

discussion

Access to information relates to the policies, practices, laws and procedures that help guarantee openness in the conduct of public affairs. In a broad sense, it is a question of how much access to internally held information outsiders are entitled to, and what outsiders can do if insiders are not sufficiently forthcoming in providing such access.

Having access to information plays a key role in efforts to curb corruption and control its impact. By facilitating the release of information from a variety of sources into the public domain, it introduces a fundamental mechanism of transparency and accountability. Where official information can be viewed by any interested party - including members of the public, civil society and the media - corruption becomes more difficult to conduct and to conceal. Those engaged in corrupt acts are faced with the real prospect of being held to account for their actions, while those contemplating such acts may be dissuaded by increased levels of openness. Ensuring access to information is therefore a fundamental requirement for establishing a functioning system of national integrity.

It is important to note that the terms "access to information" and "freedom of information" are often used interchangeably. In recent years, the former has gained increasing acceptance, partly because "freedom of information" is often confused with "freedom of speech and expression". The following text will primarily refer to "access to information" in order to express the totality of seeking and receiving information from public and private institutions.

Defining the right to access information

Access to information is an internationally recognised human right. As far back as 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" (Source: UN General Assembly, 1946 Resolution 59(1), 65th Plenary Meeting, December 14). Subsequently, the right to information was referred to in two key international human rights instruments: the 1948 UN Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights of 1966, which came into force in 1976. Many countries explicitly recognise this fundamental right in written constitutions or in specific legislation. Indeed, up to 2004, over 50 states had passed access to information legislation at national level, while many more had drafts pending approval by parliament or have sub-national level legislation in place.

Article 19 of the Universal Declaration of Human Rights (1948) defines the right to access information in the following terms:

"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".

For the full text see: <http://www.un.org/Overview/rights.html>

access to information as a means to counter corruption

Knowledge of what the state and other types of institutions do is fundamental to the power of the people to hold them to account and improve the way in which they work. Absence of, or inaccessibility to, information often creates a sense of disempowerment, mistrust and frustration. On the other hand, access to relevant, up-to-date information can create the basis for mutual exchange, allowing both officials and the public to better assess decisions taken and policies implemented.

Free and guaranteed access to information enables citizens, the media and law enforcement agencies to use official records as a means to uncover cases of corruption and maladministration. Perhaps more importantly, however, the transparency herewith achieved acts as a deterrent to future corruption, as the risk of detection of corrupt practice increases.

When citizens delegate power to political representatives, they have a right to know what is done with this power. Access to information is crucial in building the kind of transparent democratic systems in which the abuse of public power cannot be easily hidden.

Access to information can also play a role in ensuring the proper accountability of inter-governmental and non-governmental actors whose actions often affect the lives of millions. By providing greater access to internal information, organisations such as multilateral development banks and civil society organisations can strengthen their internal governance systems, reducing the opportunities for corruption within their own ranks. At the same time, by improving access they can gain legitimacy in the eyes of stakeholders and build public trust in their activities.

The same principle applies to the private sector. Corporate boards and managers can better govern their companies if information is available to them on a transparent basis. Shareholders and investors also tend to make better judgements the more they can depend on sound financial data rather than the rumours so often at the heart of financial crises.

Access to information is also integral to the achievement of development goals. It can shed light on the corrupt diversion of resources intended to reduce poverty levels and improve the effectiveness of aid to populations across the globe. By allowing access to relevant and accurate information regarding development activities - including the delivery of essential services such as health - local communities can be empowered to participate in decisions and monitor programmes that will greatly affect their lives.

The following pages will focus, in particular, on the process of promoting, adopting and implementing an access to information law. Though this is by no means the only method to address the issue of access to information, it is the area where most interest presently resides. Indeed, by March 2005, 59 countries had passed laws on access to information, while many others are in the process of considering or approving new laws - often in the context of implementing international anti-corruption conventions.

challenges

Despite the many benefits of improving access to information at national and global levels, ensuring effective access is an extremely difficult task. The existence of an access to information law does not, by itself, necessarily correlate to high levels of accountability and low levels of corruption. Lack of political will, a tradition of secrecy, lack of public awareness, and low levels of administrative compliance can all hamper the effective implementation of access laws.

Weak political will

The existence of political will can achieve impressive results in the field of access to information. In Mexico, for example, the implementation of the 2002 Transparency Law overturned 70 years of state secrecy, with 54,000 requests for information processed in 2004 alone. A lack of political will can, however, severely impede the implementation of access mechanisms. In Zimbabwe, provisions that give the state wide-ranging powers of discretion in the administration of information have crippled the public's right to receive and impart government-held data. Political will is therefore essential in developing the legal frameworks necessary to regulate the process of preparing, managing and delivering information to the public.

A culture of secrecy

The right to access information is conceptually complex as it can sometimes be legitimately restricted on grounds such as national security and the protection of personal or corporate privacy. However, the abuse of legitimate restrictions on the flow of information is one of the most serious obstacles to the realisation of this right.

State secrecy is often viewed as a means for officials to shield themselves from the consequences of their actions. Opaque decision-making processes can defer attention from those who should be held accountable for particular decisions. At the same time, secrecy provides fertile ground for the promotion of special interests that are often incompatible with the public good. Relationships between key officials and special interest representatives can lead to abuse of the official's position for his or her own personal gain, generally resulting in the conferral of undue benefits upon the special interest actor. Such abuse can take the form of outright bribery, facilitation payments, "kick-backs" or commissions for the allocation of public contracts, as well as illegal contributions to political parties and/or campaigns.

Secrecy can also furnish officials with the added power of controlling information in their possession, providing it according to their own criteria and, often, for their own benefit. In the absence of proper access mechanisms, citizens and journalists alike must rely on "leaks" as one of the few means to access official information.

The proliferation in recent years of access to information legislation has been accompanied by similar growth in the adoption of state secrecy laws. While the reasons for such increases are many - including international pressure and political or economic instability - such legislation has the potential to seriously undermine the scope of any access to information law.

Obstacles to administrative compliance

The success of access to information laws in countering corruption is also determined by their ability to overcome the administrative challenges underlying their preparation and later implementation. The state needs to ensure the supply-side of information, establishing proper record-keeping and archiving, as well as clear processes whereby information is made available to the public. Failure to support the implementation of access to information laws with appropriate management of information records and archives will seriously impede their effectiveness.

Records must be well-managed to enable information to be found quickly and processing costs kept low to encourage citizens to exercise their rights. Furthermore, the quality and "user friendliness" of the information available should be considered when it is delivered to citizens.

Internal bureaucratic procedures and mindsets play an important role in translating the right to information into practice. The training of officials with regard to the practical implementation of access provisions is therefore essential in fostering their effective application. Similarly, training that addresses the organisational culture within

an institution, as well as individual officials' perceptions of the importance of providing relevant and timely access, is fundamental if attitudes are to be changed.

An important component for ensuring compliance with access laws is the existence of effective appeals mechanisms to which citizens can direct claims if information requests are denied. Where such appeals mechanisms fail, the actual implementation of access laws will most likely be severely hindered.

All of the above is predicated on the proper and timely allocation of financial resources. The implementation of appropriate record management systems, procurement of appropriate technology, establishment of clear administrative procedures, as well as the effective training of officials, may all require substantial funding.

Lack of public and media awareness

The success of access to information laws in countering corruption depends not only on the willingness and capacity of the state and other institutions to provide information, but also on the readiness and ability of citizens to request and use it. Citizens who are unaware of their rights will not use them and, even when they are, may not know how to use them effectively. It is therefore crucial that citizen training become an integral part of any access to information provision. Such training can be accomplished via awareness-raising campaigns, the distribution of handbooks, public hearings and discussions, or a combination thereof.

The labyrinths of bureaucracy and legal terminology that define the scope for access can be daunting for citizens seeking information. Those who know their way around these labyrinths can abuse this knowledge by demanding payment from citizens wishing, for example, to file a construction permit or get their child registered at school. In contrast, open systems that actively promote access to information, reduce the scope for corruption on the part of such "information gatekeepers" by making once scarce data commonly accessible.

The role of the media is central in creating awareness among citizens about the benefits of access to information. At the same time, journalists themselves may require training to know how best to make use of these benefits. Investigative journalists who research and expose corruption are often among the first to encounter obstacles in finding appropriate information. The existence of access laws may allow journalists to pursue potential corruption cases which, without public access to official information, would be difficult to substantiate.

One practical example for enhancing public access to official information is Lebanon's construction permit manual, devised in the context of the country's post-conflict reconstruction.

Lebanon's construction permit manual

This manual provides a simplified description of the necessary procedures to acquire a construction permit in Lebanon. It provides an overview of the documents, fees, and deadlines required to obtain a permit, as well as the different institutions involved. While making this transaction transparent to the public, and informing them of their rights vis-à-vis the public administration, it also seeks to empower citizens in their contact with state authorities and thereby minimise the likelihood of corruption.

Though the growing use of information technology in the provision of access to information is welcome in many cases, caution should be observed to ensure its appropriateness in a particular context. In vast areas of the world, citizen access to such technology is still very limited, thus restricting the usefulness of internet-based information. In other areas, where there has been investment in promoting the extension of internet connections, information and communications technology can be used as a basic tool to promote openness and thus control the risks of corruption.

An innovative approach using the internet to enhance transparency at local government level has been pioneered in Colombia:

Using the internet to promote municipal accountability: Colombia

This project uses software and training manuals to enable small municipalities to improve financial transparency by publishing their budgets and accounts in a simple manner. The software, applied in 2002 and 2003 in five pilot municipalities, has now been donated to the state of Colombia, which has made its introduction mandatory in 500 other cities. It is "free code" software that can be copied without charge by those who wish to do so. The software package contains the software itself as well as training materials to set up a web-page and implement a methodology to account for municipal public funds. Both the software and training materials (Spanish language) can be downloaded free at:

<http://www.municipiotransparentes.colnodo.org.co/>