

# PROMOTING PUBLIC ACCOUNTABILITY IN OVERSEAS DEVELOPMENT ASSISTANCE:

## HARNESSING THE RIGHT TO INFORMATION

*“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, Former US President, 1822

*“International financial institutions have played an important role in highlighting the importance of transparency and in the development and dissemination of internationally recognised disclosure standards. And to strengthen their credibility as proponents of transparency, as well as to enhance their accountability to the general public, IFIs have made significant efforts to improve the transparency of their own views and operations. Nevertheless, there remains room for improvement.”*

G-22 Working Group on Transparency and Accountability, 1998



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## Introduction

Today, overseas development assistance totals more than US\$50 billion. The World Bank and the International Monetary Fund – created after the Second World War with a mandate “to help prevent future conflicts by lending for reconstruction and development and by smoothing out temporary balance of payments problems”<sup>2</sup> – now have an incredible influence over the domestic policy agendas of developing countries throughout the world<sup>3</sup>. To a lesser extent, so too do the newer regional development banks<sup>4</sup>. Bilateral and regional donors – many of whom engage with countries over which they previously reigned as colonial powers – also have considerable sway over the direction of recipient countries’ domestic policies. Unfortunately, while the domestic influence of national and international donors has grown over the last 50 years, many donors remained unaccountable to domestic constituencies who they claim are the beneficiaries of their work. They have historically negotiated projects and loans with the Executive Branch of Government such that, in practice, both elected parliaments and the constituencies they represent have regularly been excluded from the development process. However, as the UNDP observed in its seminar 2002 Human Development Report on democracy: “the deeper is their intervention in sensitive governance reforms in developing countries, the greater is the need for international organisations to be open and accountable”.<sup>5</sup>

At the same time, recipient countries also often exhibit a lack of accountability in their management of overseas development assistance (ODA). There are too many stories in too many countries in too many regions of the world of infrastructure projects being undertaken with development money which served no public purpose, yet filled corrupt officials pockets with donor money. Projects and programmes funded through loans have failed to meet their objectives, while nonetheless leaving the public with massive debts. Most troublingly, stories abound of ODA which has simply been siphoned off directly into the pockets of elites. For example, it has been estimated that “About one out of every three dollars that the Bank gave Suharto’s government over a 30 year period from the mid-sixties to the mid-nineties went to the pockets of Suharto’s people. This came to about \$10 billion of the \$30 billion World Bank lending program.”<sup>6</sup> Transparency International estimates that over \$30 billion in aid for Africa – an amount twice the annual gross domestic product of Ghana, Kenya and Uganda combined – has ended up in foreign bank accounts.<sup>7</sup>

With the close of the Cold War, donors who had previously used development aid to bolster strategic geopolitical alliances are less tolerant of blatant corruption in development spending. As countries push forward to meet the Millennium Development Goals, donors and recipient government are being increasingly called upon to be more accountable for their allocations and expenditure of development funds. However, many governments continue to shroud their development activities in secrecy. Projects are implemented with little involvement of beneficiaries and there is a black hole of information available during the design, tendering and implementation process. At the same time, many argue that donors continue not to practice the good governance lessons that they preach – namely, to implement effective public participation strategies and to ensure that they themselves are fully transparent and accountability to the communities with which they work. As one activist observed: “[International Financial Institutions] IFIs often deny communities their right to timely information and, by doing so, prevent meaningful participation in the design and implementation of projects and policies. IFI secrecy undermines domestic

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<sup>2</sup> George, S. (1999) “A Short History Of Neo-Liberalism: Twenty Years Of Elite Economics And Emerging Opportunities For Structural Change”, presented at the Conference On Economic Sovereignty In A Globalising World, 24-26 March, Bangkok, p.1.

<sup>3</sup> Stiglitz, J. (2003) *Globalization and Its Discontents*, New Delhi, Penguin Publishing.

<sup>4</sup> Most notably, the Inter-American Development Bank (established in 1959), the African Development Bank (established in 1964) and the Asian Development Bank (established in 1966).

<sup>5</sup> UNDP (2002) *Human Development Report 2002: Deepening democracy in a fragmented world*, <http://hdr.undp.org/reports/global/2002/en/pdf/chapterfive.pdf>, p.8.

<sup>6</sup> Walden Bello (2006) “WB/IMF in Crisis”, Spring Meeting Wrap-up, sent in an email from the *50 Years Email List*, [stop-wb-imf@50years.org](mailto:stop-wb-imf@50years.org).

<sup>7</sup> United Nations, (2000) Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Press Kit Backgrounder No3: <http://www.un.org/events/10thcongress/2088b.htm>

democratic processes, reduces the development effectiveness of the institutions, increases the likelihood that their work will cause social and environmental damage and alienates interested parties.”<sup>8</sup>

One key mechanism for promoting greater accountability in overseas development assistance is to entrench transparency by enacting national right to information laws while implementing information disclosure policies within international financial institutions and donors. While not an obvious policy prescription, arguably the prioritisation of information disclosure as an accountability mechanism has the potential to be revolutionary. As one commentator observed, “Access to information, consultation and public participation in policy-making contributes to good governance by fostering: greater transparency in policy-making; more accountability through direct public scrutiny and oversight; enhanced legitimacy of...decision-making processes; better quality policy decisions based on a wider range of information sources; and, finally, higher levels of implementation and compliance given greater public awareness of policies and participation in their design.”<sup>9</sup>

## The Right to Information: What, Where and Why

In 1946, the United Nations General Assembly recognised that “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated”.<sup>10</sup> Soon after, the right to information was given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights which states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media and regardless of frontiers*” (emphasis added). Over time, the right to information has been reflected in a number of regional human rights instruments, including the African Charter on Human and Peoples’ Rights<sup>11</sup>, the American Convention on Human Rights<sup>12</sup> and the European Charter of Human Rights<sup>13</sup>. This has placed the right to access information firmly within the body of universal human rights law. Up until the late 1980s, only ten countries in the world had right to information laws; today more than sixty countries have enacted access legislation.<sup>14</sup> Nonetheless, the right to information has still yet to be fully harnessed as a tool for promoting transparency, accountability and public participation at the national and international levels.

### What is the right to information?

Different terminology has been used - freedom of information, access to information, the right to know - but fundamentally, the concept remains the same. The right to information includes:

- the right of citizens to request access to information from public bodies (and in some national contexts, to access to information from private bodies, at least where the information affects people’s rights<sup>15</sup> or where the private body is performing a public function and/or is responsible for expending public funds<sup>16</sup>);

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<sup>8</sup> Saul, G. (2002) “Transparency and accountability in international financial institutions”, BIC, excerpt from original featured in Richard Calland and Alison Tilley (eds) *The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice*, Open Democracy and Advice Center, South Africa, [www.bicusa.org/bicusa/issues/IFI\\_Transparency\\_Chptr.pdf](http://www.bicusa.org/bicusa/issues/IFI_Transparency_Chptr.pdf), p.3.

<sup>9</sup> Caddy, J. (2003) “Building open government: lessons from experience in OECD countries”, unpublished, Commonwealth Human Rights Initiative, New Delhi, p.1.

<sup>10</sup> UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

<sup>11</sup> See Article 9(1), *African Charter on Human and Peoples’ Rights*, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981.

<sup>12</sup> See Art. 13(1), *American Convention on Human Rights*, 1969, Costa Rica, OAS Treaty Series No. 36, 1144 U.N.T.S. 123.

<sup>13</sup> See Article 11(1), *Charter of Fundamental Rights of the European Union*, 2000, Nice, Official Journal of the European Communities, C 364/1.

<sup>14</sup> Banisar, D. (2004) *The Freedominfo.Org Global Survey: Freedom Of Information And Access To Government Record Laws Around The World*, updated to May 2004, <http://www.freedominfo.org/survey.htm>.

<sup>15</sup> See Part IV of the *Promotion of Access to Information Act 2000*, South Africa.

<sup>16</sup> See for example: s.2(f) of the Indian *Freedom of Information Act 2002*; s.5(3) of the Jamaica *Access to Information Act 2002*; s.4 of the Trinidad & Tobago *Freedom of Information Act 1999*; and s.5(1) of the UK *Freedom of Information Act 2000*.

- the duty of the government to supply the requested information to that citizen, unless defined exemptions apply; and
- the duty on the government to disclose proactively information that is of general public interest without the need for requests from its citizens.

#### **What about accessing information from private bodies??**

As more and more public functions, like provision of health care, supply of water, power and transport, and even prison management, are privatised, people need to be able to get information from the bodies performing these services. Often, agreements between government and service providers do not require them to make information about their activities available. This removes information from the public domain that would otherwise have been covered under access laws. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if they affect people's rights. For example, the public should be able to access information on a factory's environmental management policies to ensure the factory is managing toxic waste appropriately and therefore, not diminishing their right to health.

South Africa has pioneered the application of disclosure duties on the private sector under the *Promotion of Access to Information Act 2000*. Section 50 of the Act allows a person access to any record of a private body if that record is "required for the exercise or protection of any rights". This is a very broad provision. The new Indian *Right to Information Act 2005* also covers private bodies to some extent, as it applies to any "body owned, controlled or substantially financed directly or indirectly by funds provided by the...Government". This means that if private bodies receive subsidies or concessions from the Government, they may be covered by the law. Innovatively, the Indian Act also permits the public access to "information relating to any private body which can be accessed by a public authority under any other law for the time being in force."<sup>17</sup> This means that where a public authority *should* have obtained information from a private body – for example, an environmental impact report, hazardous waste disposal plan or financial audit – even if it has not received a copy yet, a person can demand access to that report.

In practice, this requires governments develop legislation, setting out the specific content of the right - who people can access information from, how, when and at what cost - and the duties on relevant bodies to provide information, including when they can legitimately refuse to provide information. Internationally, a number of best practice principles have been recognised which should underpin any right to information law. Specifically, at a minimum the law should:

- Promote the principle of maximum disclosure of information, subject only to limited, tightly drafted exemptions;
- Ensure that access procedures are user-friendly, cheap, quick and simple;
- Require decisions regarding disclosure to be reviewable by an independent, impartial body, such as an Information Commissioner or Ombudsman;
- Permit penalties to be imposed on officials for non-compliance with the law; and
- Impose ongoing monitoring, training and public education duties on the Government.

#### ***Why is right to information a useful development tool?***

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 by governments who consulted with 'experts' but shut out the very people who were supposed to benefit. Poor people and women in particular are often completely excluded from decision-making processes in Bangladesh. Many people in Bangladesh will likely identify with the experience of a parliamentarian in Ghana who complained that the interim Poverty Reduction Strategy Paper required by the World Bank, as well as crucial decisions to take advantage of the Highly Indebted Poor Country Initiative which will affect government policy directions for

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<sup>17</sup> The Right to Information Act 2005 (India), s. 2(f).

years to come, were not even referred to Parliament at large.<sup>18</sup> Too often, donors have been complicit in keeping development planning processes closed. Multilateral institutions, such as the World Bank and the International Monetary Fund, are now beginning to open up following pressure from civil society groups, but much more work still needs to be done.

In this context, it is noteworthy that the Secretary-General of the United Nations, Kofi Annan observed in 2003 that: "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."<sup>19</sup> With assured information, marginalised groups will be given their rightful voice and a powerful tool to scrutinise and engage with the development activities being directed at them. They can access information about their development rights, as well as the projects and programmes from which they are supposed to be benefiting. In fact, experience shows that personal information is the most common type accessed under right to information laws. People use the law to ensure they receive proper entitlements and find out what the government is doing for them or for their locality.

#### **Plugging leaks by opening up the system<sup>20</sup>**

Corruption and waste of government funds can be particularly detrimental to the effective provision of public services. In particular, public health and education systems have often suffered from under-investment and/or chronic leakages of the little funding they receive, because their beneficiaries are so often the voiceless poor. This is especially troubling for Bangladesh. Net primary enrolment ratio is relatively high at 84%<sup>21</sup>, but the Government spends only 2.4% of GDP on education.<sup>22</sup> It is essential that at least this funding is properly spent. Access to information about budgets and expenditure can be a key mechanism for ensuring accountability of funds. A case in Uganda provides a good example of how the right to information was used to crack down on corruption in a developing country's education system.

Despite increased expenditure on education in Uganda in the 1990s, an expenditure tracking survey revealed that during a five-year period 87% of all funds meant for primary schools in Uganda went into the pockets of bureaucrats while enrolment remained less than 50%. Astonished by these findings, the national government began giving details about monthly transfers of grants to districts through newspapers and the radio in a bid to curb the siphoning of funds. At the other end, primary schools were required to post public notices on receipt of all funds. Parents therefore had access to this information and were in a position to monitor the educational grant programme and demand accountability at the local government level. In five years, the diversion of funds dropped phenomenally from 80% to 20% and enrolment more than doubled from 3.6 million to 6.9 million children. Schools with access to newspapers were able to increase their flow of funds by 12 percentage points over other schools. Information dissemination, though a simple and inexpensive policy action, enforced greater accountability in local government and ensured proper use of the taxpayer's money.

In addition to the overarching significance of the right to information as a fundamental human right which must be protected and promoted by the state, the following arguments in support of the right should also be recalled when advocating the right to parliamentarians and other key stakeholders:

<sup>18</sup> Globalization Challenge Initiative, (2000) 'Who Governs Low Income Countries: An Interview with Charles Abugre on the Ghana Poverty Reduction Strategy Initiative', *IMF and World Bank News and Notices*, Fall: [www.challengeglobalization.org/html/news\\_notices/fall2000/fall2000-01.shtml](http://www.challengeglobalization.org/html/news_notices/fall2000/fall2000-01.shtml)

<sup>19</sup> Annan, K. (1997) *Address to the World Bank conference "Global Knowledge '97"*, Toronto, Canada, on June 22: <http://www.ctcnet.org/kannan.html> as on 1 October 2003.

<sup>20</sup> World Bank (2003), *World Development Report 2004: Making Services Work for Poor People*, Washington, pp. 62-63 & 185.

<sup>21</sup> *Ibid.* p. 260. N.B. The net enrolment ratio is the ratio of enrolled children of official age for the education level indicated to the total population of that age.

<sup>22</sup> Above, n. 23, p. 256.

- **It strengthens democracy:** The right to access information gives practical meaning to the principles of participatory democracy. The underlying foundation of the democratic tradition rests on the premise of an informed constituency that is able thoughtfully to choose its representatives on the basis of the strength of their record and that is able to hold their government accountable for the policies and decisions it promulgates. The right to information has a crucial role in ensuring that citizens are better informed about the people they are electing and their activities while in government. Democracy is enhanced when people meaningfully engage with their institutions of governance and form their judgments on the basis of facts and evidence, rather than just empty promises and meaningless political slogans.
- **It is a proven anti-corruption tool:** The right to information increases transparency by opening up public and private decision-making processes to scrutiny. Information openness is a source of light to be shone on the murky deals and shady transactions that litter corrupt governments. It enables civil society and especially the media to peel back the layers of bureaucratic red tape and political sleight of hand and get to the 'hard facts'. It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with access to information laws are also perceived to be the least corrupt.

The Right to Information and Transparency <sup>23</sup> – A Clear Correlation					
Transparency International's Annual Corruption Perceptions Index surveys the degree of corruption in a country as perceived by business people and risk analysts. In 2005, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than nine had effective legislation enabling the public to see government files. Of the ten countries perceived to be the worst in terms of corruption, only one had a functioning access to information regime. <sup>24</sup>					
Rank	Country	RTI Act	Rank	Country	RTI Act
1	Iceland	Information Act 1986	144	Tajikistan	The Law on Information 2002
2	Finland	Act on the Openness of Government Activities 1951	151	Angola	No
	New Zealand	Official Information Act 1982	152	Cote d'Ivoire	No
4	Denmark	Access to Public Administration Files Act 1970		Equatorial Guinea	No
5	Singapore	No		Nigeria	No
6	Sweden	Freedom of the Press Act 1766	155	Haiti	No
7	Switzerland	Freedom of Information Law 2004		Myanmar	No
8	Norway	Freedom of Information Act 1970		Turkmenistan	No
9	Australia	Freedom of Information Act 1982	158	Chad	No
10	Austria	Federal Law on the Duty to Furnish Information 1987		Bangladesh	No

- **It supports economic development:** The right to information provides crucial support to the market-friendly, good governance principles of transparency and accountability. Markets, like

<sup>23</sup> Transparency International (2005) *Corruption Perception Index 2005*:

[http://www.transparency.org/policy\\_and\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_and_research/surveys_indices/cpi/2005)

<sup>24</sup> *Ibid.* See also Transparency International, (1998) "Press Release: Eight out of ten "clean" countries have effective freedom of information", [http://www.transparency.org/pressreleases\\_archive/1998/1998.12.03.ford.html](http://www.transparency.org/pressreleases_archive/1998/1998.12.03.ford.html) as on 22 July 2003.

governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of 'perfect information' and 'perfect competition'. In turn, this results in stronger growth, not least because it encourages greater investor confidence. Economic equity is also conditional upon freely accessible information because a *right* to information ensures that information itself does not become just another commodity that is corralled and cornered by the few for their sole benefit.

- ***It bolsters media capacity:*** 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. However, 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.
- ***It helps to reduce conflict:*** Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. Importantly, enhancing people's trust in their government goes some way to minimising the likelihood of conflict. Openness and information-sharing contribute to national stability by establishing a two-way dialogue between citizens and the state, reducing distance between government and people and thereby combating feelings of alienation. Systems that enable people to be part of, and personally scrutinise, decision-making processes reduce citizens' feelings of powerlessness and weakens perceptions of exclusion from opportunity or unfair advantage of one group over another.

### ***Where has the right to information been entrenched?***

Sweden passed its openness legislation in 1766, in the intervening 200 years only a handful of countries enacted right to information laws. Following the end of the Cold War however, particularly with the push for democratisation in Eastern Europe, right to information legislation was increasingly high on the democratic agenda. Today, more than 65 countries have right to information laws and another 30 have bills in various stages of development.

Unfortunately however, very few countries in Asia have enacted openness legislation. Only Japan, Thailand, South Korea, India and Pakistan have passed access laws. The Philippines has a constitutional provision which entrenches the right to information, but a comprehensive law has not yet been developed. In Indonesia, a bill has been drafted but no action has been taken on it for years.

<b>Countries that have enacted Right Information Legislation by Region<sup>25</sup></b>				
<b>Europe</b>		<b>Asia/Pacific</b>	<b>The Americas</b>	<b>Middle East/ Africa</b>
Albania	Lichtenstein	Armenia	Antigua & Barbuda	Israel
Armenia	Lithuania	Australia	Aruba	South Africa
Belgium	Montenegro	Georgia	Belize	Uganda
Bosnia & Herzegovina	Netherlands	India	Canada	Zimbabwe
Bulgaria	Norway	Japan	Colombia	
Croatia	Poland	New Zealand	Dominican Republic	

<sup>25</sup> Data compiled by Roger Vleugels via *FIOadvocates* listserv as at 10 January 2006.



Czech Republic	Portugal	Pakistan	Dutch Antilles	
Denmark	Romania	South Korea	Ecuador	
Estonia	Serbia	Tajikistan	Jamaica	
Finland	Slovakia	Thailand	Mexico	
France	Slovenia	Uzbekistan	Panama	
Germany	Turkey		Peru	
Greece	Spain		Trinidad & Tobago	
Hungary	Sweden		United States	
Iceland	Ukraine			
Italy	United Kingdom			
Kosovo				

## **Harnessing the right to information to promote accountability in Overseas Development Assistance**

By entrenching a legal right to access information, development stakeholders are equipped with a tool which will enable them to gain the information they need if they are to effectively engage in the development processes which are occurring around them. As the G-22 Working Group on Transparency and Accountability recognised: “Transparency...facilitates increased public participation in the design and implementation of development projects and thereby contributes to the local acceptance and ultimate success of projects.”<sup>26</sup> An entrenched right to access information upon request – ideally coupled with a concurrent duty on relevant institutions to proactively provide key information project-affected people – goes a long way to transforming the rhetoric of participatory development into a reality. In fact, the UNDP itself noted in its 1997 Human Development Report: “A strategy for poverty eradication must focus...on such fundamental reforms as promoting political participation by all, ensuring accountability and transparency in government,...[and] promoting free flow of information and freedom of the press...”<sup>27</sup>. This applies not only in the national, but also the international, context.

### ***Promoting accountability through RTI at the national level***

It is now firmly recognised that entrenching a culture of open government through access to information laws supports the twin governance tenets of transparency and accountability.<sup>28</sup> Corruption is able to breed in places which are kept hidden from view. Conversely, openness through information disclosure has been recognised as a key tool in tackling mismanagement and malfeasance both in the public and private spheres. By enabling access to information related to government decision-making as well as the implementation of projects and programmes, the possibility that such activities will be tainted with corruption is reduced.<sup>29</sup> Put most simply, public officials, aware that their actions may well be scrutinised by the public at some future date, are less likely to misbehave for fear of getting caught. This is particularly significant in a development context in light of the suggestion from the World Bank that “...countries that tackle corruption and improve their rule of law can increase their national incomes by as

<sup>26</sup> G-22 Finance Ministers & Central Bank Governors (1998) *Report Of The Working Group On Transparency And Accountability*, <http://www.imf.org/external/np/g22/taarep.pdf>, p.x.

<sup>27</sup> Feldman, E. & Martin, R. (1998) “Access to Information in Developing Countries”, Transparency International, [http://www.transparency.org/working\\_papers/martin-feldman/index.html](http://www.transparency.org/working_papers/martin-feldman/index.html), p.110.

<sup>28</sup> Commonwealth Human Rights Initiative (2003) *Open Sesame: Looking for the Right to Information in the Commonwealth*, Chapter 1, CHRI, New Delhi

<sup>29</sup> Roberts, A. (2000) “Access to Government Information: An Overview of Issues”, in Neumann, L. (ed) (2000) *Promotion of Democracy through Access to Information*, The Carter Center, <http://www.cartercenter.org/documents/1272.pdf>, p.9.

much as four times in the long term”<sup>30</sup> The efficiency gains to be had from open governance as a result of information disclosure should not be undervalued.

## Implementing proactive information disclosure

Even in the absence of a comprehensive law on the right to information, one effective way of promoting development accountability and more meaningful public participation in development activities is for recipient governments to explicitly prioritise greater dissemination of information to the public. At best, information dissemination is currently only an *ad hoc* activity pursued by some individual development projects. However, even this information disclosure is usually more in the form of positive press releases rather than substantive information on development strategies and implementation approaches. Many recipient governments are still to recognise that information dissemination could usefully be made a development priority in its own right, across all Government departments and development projects.

Promoting greater dissemination of Government information to the public is a cheap, simple but very effective mechanism for demonstrating a government’s development bona fides to the public (and to donors) in the short-term. With more information, the public can better understand and engage with the government’s development priorities. If they are given more specific information about projects in their area or programmes being implemented for their benefit, they will better know what services they should expect and be part of a broader accountability framework by themselves demanding that implementers meet their commitments. From the government’s perspective, information dissemination should also be prioritised because it will make the public more aware of just how much the government is attempting to do.

Ideally, a recipient government could develop and implement a whole-of-government information policy which requires more information to be proactively disseminated by all Ministries and government agencies. From a development perspective, it is particularly important that the Treasury/Ministry of Finance is signed up to any such policy, as the disclosure of budget information is one key area where transparency should be a priority. Any Ministry for Development should also, of course, be targeted, while Ministries which are implementing specific development programmes or projects should also be under an obligation to proactively publish information about project initiation, design, tender, implementation and evaluation. Such information is not sensitive and there is no justification for secrecy. Yet, often as a hangover from colonial days when governments reigned supreme and were not answerable to their populace, governments forget that the public have the “right to know” what is being done in their name and for their benefit! Proactively providing information to target communities will enable them to more effectively work with implementers and thereby ensure better and more sustainable outcomes.

### **India: Exposing corruption in the food ration distribution system<sup>31</sup>**

The Government of India spends Rs 26,000 crore annually on food subsidies to 6.5 crore people living below the poverty line. The system works by providing highly subsidised food rations to poor people who must present their ration card at privately run ration shops under the Public Distribution System (PDS). Unfortunately, considerable corruption surrounds the PDS welfare programme. Rations are often siphoned off because ration shop dealers make false entries into their records books to show rations are distributed, and then take the rations and sell them on the open market. A closed system of record-keeping allowed the problem to exist.

In March 2003, using the Delhi *Right to Information Act 2001*, a local NGO (called Parivartan) applied for four months worth of records of all shops in a particular district. After months of campaigning, the information was made available to the applicants. Following an audit of the records, Parivartan found that out of a total of 182 families interviewed, 142 did not receive a single grain of wheat during the month of June 2003. 167 families did not receive a single grain of rice. Out of a total of 4650 kgs of wheat supposed to have been distributed to the people, only 595 kgs had actually been received. The

<sup>30</sup> World Bank (2004) “Feature Stories: The Costs of Corruption”, 8 April, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190187~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

<sup>31</sup> Source: Arvind Kejriwal, Parivartan (2005)

remaining 87% found its way to the black market. Out of a total of 1820 kgs of rice supposed to have been distributed as per daily sales registers, only 110 kgs was received by the people, which meant 94% was siphoned off.

After continued pressure, the Delhi Government finally ordered for a comprehensive review of the PDS. From February 2005, dramatic changes were evidenced in Sundarnagari, with rations provided on time and for the right price. The Chief Minister also assured Parivartan that across the entire territory of Delhi, ration records would be regularly opened up for public inspection, at least once a month. By opening up the books proactively and enabling the public to review records regularly, corruption has notably reduced.

Even in the absence of a government information policy, any Ministry can still promote disclosure of their own information proactively. Even a single Ministry which is committed to openness and accountability could effectively take the lead in demonstrating to the whole of Government how simple but effective information dissemination can be as a means for promoting greater public engagement in – and public commitment to – government reform and development activities. For example, more information in the public domain about the size of the Budget and its priorities, as well as regular expenditure updates, can serve to reduce suspicion about mismanagement or misdirection of funds to non-priority sectors. Similarly, dissemination of information about grants to local provinces or agencies could contribute to a better understanding of the roles and responsibilities of the different levels of government. This could have benefits for the government, by ensuring that people do not unfairly blame departments for non-performance in areas which are not their domain.

Some suggestions are listed below of specific types of information that governments should proactively disclose as a priority:

- Publish quarterly Budget expenditure reports on Government or Ministry of Finance website;
  - Break down the budget so that the public can understand what development projects are being funded, by whom, in what amount and which department(s) is managing the project;
  - Include information about “Donor Contributions”, including which donors are giving what money to what projects over what amount of time
  - Publish summary Budget expenditure reports in the newspapers, in a form which is easily comprehensible to lay people;
    - Notify NGOs and other outreach organisations of this initiative and encourage them to proactively disseminate the information via their own networks.
- Publish – possibly on a dedicated national development website – a list of all development projects/programme being initiated, designed or implemented, including information about which national Ministry is responsible for the activity, what donor(s) is supporting the activity, how much money has been allocated (broken down into a budget if possible), what has been spent to date
- Publish all relevant design documents, contracts and implementation reports and/or order that members of the public can access such documents upon request;
- Where appropriate, publish details of monthly grants given to provinces/districts/local councils – both general grants, and sectoral grants, such as health and education
  - Information can be published on the web, in the newspapers, on the radio and by posting such information on public notice boards in schools and health clinics
  - Notify NGOs and the churches of this initiative and encourage them to proactively disseminate the information via their own networks.
- Publish quarterly reports of the expenditure of each parliamentarians Local Constituency Development Funds (if one exists)
  - To support the submission of such Reports by MPs, consider amending the relevant regulations to permit a specified percentage of the funds to be used to publish expenditure reports

## Enacting a right to information law

While individual departments can move forward immediately with proactively disclosing relevant information, nonetheless, a comprehensive national law is the most efficient means of ensuring the effective operationalisation of the right to information. Drawing on international and regional standards, evolving State practice, and the general principles of law recognised by the community of nations, in 1999, Article 19, an NGO which specifically works on these issues, developed “Principles on Freedom of Information Legislation” which set out the key features that should ideally be present in any information disclosure policy or law. In 2000, the United Nations Special Rapporteur endorsed these principles.<sup>32</sup> Notably, the African Union<sup>33</sup>, the Organisation of American States<sup>34</sup> and the Commonwealth<sup>35</sup> have also endorsed minimum standards on the right to information, while the European Union has developed a specific Regulation on Freedom of Information.<sup>36</sup> These various generic standards have been summarised into the five principles below:

- Promote the principle of maximum disclosure of information, subject only to limited and very tightly drafted exemptions;
- Ensure that access procedures are user-friendly, cheap, quick and simple;
- Require decisions regarding disclosure to be reviewable by an independent, impartial body, such as an Information Commissioner or Ombudsman;
- Permit penalties to be imposed on officials for non-compliance with the law; and
- Impose ongoing monitoring, training and public education duties on the Government.

The push for a right to information law can be a long and arduous process. In the United Kingdom, civil society groups started lobbying for an access law in 1984 but a national law was passed only in 2000 and came into force five years later in 2005. In India, the movement for a right to information law started in 1994, but national legislation was only operationalised in 2005. A review of campaigns from around the world throw up a number of useful ideas that advocates can utilise to lobby for an Act. Some of the most innovative and useful are discussed below.

### Networking for change

Building coalitions of like-minded groups encourages broad-based consultation and representation of a wider variety of interests. This contributes to a better legislative outcome, and also has long-term benefits in terms of building support for the law and developing a ready-made constituency of users of the law who understand how it functions and how it can benefit them. Coalition-building also strengthens the bargaining position of a group of advocates – sheer strength of numbers often carries weight with policy-makers keen to maintain broad appeal to voters. A common voice also strengthens the messages being sent to legislators; multiple or mixed signals can be confusing and can dilute the impact of recommendations for change. At the more practical level, a bigger group of organisations working on the

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<sup>32</sup> Hussain, A. (2000) *Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted in accordance with Commission resolution 1999/36*, Doc.E/CN.4/2000/63, 5 April. See also Ligabo, A., Haraszti, M. & Bertoni, E. (2004) *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1>.

<sup>33</sup> See also *Declaration of Principles on Freedom of Expression in Africa*, Part IV, adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, Banjul, The Gambia, 17-23 October 2002, <http://www.article19.org/docimages/1600.pdf>.

<sup>34</sup> See Organisation of American States - General Assembly (2003) *Access to Public Information: Strengthening Democracy*, resolution adopted at the fourth plenary session, June 10 2003, AG/RES.1932 (XXXIII-O/03).

<sup>35</sup> See (1999) Commonwealth Freedom of Information Principles, in *Promoting Open Government Commonwealth Principles And Guidelines On The Right To Know*, Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, Marlborough House, London, 30-31 March 1999.

<sup>36</sup> See European Union (2001) *Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents*, Official Journal of the European Communities L145/43.

same issue usually results in the availability of more resources, both human and financial, and the development of specialised expertise within the network.

Networking comes in many shapes and sizes. Experience has shown that networks can be formal – as when task groups, committees and coalitions are formed – or informal, for example, when different groups attend meetings or conferences together. Coalitions can be formed around single issues – such as the right to information – or can serve as subsets of larger networks – in this context, most likely, human rights groupings. Typically members of right to information campaigns have been human rights organisations, freedom of expression/media groups and anti-corruption/good governance organisations. However, the broader the base of groups involved in a coalition, the more effective it will be. Not only NGOs, but the media, lawyers associations, commerce groups and supportive legislators should be drawn into networks as they all bring contacts and skills that can be useful. Networks can be provincial, national, regional or international. More and more networks are web-based.

#### **NGOs are increasingly targeting donors to be more transparent**

International advocates are increasingly alert to ensure that these powerful entities do not slip under the radar simply because they perceive themselves as answerable only to their own mandates and member country governments, rather than citizens. Groups such as the Bank Information Centre<sup>37</sup> and Bretton Woods Project<sup>38</sup> closely monitor developments at international financial and trade institutions and push for greater transparency, accountability and citizen participation, in particular, through providing greater public access to information. In February 2003, a group of activists from five continents met to further their ability to work together and set up the Global Transparency Initiative, an informal network aimed at tackling the secrecy surrounding the operations of these international bodies.<sup>39</sup> National parliamentarians and CSOs should consider partnering with such international groups because their contacts and knowledge of the intricacies of international organisations is invaluable.

#### **Incorporating openness into election manifestoes**

Access to information laws are often presented by advocates as a tool in the struggle against corruption and more effective development. The issue of access to information can therefore be an excellent selling point for politicians entering an election cycle; voters are likely to consider favourably a commitment by a politician to work towards open government, anti-corruption and the enhancement of citizens' rights. Activists and supportive legislators can promote this view amongst political parties and politicians to good effect, particularly where there are upcoming elections. Ideally, campaigners can lobby political parties to include a commitment to implementing an access to information regime as part of their manifesto. Such a commitment to open government will likely be well-received by voters and provides a good starting point for implementing transparency and accountability at a practical level when in power.

The experience of many access to information campaigns around the world shows that that it is much easier to get an access to information law adopted when a new government has just been elected, especially where it was elected on a platform of democratic reform.<sup>40</sup> Notably however, in many countries further campaigning will be necessary to ensure that new governments stick to their election pledges. In federal systems, parliamentarians in state governments could also consider taking the lead, passing a good law which can then be used as a model for national legislation. This was famously done in Japan, where the push for right to information started at the local council level and eventually snowballed into the enactment of a comprehensive national law.

#### **Developing a model law or private members bill**

Where there is no clear government plan to introduce an access to information law, civil society or parliamentarians can take the initiative to promote their own draft to the government. In fact, the great

<sup>37</sup> See [www.bicus.org](http://www.bicus.org).

<sup>38</sup> See [www.brettonwoodsproject.org](http://www.brettonwoodsproject.org).

<sup>39</sup> See the website of the Global Transparency Initiative at <http://www.ifitransparency.org/>.

<sup>40</sup> Darbshire, H. (2003) "The role of civil society in the adoption and implementation of Freedom of Information laws", CHRI unpublished.

majority of the over 50 access to information laws adopted since 1990 have had significant civil society input into the drafting process.<sup>41</sup> Partnering with members of parliament who are open to the promoting a draft law has proved a successful strategy in many countries. In Zambia, the Zambian Independent Media Association (ZIMA) reviewed the governments draft FOI Bill, and as part of a coalition, proposed an alternate FOI bill drafted to support principles freedom of the press and to reflect international standards. Advocacy was initiated around the bill via a stakeholders' workshop. From the workshop, a task force emerged to progress advocacy on the issue. In India too, the first draft of the new national *Right to Information Act 2005* was developed by the National Campaign for the People's Right to Information, which submitted it to the National Advisory Council (a group of NGOs advising Government on its key priorities) who then passed a final draft to the Government for consideration.

In order to maximise the chances of successful input into the drafting process, advocates need to put serious energy into trying to understand who in the political spectrum will be most likely to support the law and who might actually act as a conduit for their views. NGOs report that where good cooperation was established, it made a significant difference in ensuring civil society input into the draft law. Another successful strategy is to cooperate with parliamentarians and bureaucrats by offering them technical assistance in drafting (and implementing) access to information legislation. Often, CSOs working in this area are more knowledgeable on the intricacies of access to information law than bureaucrats responsible for the drafting process and the parliamentarians responsible for sitting on committees of review. In particular, CSOs will often have comparative law experience, and therefore a fuller understanding of the options available and their applicability to their national context.

Parliamentarians may also want to consider using a Private Members Bill as a means of putting right to information on the Government legislative agenda. In some countries, private members' bills have been used to draw other parliamentarians' attention to the issue of access to information, to get specific legislative provisions out into the open for discussion and, in an ideal scenario, to actually enact access to information legislation. Private members' bills are bills introduced by parliamentarians who are not Ministers, in their individual capacity rather than under the auspices of their party. Civil society and interested parliamentarian(s) can work together to push for access to information – with civil society drafting a Bill and then an MP sponsoring it in parliament. Recognising how under-staffed many parliamentarians are, civil society should offer support throughout the process, including providing detailed briefing, drafting parliamentary (and other) speeches, and assisting with lobbying other parliamentarians. The strategy of using Private members bills is gaining increasing popularity with advocates. For example, the Campaign for Freedom of Information in the United Kingdom successfully used Private Members Bills to ensure the passage of four bills which served to increase citizen's rights to access information.<sup>42</sup> These incremental gains established an overall pro-disclosure environment that was very useful in supporting subsequent advocacy for an omnibus access to information law.

#### **India: Using a local law to uncover procurement irregularities<sup>43</sup>**

Documents recently released under the local Delhi *Right to Information Act 2001* raised a major public controversy over World Bank involvement in bidding for water privatisation contracts in Delhi. In 1998, the Delhi Government put out a tender regarding developing a plan to privatise its water supply. The multi-million dollar contract was awarded to a Calcutta subsidiary of PricewaterhouseCoopers (PwC) in 2001. Allegedly, the contract was awarded despite strong opposition from the Delhi Water Board, which consistently ranked PwC lower than other corporations during three subsequent rounds of bidding.

<sup>41</sup> Darbishire, H. (2003) "The role of civil society in the adoption and implementation of Freedom of Information laws", CHRI unpublished.

<sup>42</sup> Access to Personal Files Act 1987, Access to Medical Reports Act 1988, Environment and Safety Information Act 1988 and Access to Health Records Act 1990: see Goldberg, David. *op cit*. Also, for more information regarding these laws see <http://www.cfoi.org.uk/legachiev.html>.

<sup>43</sup> Case study summarised by Ms Mandakini Devasher, based on: 'Documents Spur Public Debate about World Bank Involvement in Awarding Contract for Delhi Water Deal', Kristin Adair, as posted on [freedominfo.org](http://www.freedominfo.org) - IFTI Watch (14 September 2005), <http://www.freedominfo.org/ifti.htm>; 'Depute Officials for Public Hearing on Water, Shiela told', The Hindu (9 October 2005), <http://www.hindu.com/2005/10/09/stories/2005100903430400.htm>; 'Right to Information Exposes World Bank Water Deal', Bharat Dogra, IPS News, (6 November 2005).

On 28 July 2005, Parivartan (a Delhi based anti-corruption NGO), citing internal documents obtained through a freedom of information request, charged that World Bank officials had repeatedly overruled Indian civil servants to push their preference in the selection of a contractor. Arvind Kejriwal of Parivartan stated: "Despite reservations, the Water Board cancelled the earlier evaluation and invited fresh bids. A new evaluation committee was formed to go through the financial and technical evaluation. The PwC again failed to clear the evaluation test. The World Bank asked for detailed scores given by each member of the evaluation committee and subsequently demanded that the scores given by one member, RK Jain, be omitted as he had given low marks to PwC."

Parivartan also called attention more generally to the importance of transparency and open decision-making in international organizations like the World Bank: "If the World Bank claims that such disclosure is not allowed under its current policies, we also demand that in the interests of being a 'transparent public institution,' it should change its global disclosure policies to enable public access to such information by the citizens of any of the countries concerned. The records of the Delhi Jal Board and their correspondence with the Bank indicate that the only way people can understand the reasons for certain crucial decisions taken is through access to the relevant correspondence," said Kejriwal. The World Bank's India Country Director responded to Parivartan's accusations in a press statement on 29 July and defended the Bank's intervention in the contract bidding.

Parivartan has stated that the documents they obtained show that the deal promises to accrue super profits for a few water companies and in so doing significantly push up the water bills of ordinary people as well as deny water to those unable to afford the heavy bills. Under the project, the management of each of Delhi's 21 zones would be handed over to water companies which will collect management fees, engineering consultancy fees and a bonus. Parivartan has estimated that at 24,400 US dollars per month, management fees to each expert alone, would work out to more than 25 million dollars a year. Further, each water company has a say in deciding its own annual operating budget and there are provisions for upward revision which can be misused to make extravagant demands on the government. Parivartan's calculation is that, if the project is accepted, a typical family may find its water bills increasing five times over. Under intense public criticism, the Delhi Jal Board has decided not to go ahead with the recommendations of the World Bank report prepared by PricewaterhouseCoopers after the Chief Minister met with a group of NGO representatives.

### **Using the media to raise awareness**

Encouraging mainstream media organisations, which are often geared to current news stories around events, to cover the intricacies of law making in the abstract is always an uphill task. Regardless, press contacts can be cultivated – this will take, time, energy and nous, but it can be done. Education campaigns can be specifically targeted at raising awareness in the media themselves. More generally, the key is to demonstrate to the media why the public will be interested in the issue – it is this interest that will sell newspapers and get people to tune into news bulletins. In fact, assuring the media of public interest is not actually such a major task; in many countries, citizens will be keen to receive information from the media on how they can keep their government's accountable and take control of their own development through the right to information. To assist the media, supporters can draft press releases and feature stories. Such submissions should be written in a form that can be easily utilised by the media – jargon should be kept to a minimum and the story should be written with a view to capturing the interest of the public. In fact, on the issue of the right to information the media can often provide fertile ground for advocates looking for support because improved access to information is of direct benefit to the media itself. This fact can be used to encourage the media to be an active partner in the campaign for the right to information.

### **Utilising the right to information**

Even where a law is in place, it will only improve public accountability for development expenditures if it is USED by the public, parliamentarians and the media to expose mismanagement and malfeasance and demand change. Information laws are only effective where they are used – often and innovatively. Over time, just the knowledge that the law *could* be used is often enough to encourage officials to strive to meet higher standards of efficiency, effectiveness and accountability.

To promote better development accountability, people may wish to ask for information about development expenditures relating to their particular locality or in relation to particular sectors. For example, in the state of Rajasthan in India, the famous movement Mazdoor Kisan Shakti Sanghatan (MKSS), asked for information regarding development expenditures in the two districts in which they worked and uncovered massive misallocation of funds when they audited the documents they were finally provided with.<sup>44</sup> In another case, an NGO in the state of Madhya Pradesh accessed documents about purchases made under an ILO project which was supposed to assist with improving health care outcomes for child labourers. Part of the project involved purchasing medical kits, but the NGO accessed information which showed that the project spent more than US\$3000 on the purchases despite the lowest tender price being less than US\$1000. In a country where more than 400 million people live on less than US\$1 a day, this is a culpable misuse of development funds.<sup>45</sup> Today in India, many NGOs now request information about local level development activities, such as the drilling of bore wells, installation of water pumps, building of local schools/health clinics/community centres and payment of wages by government bodies responsible for development projects. They have used the information to uncover large-scale corruption in the development sector.

#### **Promoting development accountability through parliamentary committees**

The use of parliamentary committees and taskforces to examine important political issues is becoming increasingly prevalent. Unfortunately, in many countries, the work of parliamentary committees is closed to the public, which reduces their capacity to promote accountability through transparency. Where committees are open however, they can be a very effective oversight mechanism to check that development funds are properly spent. In this context, parliamentarians need to be alert for opportunities to use their membership on committees to ask questions about development budgets and/or specific sectoral development projects. For example, members of the committee reviewing the annual budget can ask specific questions of Ministers and officials to find out how funding for projects was decided upon and how well projects were implemented under the previous budget. They can use parliamentary rules to request detailed project documentation. Other sectoral committees, such as law and justice committees or human rights committees, can also be used to ensure that development projects are being implemented in accordance with all domestic laws – including those related to tendering, procurement and financial management – and international and national human rights standards.

#### **Promoting accountability through RTI at the international level**

Over the past decade or so, the right to information movement has made significant progress. First recognised in the domestic context for its important contribution to good governance, in more recent years, the right to access information has become a key plank in the strategy of civil society activists determined to make donors more transparent, accountable and open to the participation of beneficiaries. The World Bank, which produced the very first MDB information disclosure policy, has itself recognised that: “The sharing of information is essential for sustainable development. It stimulates public debate on and broadens understanding of development issues, and enhances transparency and accountability in the development process. It also strengthens public support for efforts to improve the lives of people in developing countries, facilitates collaboration among the many parties involved in development, and improves the quality of assistance projects and programs.”<sup>46</sup> Nonetheless, official development assistance continues to be misdirected, in large part because the public, parliamentarians and sometimes even local officials cannot access information from donors about how it is being spent. In this context, it is important that proactive information disclosure and the legal right to information are recognised by donors as a core mechanism for promoting accountability.

<sup>44</sup> Based on: Mishra, N. (2003) *People's Right to Information Movement: Lessons from Rajasthan*, New Delhi, UNDP, p.10.

<sup>45</sup> Story collected by Dr Rakesh Ranjan, consultant to the Commonwealth Human Rights Initiative.

<sup>46</sup> World Bank, op cit, Foreword by Mr James D Wolfensohn, President of the World Bank.



## Implementing information disclosure policies

Despite the clear benefits of regular information disclosure, as a practical means of promoting transparency, public participation and accountability, donors have been slow to take up the right to information as a key issue for action. In particular, regional and international donors – who are not covered by domestic right to information legislation – have not necessarily embraced information disclosure as a strategy in its own right. Information disclosure policies have been viewed more as administrative policies rather than core strategic documents which support their overall mandate to work accountably to dispense development assistance.

### **Existing disclosure policies**

It took some time for the multilateral development banks (MDBs) to come around to the fact that they needed not only to advocate, but also to implement, the right to information themselves. As has been common amongst the MDBs, it was the World Bank that took the lead, implementing the first MDB Information Disclosure Policy in 1993. Since that time, all of the MDBs have developed information disclosure policies.<sup>47</sup> Unfortunately, a close review of the policies shows that while the narrative of openness and disclosure is firmly in place, too often the substantive clauses fall far short of the ideal. It was likely this fact that prompted the G-7 Finance Ministers and Central Bank Governors, as recently as 2001, to note that “[e]nhancing internal governance, accountability and transparency are crucial to enable the MDBs to strengthen their role in the fight against poverty and retain institutional credibility. Over the last few years, significant progress towards greater transparency and openness has been made. However, there is still scope for further improvement.”<sup>48</sup>

#### **Uganda: Information empowers citizens to expose poor project design**

Access to information laws offer a very practical means for individuals and civil society to take on the state and protect their rights. This has been particularly well-illustrated by environmental action groups which have been very adept at using access to information legislation to expose and discourage anti-green government programs.

For example, in 2002 in Uganda, Greenwatch Limited, an environmental NGO, successfully used the open government clause in Article 41 of 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 project is now on hold.<sup>49</sup>

The International Monetary Fund (IMF) has been severely criticised for operating in secret. Its 1998 disclosure policy lists documents that can be made available; but disclosure is only possible if concerned governments consent. Agendas and minutes of meetings of the governing board are excluded from what is already a very bare list of documents for disclosure. Successive managing directors have stated that the IMF is only accountable to its member countries, and increased openness will require consensus

<sup>47</sup> African Development Bank Group (2003) *Disclosure of Information Policy Paper*, [http://www.afdb.org/about\\_adb/disclosure.htm](http://www.afdb.org/about_adb/disclosure.htm); Asian Development Bank (2005) *Public Communications Policy*, [http://www.adb.org/Documents/Policies/Confidentiality\\_Disclosure/confidentiality.pdf](http://www.adb.org/Documents/Policies/Confidentiality_Disclosure/confidentiality.pdf); Inter-American Development Bank (2003) *Disclosure of Information Policy*, <http://www.iadb.org/exr/pic/info/infofinaleng.pdf>; World Bank (2002) *The World Bank Policy on Disclosure of Information*, <http://www1.worldbank.org/operations/disclosure/policy.html>.

<sup>48</sup> G-7 Finance Ministers and Central Bank Governors (2001) "Strengthening the International Financial System and the Multilateral Development Banks", Meeting in Rome, Italy, 7 July 2001, <http://www.idlo.int/texts/IDL/mis5716.pdf>.

<sup>49</sup> "Ugandan Judge Orders Release of Key Document on Bujagali Dam", 22 November 2002, <http://www.freedominfo.org/ifti1102.htm#1> as at 22 July 2003.

among governments.<sup>50</sup> The World Trade Organization also has only relatively limited information disclosure. Information about the governing structure and descriptions of key bodies and functions are available, as are all final agreements and summaries of governing body decisions and statements. However, all trade negotiations and dispute settlements are closed to the public. Critics argue that providing access to agreements only after they are signed is unsatisfactory because without knowing what really goes on during negotiations, it is difficult to hold the WTO or country representatives to account. The new 2002 Derestriction Policy<sup>51</sup> though, is very comprehensive, shortening the time frame in which documents can be released from an average of eight to nine months to six to eight weeks.<sup>52</sup> Some documents can still be withheld (most commonly, documents the member itself has provided to the WTO) if a WTO member-government demands non-disclosure, but the list of undisclosed documents has been cut down.

By contrast, the United Nations Development Programme's (UNDP) Public Information Disclosure Policy is relatively wide and inclusive. The Policy's objective is stated clearly to be to "ensure that information concerning UNDP operational activities will be made available to the public in the absence of a compelling reason for confidentiality".<sup>53</sup> There is "a presumption in favour of public disclosure of information and documentation generated or held by UNDP".<sup>54</sup> Anyone can ask for copies of any document in the UNDP's possession, except those expressly exempted on such grounds as commercial confidentiality, confidentiality of internal deliberative processes, legal privilege and privacy of employees.<sup>55</sup> The European Union (EU) also has a relatively strong information disclosure regime. The 2000 Charter of Fundamental Rights of the European Union explicitly guarantees access to documents of the European Parliament, Council and Commission.<sup>56</sup> In 2001, the EU passed a specific regulation on freedom of information to "ensure the widest access possible to documents".<sup>57</sup> It covers "all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union".<sup>58</sup> The Regulation obligates both the European Union Commission and the European Parliament to maintain updated public registers of documents on the internet.

### **Limitations of existing disclosure policies**

While some progress has been made in terms of strengthening donor disclosure, the disclosure policies of most international financial and trade institutions still contain major deficiencies. Advocates – both within civil society and within the legislature – need to be alert to these shortcomings, so that they can lobby institutions to fix them as well as ensure they properly understand the parameters of what they can access under relevant disclosure policies. Specifically, key issues with disclosure policies include:

- **Member state vetoes**: Many policies allow member states to veto disclosure of documents which relate to their country. This harks back to the past when international organisations adopted a policy of strict non-interference in national politics and policy development. It is inappropriate today and moreover, does not accord with best practice disclosure approaches adopted in domestic laws where it is the body which holds the information which has the final say over whether information should be released – even if it involves a third party's interests. Ironically, the very international bodies which argue that they cannot force governments to disclose their documents are the same ones who use the threat of withdrawing financial support to load up loan agreements with any

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<sup>50</sup> Roberts, A. (2000) "Informational commons at risk", p.15,

<http://faculty.maxwell.syr.edu/asroberts/documents/chapters/commons.pdf> as on 1 October 2003

<sup>51</sup> WTO (2002) *Procedure for the Circulation and Derestriction of WTO Documents*, Doc. WT/L/452, decision of 14 May 2002, <http://docsonline.wto.org/DDFDocuments/t/WT/L/452.doc> as on 1 October 2003.

<sup>52</sup> WTO (2002) *Explanatory note on old and new procedures*,

[http://www.wto.org/english/forums\\_e/ngo\\_e/derestr\\_explane\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/derestr_explane_e.htm) as on 1 October 2003.

<sup>53</sup> UNDP (1997) *Public Information Disclosure Policy*, paras 1 and 6,

<http://www.undp.org/csopp/CSO/NewFiles/policiesinfo.html>, as on 1 October 2003.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.* Part II.

<sup>56</sup> Doc. 2000/C 364/01, Article 42 [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf) as on 1 October 2003.

<sup>57</sup> *Regulation (EC) 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents*, 30 May 2001,

[.http://europa.eu.int/comm/secretariat\\_general/sgc/acc\\_doc/docs/1049EN.pdf](http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/1049EN.pdf) as on 1 October 2003.

<sup>58</sup> *Ibid.* Art.2.3.

number of other conditionalities. If they are willing to use their power to force national governments to implement controversial domestic policy reforms, it is problematic that they are reluctant to adopt a similarly firm stance when their transparency and accountability are at issue.

- Private company exemptions and vetoes: Many policies include very broad exemptions to protect against the disclosure of information provided by or related to private companies. Exemptions are often supported by an actual veto which allows private companies to decide whether or not their information should be disclosed. Such an approach is no longer appropriate. Any private company which receives public monies – which is what the international financial institutions are largely funded with – should be required to be open and accountable to the public. This is certainly the approach which is increasingly being adopted in national access laws.
- Failure to disclose drafts: Although policies are increasingly broadening out the types of documents they will allow to be released, nonetheless, there continues to be a reluctance to require the disclosure of draft documents. This is disappointing because for information disclosure to meaningfully promote public participation in practice, it is important that documents are disclosed prior to being finalised so that the public can usefully input their ideas and make suggestions for amendments. As one activist from India observed: “Unless a public is fully empowered with all the relevant and required knowledge *within a relevant time frame*, its participation in a given situation is cosmetic at best.”<sup>59</sup> (emphasis added). Unfortunately though, policies “are generally geared towards informing people of decisions that have already been made, rather than giving people the information that they need to participate in decision-making. There are notable exceptions to this rule, but in general the IFIs [the International Monetary Fund and the multilateral development banks] fail to share detailed information early in the deliberative process and are more comfortable distributing outcomes of decisions rather than working drafts.”<sup>60</sup>
- Failure to disclose ongoing implementation reports: Policies increasingly require more public input and information dissemination while projects are being designed, in recognition of the fact that beneficiaries have too often been excluded from deciding what they want and what is in their best interests. However, once a project is agreed upon, it is essential that the public, and in particular, project beneficiaries, can access ongoing information about how implementation is progressing. Some policies require the disclosure of summary implementation information, but even this is not enough. People should be able to access all implementation reports so they can assess for themselves whether the project is on-track.
- Failure to translate information and dissemination in accessible forms: All of the international donor organisations work in multiple countries, the majority of which have official languages other than English. Despite this fact, they all operate in English this makes the inclusion of a translation policy vital to any information disclosure policy – information is next to useless if it cannot be understood by recipients. Unfortunately, only the World Bank has a comprehensive translation framework, and even this has its deficiencies – most notably, the fact that the responsibility for decisions on translation (including what, when, and how) is discretionarily vested in the institution responsible for the document. The internet is a key mode of information dissemination identified in most disclosure policies, but it goes without saying that tens of millions of project affected people do not have access to the internet. The World Bank has instituted the most progressive supplement to the internet, establishing Public Information Centers (PIC) in most of their country offices. The Bank’s specific policy on PIC’s notes that many have taken on an active dissemination role, using a variety of methods and customized packages - such as road shows, brochures in English and local languages, monthly or quarterly newsletters or booklets, and “mini” PICs established throughout the country.<sup>61</sup> This work needs to be extended by the World Bank and replicated by the other organisations.

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<sup>59</sup> Guttal, S. op cit.

<sup>60</sup> Saul, G. op cit, p.5.

<sup>61</sup> World Bank (2003) *Strengthening the World Banks Public Information Centres*, [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/08/12/000012009\\_20030812092512/Rendere/PDF/260211Str110PICs.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/08/12/000012009_20030812092512/Rendere/PDF/260211Str110PICs.pdf), paragraph 2, p.vii.

### **Utilising disclosure policies effectively**

For information disclosure policies to be useful in promoting more accountability in overseas development assistance, they need to be used by stakeholders actively and effectively. Unlike many other policies which place specific duties on officials, an information disclosure relies for its utility on affected or interested people using it to promote more transparency. Importantly, information disclosure policies provide a direct link between beneficiaries and donors. Rather than beneficiaries having to rely on their governments to represent them or donor country citizens to take up issues on their behalf, disclosure policies can be used BY beneficiaries to directly hold donors accountable.

### **Encouraging recipient governments to open up**

More controversially, donors can also be active in promoting information disclosure around development projects by encouraging national governments to enact right to information laws and/or implement information disclosure as a matter of policy. For example, Ghana's Poverty Reduction Strategy, developed in consultation with the World Bank with CSO involvement, requires that an FOI law will be adopted by 2004.<sup>62</sup> Donors such as the international financial institutions increasingly make transparency a condition of loans and assistance and issues of transparency have increasingly been included in dialogue between governments and the international community via the good governance agenda. Although precise requirements are not always formulated, it is often a criterion that the government takes steps to promote transparency, and this is something which CSOs have exploited to good effect.

Notably however, many development activists are highly critical of "donor conditionality" as a means of achieving sustainable policy reforms. In many other sectors, conditionality has led to national reforms being handled as a "tick-the-box" exercise, where governments simply do the minimum needed to satisfy the donor, without seriously internalising the reform agenda. In the long-term, this has often led to a lack of sustainability of any short-term gains. In the area of freedom of information, activists sit on both sides of the fence regarding conditionality as an advocacy approach. As a recent article reported, Toby Mendel, Law Programme Director at ARTICLE 19 pointed out, "The banks are recreating whole judicial systems in developing countries, why not pump FOI?...It's one thing for the Bank to aim conditionality at social spending which has often hurt the poorest of the poor and quite another for it to use its leverage to pressure countries to respect basic human rights, including the right to know."<sup>63</sup> However, some activists are less confident that donor conditionality will result in real improvements in public access to information. David Banisar of Privacy International has said, "I'm of two minds on whether having the World Bank or IMF force a country to adopt a FOI law is entirely useful. I suppose it's better than not, but in a lot of places, it's really just a ticking of a box and no serious implementation is then done. There does need to be a civil society there that wants to use it and force the government to implement it. Where there is not, it can just sit there dead."<sup>64</sup>

Apart from conditionality, donors will have to think more innovatively about how to support domestic activities to entrench the right to information. One obvious way, is to require information disclosure to be an integral part of all projects supported by the donor. This would not require legislative action on the part of the recipient government, but would be one step forwards in familiarising local officials with the mechanics of information disclosure. Over time, once the benefits of disclosure manifest – for example, more accountability for expenditure and more effective public participation in development activities – it is to be hoped that governments would be keener to take the lead on entrenching the right to information more comprehensively through legislation.

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<sup>62</sup> This is a requirement listed in the 'policy matrix' of the PRSP. See [www.worldbank.org/poverty/strategies/index.htm](http://www.worldbank.org/poverty/strategies/index.htm), as at 9 June 2003.

<sup>63</sup> Toby McIntosh (2006) "Freedom of Information Laws Added to the Development Agenda", 22 March, <http://www.freedominfo.org/features/20060322.htm>

<sup>64</sup> *Ibid.*

## Conclusion

It is important to note the limitations of the right to information, most significantly, the fact that information is not a cure all in terms of increasing transparency and participation, but is only a tool – albeit a central tool – that can be used in support of a more comprehensive strategy. Simply developing an information disclosure policy will change little in practical terms if officials are not committed to their new disclosure duties and the public are not aware of their rights and assisted in exercising them. Furthermore, it is necessary that other mechanisms are in place to maximise the benefits of increased information disclosure. For example, anti-corruption divisions need to be established to prosecute malfeasance where information is brought to light. Participation mechanisms need to be developed to ensure that once project-affected people obtain access to information about the development and/or implementation of activities they have accessible avenues for channeling their feedback back to decision-makers. Additionally, it must be institutionalized that decision-makers are required to be consider the inputs of the public, and not only governments, the private sector and/or consultants.

Nevertheless, the right to information offers a cheap but effective tool for contributing to oversight of the allocation and expenditure of overseas development assistance. Although governments and donors often talk about transparency, rarely do they implement concrete mechanisms for promoting greater openness. The right to information – which can be relatively easily operationalised through legislation and/or information disclosure policies – addresses this problem in a practical way. It provides a direct link between donors, governments and the public and empowers ordinary people to engage with the development processes that affect them, but too often sideline them. More information will bring more accountability and should be prioritised by all development players accordingly.