerge in the hands of the press, then time and again the sources are honest government regulators and/or public prosecutors.

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Without the assistance of such public individuals the ability of many investigative reporters to ferret out corruption would be far more circumscribed. The linkage needs to be more broadly appreciated.

Investigative journalism has been defined as “the material obtained by using one’s own efforts and initiative for investigating an important subject, which some people or agencies would like to keep secret”. In general, it means a comprehensive and detailed investigation of some poorly studied, closed or carefully guarded subject, during which one has to overcome the resistance of some bodies that are not willing to provide information. This describes corruption.

Investigative journalism stories are the most favoured by readers. Publishing of such material facilitates a sharp growth of popularity of a periodical and enhances the role of the press in society. There has been fear for safety among journalists in their investigative work. The price of exposing corruption can be high. Many journalists around the world have been threatened, arrested, physically attacked and even murdered for their courage in attempting to do so. This pressure has forced numerous journalists to examine their attitude towards their own honesty and ask themselves: Is it worth the consequences to expose corruption? Andre Loersch, civil media expert said of Uzbekistan: “In your country where journalists have no rights and can barely make ends meet, to push them to write about corruption is to push them to commit suicide.” Let us strive to ensure the same can never be said about Kenya. Our efforts in cleaning up the police force and the courts and in improving our prosecutorial capacity should contribute to this end. The capacity of the media to tackle corruption will only be attained when independent and honest judges protect the media assisted by courageous public prosecutors and official regulators.

The media will therefore contribute more effectively in curbing corruption in countries where the public has a deeper and better appreciation of the notion of freedom of the press and where there is comprehensive access to information. Organisations that have tended to narrowly focus on either the media, the independence of the judiciary, or the public prosecutors should pool their resources and interests to attain reasonably adequate strength to fight corruption. It is through the mass media that a nation becomes interconnected and communicates internally and externally. It is critical to providing the government with a sense of the mood of the nation and it is through the media that the public perceive the policies and functions of the government.

Accordingly, it would be valuable for all parties to come together on a common agenda and seek to secure the establishment of a wide coalition among judges, prosecutors, regulators and journalists, bound by a common purpose to enhance the anti-corruption work- a major challenge that determined individuals, foundations, NGOs, and multilateral organizations actively support.

James Madison, one of America’s constitutional fathers declared: “A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power that knowledge brings.”

Lisa Karanja is a Law and Policy Development Specialist in the Department of Governance and Ethics. This paper was presented at a Media and Corruption Workshop held at the USIU- Africa on March 28 - 29, 2004

ACCESS TO INFORMATION: WHOSE RIGHT AND WHOSE INFORMATION

by Jeremy Pope

A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives.

James Madison, letter to W. T. Barry, 4 August 1822

Madison’s observation is as valid today as it was when he made it almost 200 years ago. Access to information is still a minefield across the world. As Madison noted, knowledge is power, and those who possess it have the power to rule.

The concept is problematic enough in many industrialised countries, but it is particularly challenging where countries have been under forms of colonial rule – systems marked by a preoccupation with secrecy, with information of the most menial type being scrupulously guarded, and with accountability not to their peoples, but to remote metropolitan capitals. There was no element of trust.

On regaining independence, these countries inherited administrative systems and officials obsessed with secrecy. The same holds true of the transition countries of Central and Eastern Europe, and those elsewhere emerging from various forms of dictatorship or feudalism. Sheltered by secrecy, corruption, repression and human rights abuse abounded – and trust was at zero. This climate persists in many countries, as recent events from Kazakhstan to Zimbabwe have made all too clear. In the former, the authorities have beaten outspoken journalists, while in the latter the Mugabe regime has crushed access to government information and a free press.¹

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An obsession with secrecy persists in leading industrial countries. Witness the absurd spectacle of Sweden being accused by the European Commission of breaching Community Law by making Commission documents available under legislation the Swedes have enjoyed for nearly 250 years². Even modest access proposals provoked a 'bitterly fought and still controversial compromise' in the European Parliament.³

Meanwhile, in the United States (whose landmark freedom of information legislation has long been a world leader) the White House has sought to block public disclosure of its meetings with Enron and other energy industry officials – illustrating the fact that the struggle for information is, first and last, a struggle for accountability.

At the Johannesburg summit on sustainable development, battle raged over whether communities in the developing world should have rights to information that would empower them to hold multinational corporations to account if and when they pollute the environment and damage the health of their people.⁴ In the developing world the perceived secrecy and lack of accountability of aid donors and international financial institutions have fuelled people's misgivings.

The donors have too often appeared to shore up secretive regimes with loans and assistance, the details of which are kept from the citizens they are ostensibly intended to help. In some countries, these citizens are now expected to make good the loans plundered by their former leaders with the apparent acquiescence of the lenders.

These abuses have been compounded by excessive bank secrecy, coupled with offshore financial centres, some of whom advertise their mission as being to help customers (corrupt political leaders among them) to 'keep their assets away from prying eyes'⁵

Matters are further complicated by the crisis in the industrialised world over accounting practices in the private sector. There, the linking of rewards for senior executives to stock prices – coupled with egregious conflicts of interest on the part of auditors – has enabled scandalous accounting practices and shameless insider trading. We have reached the point now where the public can have no confidence that any given corporation's books present a true and fair statement of its financial affairs, with untold consequences for the savings and pension schemes of a whole generation in much of the developed world and for the sound operation of capital markets.

Behind a mask of apparent openness and accountability to which once-trusted accountancy firms and business analysts were willing collaborators, a raft of corrupt

practices has undermined the livelihoods and expectations of millions. Yet by blowing the whistle audit firms risk losing fees as well as being questioned about their own role in devising opaque corporate structures and offshore subsidiaries.⁶

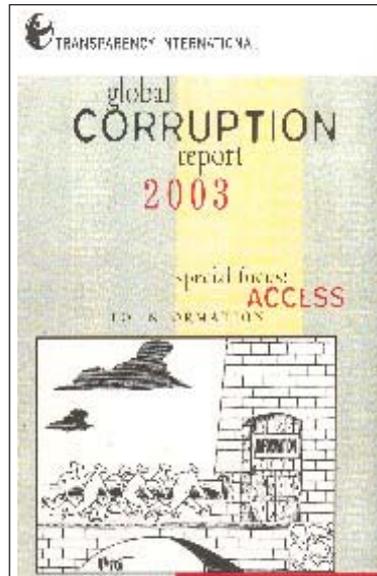
Auditors were trusted to provide honest accounts, and this trust was betrayed.⁷ Often, their activities were supported by legal advisers, who helped to construct secret corporate partnerships and offshore tax evasion schemes.⁸ Other passengers on the crowded secrecy bandwagon are research institutes, with major cash-strapped universities embracing industrial sponsors.

Here there are incalculable risks when, as they invariably must, business interests come into conflict with central tenets of academic inquiry. The funders of university research often claim the right to suppress findings that might work to their disadvantage.⁹ The media, whose role should be to protect us from these abuses, often let us down. True, some media organisations have played key roles in revealing and investigating corruption. But it is equally true that many media organisations have been at the mercy of the advertising policies of business and government alike, with advertisers (both private and public) prepared to abuse their power to place and to withdraw advertising. Huge international media conglomerates have

evolved, at times all too willing to do the bidding of governments in order to massage the size of their audiences and the potential for increased advertising revenue.

These networks have assumed incalculable political power, and they are accountable to none but themselves. The saving grace here is that these conglomerates operate in a competitive environment and there are still independent media organisations that can and do bring to public attention the most egregious instances of abuse by these global media leviathans.

Another danger is the mounting influence of the media oligarchs who have emerged to use their power, not to inform but to serve blatantly partisan and self-serving political and financial ends. The spectacle in Italy of a head of government not only dominating the private media but also with the power to gerrymander the state-owned media institutions bodes ill for democracy. It points not only to the dangers of individual domination of the private media, but also to the dangers inherent in most forms of state-owned and state-controlled media. The often intensely close relationship between media tycoons and powerful political leaders in developing countries and in Central and Eastern Europe frequently blocks the media from fully informing the public on major issues, while equally frequently ensuring that the public receives news and views that serve the business



SIX GLOBAL ORGANISATIONS JOIN FORCES AGAINST BRIBERY FOR MEDIA COVERAGE

London, July 26, 2004: Six global organisations today announced their support for a set of principles designed to foster greater transparency in the dealings between public relations professionals and the media, and to end bribery for media coverage throughout the world.

The organisations are the International Press Institute, the International Federation of Journalists, Transparency International, the Global Alliance for Public Relations and Communications Management, the Institute for Public Relations Research and Education, and the International Public Relations Association.

The principles, embodied in the Charter on Media Transparency developed by the International Public Relations Association, are that:

- § News material should appear as a result of the news judgment of journalists and editors, and not as a result of any payment in cash or in kind, or any other inducements.
- § Material involving payment should be clearly identified as advertising, sponsorship or promotion.
- § No journalist or media representative should ever suggest that news coverage will appear for any reason other than its merit.
- § When samples or loans of products or services are necessary for a journalist to render an objective opinion, the length of time should be agreed in advance and loaned products should be returned afterwards.
- § The media should institute written policies regarding the receipt of gifts or discounted products and services, and journalists should be required to sign the policy.

“In too many countries, bribery of the news media robs citizens of truthful information that they need to make individual and community decisions,” said Dr. Donald K. Wright, 2004 President of the International Public Relations Association. “We started this campaign with the goal of creating greater transparency and eliminating unethical practices in dealings between news sources and the media.”

“The International Press Institute’s General Assembly has endorsed these principles because all attempts to corrupt the media compromise the freedom of expression that protects all other rights,” said Johann P. Fritz, Director of the International Press Institute.

Peter Eigen, Chairman of the Board of Transparency International, said, “We have long believed in the power of coalitions to combat corruption in all its forms. The media has an important watchdog role to hold to account those in positions of power. To be credible in this role, it is essential that journalists refuse bribes and the

corporate sector desists from offering bribes. It is also crucial that editors, publishers and media owners give journalists all the support they need to implement the media transparency principles announced today.”

“Courageous reporters risk life and limb every day to defend press freedom and human rights,” said Aidan White, General Secretary of the International Federation of Journalists. “We cannot stand by while bribery mocks those sacrifices, anywhere in the world.”

“We represent professional public relations associations in 53 countries, and we want to bring that grassroots strength to this coalition for media transparency,” said Jean Valin, Chair of the Global Alliance for Public Relations and Communications Management. “This is closely linked to ethics in organizations, which is a cornerstone of effective and credible communication with the public.”

“Last year the Institute for Public Relations Research and Education joined with the International Public Relations Association to release a comprehensive index that ranks 66 nations for the likelihood that print journalists will seek or accept cash for news coverage,” said Frank Ovaitt, President and CEO-Elect of the Institute. “We continue to believe this is a critical issue that serious journalists and public relations people must address together.”

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Upcoming Events

July 27-29: National Summit on Municipal Governance
Organizers: Strategy Institute
Venue: The Crown Plaza, Ottawa, Ontario
Email: info@strategyinstitute.com
Website: www.strategyinstitute.com

August 2-8 : New Preventative and Investigative Methods for Averting Fraud and Corruption
Organizers: Lisho Events
Venue: Ridgeway Hotel, Randburg, Johannesburg, South Africa
Email: Lisho@worldonline.co.za

August 26-27 : 5th International Sustainability Forum Zurich "Business Investment in Development"
Organizers: Swiss Re Centre for Global Dialogue and sustainability Forum Zurich
Venue: Zurich, Switzerland
Email: Stefan.huber@sustainability.zurich.org
Website: www.sustainability.or-zurich.org

Think about it...

I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. . . . Corporations have been enthroned, an era of corruption in high places will follow, and the money-power of the country will endeavour to prolong its reign by working upon the prejudices of the people until the wealth is aggregated in a few hands and the Republic is destroyed.

[Abraham Lincoln](#) (1809 - 1865), quoted in Jack London's "The Iron Heel"

On a lighter note

A little boy, at a wedding looks at his mom and says, "Mommy, why does the girl wear white?"

His mom replies, "The bride is in white because she's happy and this is the happiest day of her life."

The boy thinks about this, and then says, "Well then, why is the boy wearing black?"

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interests of the media owners and their political partners in corruption. The ongoing episodes of political efforts to dominate the media in Central and Eastern Europe are part of a profoundly disturbing trend.¹⁰

Within news corporations, from Latin America to Central Asia, are individual journalists who have proved willing victims of offers of corporate hospitality and bribes, and who have thought nothing of misusing their power to private ends. Even in the leading industrial countries we have seen reporters grow so close to major corporations that they have failed to do their duty – so many were bullied by Enron that they chose to ignore for months the fact that the demise of one of the world's largest corporations was imminent.¹¹ The *Financial Times* is among those that complain of 'pious protestations of public interest from sensationalist newspapers that are unscrupulous in their own professional practices'.¹²

Ranged against these battalions has been a lonely and exposed band of whistleblowers: individuals who risk good reputations, careers and families to bring both public and private sector abuse to public notice. To these we should add the intrepid journalists who have paid with their lives for their dedication to the fight against corruption – providing further evidence of the lengths to which some political elites are prepared to go to protect the status quo. When the Voice of the People Communication Trust in Zimbabwe succeeded in sidestepping a government ban on independent radio stations by having its programmes beamed from the Netherlands, it was quickly the victim of a

'professional incendiary demolition' that destroyed its computers, recording equipment, files and tapes, leaving only the walls of its studios standing.¹³

Little wonder, then, that in societies around the world the notion of 'trust' has shifted radically – be it in government, in the private sector, in the professions, in the media or in civil society. No longer do people accept the diktat 'Don't challenge me. You can trust me'. So frequently kept in the dark, so regularly misled and so often betrayed, the people now tend to respond, 'Show me! I must see for myself.' Transparency has become a substitute for trust.¹⁴

Indeed, the public responds with demands to know not only the sources of political party funding but also the assets, incomes and liabilities of politicians and senior public servants, in a manner unheard of in the past.¹⁵ Paradoxically, these demands are often met with claims that disclosure would represent an unwarranted intrusion into privacy – a defence that further feeds suspicions that politicians are selling out to the highest bidders and that officials are siphoning wealth from the public purse.¹⁶ The claim to privacy is basically the same cry of 'Trust me!' But the fact remains that a cynical public does precisely the opposite. In the absence of reliable information to the contrary, it simply assumes the worst. If our objective is transparent, accountable and honest governance – government we can trust and a private sector that is trustworthy – then clearly the less information that is kept from us, and the greater the confidence we can have in its accuracy, the more likely we are to achieve our aim.

Source: Global Corruption report 2003