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**E-Governance in the Pacific Islands:
Entrenching Good Governance & Sustainable Development by
Promoting ICT Strategies Based On The Right to Information**

by

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“We are going through a historic transformation in the way we live, work, communicate and do business. We must do so not passively but as makers of our own destiny. Technology has produced the information age. Now it is up to all of us to build an Information Society.”¹

Introduction

Many commentators have identified the Pacific Islands countries as being plagued by a diverse range of challenges - political insecurity, ethnic divisions, corruption, economic under-development and social inequality. Making these problems more difficult to tackle is the so-called ‘tyranny of distance’, the large physical distances and lack of communications infrastructure between the remote communities of the islands and their capitals.

In recent years, Information and Communications Technologies (ICTs) have gained prominence for their potential to overcome the tyranny of distance, and in so doing, assist Pacific Island Governments to promote their common objectives of good governance and sustainable development, particularly by engaging more effectively with remote and/or rural populations. Indeed, ICTs offer a myriad of ways to connect people in remote locations to their capitals. Although more recent ICTs such as computers are not yet widely entrenched throughout the Pacific, they are gaining traction and could be effectively coupled with older ICTs, such as radios, to great effect.

Recognising the enormous potential for ICTs in the Pacific – if utilised effectively – this paper seeks to raise awareness at this early stage of the importance of ensuring that any ICTs strategy is underpinned by a recognition of the “right to information” and its potential contribution to good governance and sustainability. By purposefully prioritising strategies which entrench the right to information – in particular, proactive disclosure strategies which use ICTs to put more government information into the public domain – ICTs could be used to bridge the governance divide in the Pacific and bring governments closer to their constituents.

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. At the heart of the Right to Information are three key principles:

- the right of the public to request access to information concerning their government’s activities;
- the corresponding duty on the government to meet a request, unless specific, defined exemptions apply;
- the additional duty on the government to provide certain key information proactively - even in the absence of a request

The right to information has been recognised by the United Nations General Assembly as far back as 1946, when it declared “*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*”². Soon after, the right to information was given international legal status when it was enshrined in

¹ UN Secretary General, Kofi Annan, *Message to World Summit on Information Society*, Tunis 2005.
<http://www.itu.int/wsis/messages/annan.html>

² See UN General Assembly Resolution 59(1), 65th Plenary Meeting, 1946.

Article 19 of the International Covenant on Civil and Political Rights.³ Over time, the right to information has been included in a number of regional human rights instruments, including the African Charter on Human and Peoples' Rights,⁴ the American Convention on Human Rights⁵ and the European Charter of Human Rights.⁶ This has placed the right to information firmly within the body of universal human rights law.

In practice, effective implementation of the right to information requires governments to develop legislation, setting out the specific content of the right - such as 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 (see Annex A for details of best practice law-making principles that constitute an effective right to information law).

The Pacific Media and Communications Facility recently released a report – *Opportunities for Media and Communications in the Pacific* – that summarised the state of the right to information in the Pacific region.⁷ Most notably, Papua New Guinea's constitution actually specifically entrenches the right to information,⁸ although the Government has yet to develop separate right to information legislation. In Fiji, the Constitution explicitly requires the Government to enact legislation on freedom of information⁹, but while the current Government has indicated its intention to table a Bill¹⁰ as a priority, draft legislation has yet to be released. The only other Pacific Islands country which appears to have made moves to enact a right to information law is the Cook Islands, which earlier this year had completed the drafting of its Official Information Bill which has since been forwarded to the Cabinet for consideration.

The value of the right to information

As noted previously, the right to information imposes a duty on governments to respond to the inquiries of its constituents by providing information on request. It also requires governments to proactively disclose important information to the public, rather than simply conducting its activities in secret. Historically, the right to information was often understood in developing countries as more of an administrative, bureaucratic mechanism. However,

³ This 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]

⁴ See *A Right to Information*, 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.

⁵ See *A Right to Information*, Article 13(1), *American Convention on Human Rights*, 1969, Costa Rica, OAS Treaty Series No. 36, 1144 U.N.T.S. 123.

⁶ See *A Right to Information*, Article 11(1), *Charter of Fundamental Rights of the European Union*, 2000, Nice, Official Journal of the European Communities, C 364/1.

⁷ For more information see the Pacific Media and Communications Facility website at <http://pmcf.muprivate.edu.au/index.php?id=798>. See also CHRI's website at www.humanrightsinitiative.org (click on Right to Information, International, Member States Laws & Papers).

⁸ Article 51 of the Constitution explicitly recognises the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society.

⁹ Article 30(1) of the Constitution includes the freedom to seek, receive and impart information and ideas as part of the right to freedom of expression. Article 174 explicitly requires that Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies, as soon as practicable after the commencement of the Constitution.

¹⁰ Minister for Information Marieta Rigamoto announced at the end of September that the Government is drafting a Freedom of Information Bill which, along with the Public Records Act, would give citizens wider access to information held by the Government and its agencies. See <http://www.fijitimes.com/story.aspx?id=29425> for more details.

experience in many developing countries over the last decade has shown that by empowering citizens with a tool which enables them to scrutinise their government's actions on a day-to-day basis, the right to information is a key mechanism for practically entrenching government transparency, accountability and public participation. Accordingly, an ICT strategy that co-opts the Right to Information can benefit governance and promote sustainable development in a number of ways.

Promoting democratic governance

The foundation of democracy is an informed constituency that is able to thoughtfully choose its representatives on the basis of the strength of their record and one 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. Where people do not have access to information, as has so often been the case in the Pacific Island states, voters will often fall back on ethnic, religious or geographic affiliations when choosing a candidate.

Supporting participatory development and effective service delivery

In terms of promoting sustainable development, much of the failure of development strategies in the Pacific Islands to date is attributable to the fact that, for years, they were designed and implemented in a closed environment - between governments and donors and without the active involvement of the public. However, if governments are obliged to provide information to the public, then citizens can assess for themselves why they have not benefited from government development activities or even from basic service-delivery initiatives in such areas as health care provision and education. Armed with paper-based documentation, the public are in a better position to effectively lobby governments to ensure that services meet their community-specific needs and that money is spent appropriately.

Information empowers citizens and NGOs

The right to information offers a very practical means for individuals, civil society and even parliamentarians to engage more effectively in development activities and ensure that their rights are protected and their legitimate interests promoted. 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 and/or donor-driven and/or private sector driven programmes.

For example, in 2002 in Uganda, Greenwatch Limited, an environmental NGO, 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 was consequently put on hold by the World Bank.¹¹

¹¹ *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.

Supports state-building and promotes national stability

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 also goes some way to minimising the likelihood of conflict. In post-conflict development situations, the right to information can be especially crucial in the state-building process, such as that underway in the Solomon Islands because 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 or unfair advantage of one group over another.

Exposes corruption

If implemented effectively, the right to information can act as a powerful deterrent of government corruption. In many Pacific states, corruption has eaten away at civil society's trust in the state's political and legal system and has greatly hindered economic development. In particular, corruption can destroy efforts at poverty reduction, creating a vicious circle where funds are often skimmed off by the state, which, in turn, deters crucial foreign investment and growth. However, an effective right to information regime can make it much harder for government officials to cover up their corrupt practices at all levels of government, and also works to expose poor policymaking. Notably, in 2004 of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. In contrast, of the ten countries perceived to be the worst in terms of corruption, only one had access to information legislation in place.

Cracking down on welfare corruption in Delhi, India¹²

In India, poor citizens are given a ration card which entitles them to discounted rice and wheat. This is similar to some of the government subsidy programmes found in the Pacific. In the jurisdiction of Delhi, citizens used their the Right to Information Act to access records held by the private ration shop dealers responsible for administering the programme and found that the shops owners had been siphoning off rations, while providing false records to the Government Food Department.

Through the right to information applications citizens could see their ration record held by the Government and compare it to the record in their own ration book. Comparisons showed that the Government's records contained widespread falsifications. The campaign to open up the registers of ration shop dealers and the Government took two years and met with stiff resistance from Government and the private dealers – including death threats and physical attacks. However, at the end of the campaign, the Delhi Government has now agreed to proactively open up ration registers every month to enable citizens to regularly check their ration records. It is expected that this will substantially reduce economic losses to the Government from misdirected welfare and ensure proper benefits to the poorest in the community.

¹² Look, *How Fair Price Shops Clean Up Act*, Indian Express, February 24, 2005. See <http://cities.expressindia.com/fullstory.php?newsid=118913>.

Supports equitable economic development and investment-friendly growth

In recent years, Pacific Island states have struggled to attract significant levels of foreign investment in order to accelerate economic growth and development. The benefits from economic development that has occurred have often not been equitably enjoyed by all citizens. However, a transparent government that is committed to right to information is obliged to provide good-quality economic and social data proactively which will better inform government economic policy and decision-making. Openness about licensing regimes, awareness of concessions and permits and more accountability government decision-making processes will also bolster private and foreign investor confidence in the economy, encouraging long-term private investment and thereby boosting growth. By empowering smaller stakeholders to more effectively participate in the economy, the right to information can also help to ensure the economy grows in an equitable manner.

Pacific ICTs strategies should prioritise the promotion of the right to Information

Work on the right to information in the Pacific region has been limited, but already there has been significant interest in utilising ICTs to promote good governance and more sustainable and participatory development. ICTs offer an opportunity to finally address the “tyranny of distance” which has plagued Pacific governance and development strategies for so long by making geographic constraints redundant, providing remote communities with the means to access the ‘information highway’ to their capitals and the world beyond.

Nevertheless, although ICTs provide important tools to address the tyranny of distance, if they are to be utilised to maximum advantage in terms of promoting sustainable development and good governance in the Pacific Islands, it is strongly recommended that specific attention be paid at these early stages to ensuring that Pacific ICT strategies properly incorporate the promotion of the right to information.

A “proactive disclosure” approach

Ideally, the right to information should be underpinned by comprehensive legislation. However, in the Pacific, legislative processes have proven to be slow and unreliable – Fiji’s Constitution *requires* the enactment of legislation but governments have yet to pass a right to information law seven years since the Constitution came into effect! Notably though, this does not mean that ICTs cannot still be used to entrench the right to information in practice to ensure that the benefits of the right can still be enjoyed by citizens of the Pacific Islands.

ICT strategies can be harnessed to prioritise the concept of “proactive disclosure” – getting governments to routinely disclose and disseminate information into the public domain even in the absence of a specific request for it. Significantly, this emphasis on proactive disclosure would actually draw upon what is becoming an international trend. Early right to information laws – including the access laws passed by New Zealand¹³ and Australia¹⁴ in 1982 – focused heavily on the public’s right to request specific information from the Government. However, over the last decade, newer right to information statutes have put greater emphasis on the principle of proactive disclosure, in recognition of the fact that if the right is really to be of assistance to the poorest and most disadvantaged, it should

¹³ See

http://www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=1260365289&hitsperheadin g=on&infobase=pal_statutes.nfo&jump=a1982-156&softpage=DOC for a copy of the law.

¹⁴ See <http://www.scaleplus.law.gov.au/html/pasteact/0/58/top.htm> for a copy of the law.

place as little burden on them as possible, and instead should actively provide them with information in order to facilitate their re-engagement with government.

Notably, if implemented with public participation objectives in mind, proactive disclosure activities can be a very cheap but effective way of interacting with citizens. The most notable examples of such initiatives are contained in the very strong Mexican *Transparency Law* passed in 2000, and the new Indian *Right to Information Act* passed in 2005 which both include proactive disclosure requirements which require all public authorities to publish and disseminate more than 15 different categories of information, from basic information about departmental organisation structures and services, to detailed information about public tenders and contracts awarded and recipients of government concessions and subsidies. Most of this information is to be published on government websites – a clear interface between ICTs and the right to information with a view to promoting better governance.

Practical ideas for implementation

In the Pacific, the right to information has been so overlooked as a governance and development strategy, that opportunities exist at all levels to incorporate the right into ICTs activities and in so doing, to ensure that the ICTs activities undertaken by Pacific governments are the most appropriate and will most effectively promote good governance and participatory development in both the short and long term. A few areas for work which could be undertaken as an immediate priority are discussed below:

Developing a coordinated Information and ICTs Policy

As noted above, although a right to information law is unlikely to be passed in the short-term in most Pacific Islands countries, nonetheless, government Information and ICTs Policies which promote proactive disclosure could offer a very good start towards this goal. Conversely, Information and ICTs Policies can prioritise proactive disclosure as a means of providing a practical response to the public participation problems identified across the region. It is notable in this regard that many ICT strategies focus on using ICTs to promote better service delivery. While this is an important goal in and of itself, it overlooks the potential for ICTs to actually promote broader democratic values and aims – such as transparency, accountability and participation – and instead reduces ICTs to promoting only operational ends. This approach should be reconsidered.

Information and ICTs policies need more explicitly to recognise the potential for ICTs to promote public participation in governance and development. The public need to be recognised as not mere passive receivers of government services through web-based mechanisms, but as active partners who should be engaged and supported to interact with the government, most notably through ICT-based dissemination of relevant government information.

Refocusing Pacific ICT and Information Disclosure Policies

In the last year, CHRI has been strongly encouraging many national government in the Pacific as well as the Pacific Forum Secretariat to promote greater information disclosure, at a minimum via the internet. It was recognised early on that statutory-based information regimes were probably not viable in the short-term, but that nonetheless, the people of the Pacific were entitled to have access to more information about who governed them, how and to what end. The Forum Secretariat has been encouraged to include the promotion of the right to information as an objective of the new Pacific Plan. It has also been encouraged to develop a Forum Secretariat Information Disclosure

Policy which would ensure that all except the most sensitive Secretariat documents were published on the Secretariat's website, for download and dissemination within Forum member states.

ICTs can provide effective strategies to deliver government information to remote communities in Pacific countries. However, ICTs have become synonymous with Internet and digital technology while many parts of the Pacific Islands still do not have access to electricity and a telephone line, let alone to a computer. In this context, it is important that ICTs and Information Policies recognise the obvious – that ICTs in the Pacific include not only new computer-based e-governance initiatives, but also capture older technologies such as radios. Ideally, these technologies should *all* be utilised, as resources, capacity and geography permit.

In the Pacific, this would necessitate that any ICT strategy clearly recognise the important role that battery powered radios have played in terms of connecting up remote communities. To utilise current radio systems more effectively though, consideration should be given to using the radio more regularly as a cheap but effective method for communicating information on government policies and activities to the public. Special radio programmes updating communities on the development and implementation of key government policies and activities could be run by the government. For example, radio programmes could be developed to update communities on when provincial health service grants have been paid, so that members of the community can then know to question their service providers on what they are doing with the funds. Governments could also use the radio to announce national policies, such as the budget, and explain their specific objectives and likely impacts in simple terms.

Any Information and ICTs Policies could also consider the development of community information hubs based around current ICT infrastructure. For example, many rural health clinics contain a radio that is used to link up the clinic with headquarters and other health clinics so that they can get advice from specialists and/or check diagnoses and/or for training purposes. However, health clinics are a community resource more generally and their radios could be considered similarly. Health clinic radios, their noticeboards and possibly even their computer infrastructure, could be utilised as information dissemination points for all members of the community (subject of course, to the needs of the health clinic). Even new ICTs infrastructure should be recognised for the potential as information dissemination points. For example, in Solomon Islands the new PFNet system, which is focussed on setting up computer-based “information kiosks” in rural areas, could be developed to ensure that those information kiosks allow quick access to key government information, by including sites in the list of favourites and/or by developing a new site – which could be used as the default page when the browser opens – which collects together all key government links.

Promoting more participatory governance

At the moment, there is a dearth of useful, up-to-date information in the Pacific about Pacific governments. Only a very small number of Pacific governments have websites which capture information about all government departments. More commonly, one or two departments may simply set up websites on their own, highlighting only their own work, and even in these cases, the websites are often not updated. This makes it extremely difficult even for citizens in the capital city to engage effectively with their government. Identifying who is responsible for what service or policy can be extremely difficult, while

sending a fax or email to that person can be near impossible. Simple forms can be difficult to get hold of, unless a citizen is prepared to actually attend at the relevant department, while it can also be very difficult for people to find out about services and benefits to which they are entitled.

In this environment, ICTs clearly need to be harnessed more effectively to promote simple, cheap and user-friendly access to governance information. Ideally, governments should prioritise as one of their first ICT initiatives the collection and dissemination of this information (see the box below for a list of the most essential information). The information could be relatively cheaply published on the internet, although obviously to ensure greater outreach, consideration could be given to using other ICTs technologies such as radio, TV and newspapers.

Extending the Pacific Portal?

The University of the South Pacific and Institute of Justice and Applied Legal Studies (IJALS) are jointly developing an e-Governance portal. Known as the Pacific Portal, it is understood that the site will focus largely on ensuring the statistical and other data in specific sectors, namely education and health, are comprehensively and consistently collected and placed on the internet.

Notably however, there is huge potential to extend the scope of the site to include basic government information from across the Pacific, and in so doing, to bring communities across and within Pacific Island Countries closer together. In 2004, CHRI suggested that the portal could be broadened to include information on the duties, responsibilities and services provided by all levels of government and its departments (see Annex B for more). It was suggested for example, that the Portal could include the following information (which of course, ideally should already be collected and published by member country governments):

- *A list of every government department, including:*
 - *The name and contact details of the responsible Minister*
 - *The name and contact details of the CEO/Permanent Secretary*
 - *The physical address and mailing of the department*
 - *A statement of the aims and objectives of the department;*
 - *A chart/list setting out the organisational structure of the department and/or a directory of the departments public servants, at least to the level of Section Head (or the equivalent), including the total number of staff in the department broken down by levels and the pay scales applicable to each level*
 - *The services offered, schemes run, subsidy programmes implemented by the department; including any relevant copies of all policies, guidelines and forms;*
 - *A description of the powers and duties of senior officers and the procedure to be followed in making decisions;*
 - *An explanation of any departmental complaints mechanisms;*
 - *A register of the types/categories of information/records the department holds and publishes and the procedure to be followed in obtaining information;*
- *If resources permit, a list of every major public authority, such as the Reserve Bank, Office of the Ombudsman, Public Service Commission, etc.*
- *The Government's annual budget, including a breakdown by department and further breakdowns by line item if possible*
- *Regularly updated reports (quarterly if possible) about the disbursement of the Budget;*
- *The results of any Government audits and corresponding departmental explanations;*

- *Information about any Government inquiries/commissions, including copies of submissions and draft and final reports;*
- *Mechanisms for citizen participation, where they exist.*

Notably, even if the new governance information is initially provided on the internet, the usefulness of this form of dissemination should not be underestimated simply because many Pacific communities do not currently have good access to the internet. Any ICTs and Information Policies should recognise the importance of developing outreach partnerships so that new technologies can be utilised by existing networks for maximum effect. In the Pacific, the most obvious strategy in this regard is supporting – formally or informally – church and civil society groups who already have strong networks in rural areas to access the information on the web so that they can then disseminate it through their own channels.

Supporting more effective (decentralised) service delivery

A proactive disclosure-focused ICT strategy can also be targeted towards promoting more effective service delivery, in particular by facilitating more informed participation by communities in the operation and oversight of community services. In this context, it is notable that a number of Pacific Islands countries have chosen to pursue devolution or decentralisation strategies, with a view to bringing governance closer to communities. However, these strategies have been fraught with difficulty. Local level corruption is a major problem and effective public participation is still lacking. Making things worse, there is still often considerable confusion, not only among communities but also within government, regarding which department or level of government is responsible for providing what public services. This weakens accountability mechanisms.

As noted previously however, at a more general level, ICTs could be used as an effective mechanism for proactively disclosing more information about what the government does and who does it. In terms of service delivery specifically, this means that ICTs could be used to disseminate information about how much money is to be spent on a community, what the money is to be spent on, over what period of time and by which department(s). Armed with this information, the public can start demanding more effective service-delivery from the various levels of governments. In fact, ICTs can provide a two-way channel of communication between governments and remote communities that empowers local citizens with real influence over decisions that affect their lives.

Using ICTs to promote more effective delivery of education and health services

In the Pacific, health and education services have commonly been developed to local government bodies to implement. Monthly or quarterly grants are sent from the central government to the local/provincial government, which is supposed to administer it and report back on its expenditure. Unfortunately however, it has been witnessed that that such arrangements have resulted in considerable leakage of funds, with little accountability as the various levels of government blame each other. The public has difficulty knowing who to hold responsible because they have little or no information on when the grant was to be paid, whether it was paid, how much it was for and what services they were supposed to get as a result. All they know is that “government” – at some or all levels – is not performing.

Using ICTs to proactively disclose more information to communities about government expenditure could be a key way of addressing this problem, as a case study from Uganda

shows. In that country, despite the increases in education expenditure during the 1990s, a five-year survey found that 87% of all funds meant for primary schools throughout the country were being pocketed by bureaucrats. Shocked by these findings, the national government began to publicise details of monthly transfers of grants to districts through newspapers and the radio in order to curb the siphoning of funds. Primary schools were also required to display public notices on receipt of their funds.

Empowered with this information, parents could monitor the educational grant programme and make the local government accountable for education provision. In five years, the diversion of funds dropped massively from 80% to 20%, while enrolment more than doubled from 3.6 million to 6.9 million children. In this way, proactive disclosure of information concerning education funding, though a simple and inexpensive strategy, enforced greater local government accountability and ensured the proper use of taxpayers' money.¹⁵

Conclusion

ICTs have been hailed as a solution to the Pacific Islands' chronic problems of governance. What they must do, as a matter of priority however, is to deliver the immediate benefits of the right to information to Pacific citizens – most easily by helping governments to publish and disseminate a wide range of key government information proactively.

To date, in the Pacific Islands, the paucity of physical infrastructure between governments and their remote communities has made the delivery of government information near impossible. However, if ICTs and right to information strategies are developed in a coordinated fashion, together they can be harnessed to open up channels of communication between Pacific Island governments and their disparate populations, thereby not only narrowing the physical tyranny of distance but also bridging the divide that exists in terms of public trust, transparency and accountability.

¹⁵ World Bank (2001), *World Development Report 2000-01: Attacking Poverty*, Oxford University Press, New York

Annex A: Key principles that underpinning a good Right to Information law

Governments can grant access to information through executive orders, administrative guidelines and some have even entrenched Right to Information in their constitutions. Nevertheless, to ensure consistent application of simple, clear, agreed processes, Right to Information legislation is still essential. A number of basic principles have evolved over time which should be enshrined in all access laws, most of which have been consistently endorsed by the UN, the Commonwealth, the Organisation of American States and the African Union¹⁶:

- (1) *Maximum Disclosure*: The value of access to information legislation comes from its importance in establishing a framework of open governance. This means that there should be a presumption in favour of access - bodies covered by the Act have an obligation to disclose information and every member of the public has a corresponding right to receive information. Any person should be able to access information, whether a citizen or not. All arms of Government should be covered – executive, judiciary and legislature – and private bodies should also be subject to the law, at least where the information requested affects people’s rights. Bodies covered by the Act should also be required to publish and disseminate documents of general relevance proactively to the public, for example, on their structure, norms and functioning, the documents they hold, their finances, activities, any opportunities for consultation and the content of decisions/policies affecting the public.
- (2) *Minimum Exceptions*: The key aim of any exceptions to disclosure should be to protect and promote the public interest. The law should therefore not permit non-disclosure in order to simply protect government from embarrassment or the exposure of wrongdoing. In line with the commitment to maximum disclosure, exemptions should be kept to an absolute minimum and should be narrowly drawn. Blanket exemptions for specific positions (eg. President) or bodies (eg. the Armed Services) should not be permitted. Even where exemptions are allowed, they should still ALL be subject to a blanket “public interest override”, whereby a document which is presumed exempt under the Act should still be disclosed if the public interest in the specific case requires it.
- (3) *Simple Access Procedures*: A key test of an access law's effectiveness is the ease, inexpensiveness and promptness with which people seeking information are able to obtain it. The law should include clear and uncomplicated procedures that ensure quick responses at affordable fees. Applications should be simple and devised to ensure that the illiterate and/or impecunious are not in practice barred from utilising the law. Any fees which are imposed for gaining access should also not be so high as to deter potential applicants and should be limited only to cost recovery. The law should provide strict time limits for processing requests.

All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information. Provisions should be included in the law which require that appropriate record keeping and record management systems are in place to ensure the effective implementation of the law.

¹⁶ (2003) *Open Sesame: Looking for the Right to Information in the Commonwealth* Chapter 2, CHRl. See www.humanrightsinitiative.org.

- (4) Independent Appeals Mechanisms: Effective enforcement provisions ensure the success of access legislation. Powerful independent and impartial bodies must be given the mandate to review refusals to disclose information and compel release. While internal appeals provide an inexpensive first opportunity for review of a decision, oversight by an umpire independent of government pressure is a major safeguard against administrative lethargy, indifference or intransigence and is particularly welcome where court-based remedies are slow, costly and uncertain. The fear of independent scrutiny ensures that exemption clauses are interpreted responsibly and citizens' requests are not unnecessarily obstructed. While the courts satisfy the first criteria of independence, they are notoriously slow and can be difficult to access for the common person.

As such, in many jurisdictions, special independent oversight bodies have been set up to decide complaints of non-disclosure. They have been found to be a cheaper, more efficient alternative to courts and enjoy public confidence when they are robustly independent, well funded and procedurally simple. Best practice supports the establishment of a dedicated Information Commission with a mandate to review refusals to disclose information, compel release and impose sanctions for non-compliance.

- (5) Penalties: The powers of oversight bodies should include a power to impose penalties. Without an option for sanctions, such as fines for delay or even imprisonment for wilful destruction of documents, there is no incentive for bodies subject to the Act to comply with its terms, as they will be aware that the worst that can happen is simply that they may eventually be required to disclose information.

In the first instance, it is important to detail what activities will be considered offences under the Act, for example, unreasonable delay or withholding of information, knowing provision of incorrect information, concealment or falsification of records, willful destruction of records without lawful authority, obstruction of the work of any public body under the Act and/or non-compliance with the Information Commissioner's orders. Once the offences are detailed, sanctions need to be available to punish the commission of offences. International best practice demonstrates that punishment for serious offences can include imprisonment, as well as substantial fines. Notably, fines need to be sufficiently large to act as a serious disincentive to bad behaviour.

- (6) Monitoring and Promotion of Open Governance: Many laws now include specific provisions empowering a specific body, such as an existing National Human Rights Commission or Ombudsman, or a newly created Information Commissioner, to monitor and support the implementation of the Act. These bodies are often be empowered to develop Codes of Practice or Guidelines and are also usually required to submit annual reports to Parliament. Although not commonly included in early forms of right to information legislation, it is increasingly common to include provisions in the law itself mandating a body to promote the Act and the concept of open governance. Such provisions often specifically require that the government ensure that programmes are undertaken to educate the public and the officials responsible for administering the Act.