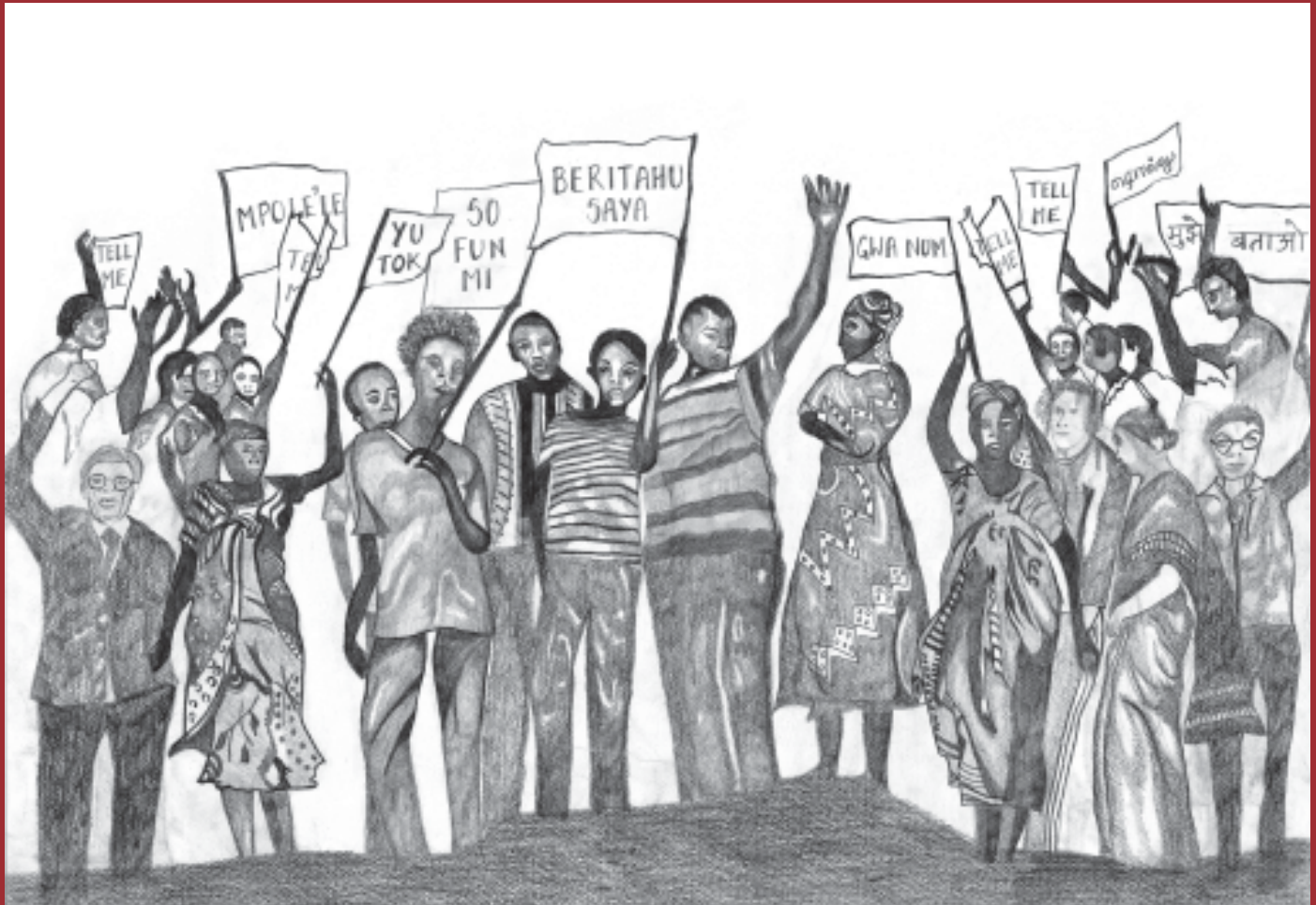


Chapter 4

People Power: Civil Society Advocacy Experiences



“I welcome the growing influence of civil society in the public debate on human rights. Civil society is being called on to participate in new approaches to solving global problems...Clearly the many challenges to human rights will not be fully addressed without mobilising the energies of all parts of society.”

— Mary Robinson, Former UN High Commissioner for Human Rights, 2002²¹⁹

From Jamaica to Zambia, Papua New Guinea to Pakistan, the spur for open government has come from civil society. Whether working at the grassroots to support demands for economic justice, exposing scandals that save nations millions of development dollars, helping governments to craft open-door policies and laws, or collaborating across jurisdictions to change the functioning of remote and closed international financial and trade institutions, civil society's successes are sources of inspiration as well as practical ideas for other groups across the Commonwealth.

Advocates are to be found pushing for openness from the high policy levels of the World Trade Organization and the International Monetary Fund, to small, remote and unlettered hamlets where local governance responsiveness is a challenge. Some narrowly confine their focus to prising open single institutions, like the World Bank, which, even as it only gradually cedes ground itself, has sometimes been an unlikely ally in cajoling secretive national governments to open up and consult more with their citizens as part of the terms on which loans are granted. Others strive to mobilise large numbers of people into the critical mass of public opinion needed to force closed governments to function more openly. Innovations, tactics and strategies used in the battle to get a guaranteed right to access information in place are as varied as citizens' targets and the unique contexts in which they find themselves.

Advocacy Experiences

Access campaigners typically come from groups engaged in good governance and human rights. Some campaigners work specifically on recognition of the right to information as an essential goal in itself and a singular means by which overall government functioning can be improved. On the other hand, open media groups, anti-corruption campaigners, environmental action organisations and the like have all joined forces to demand the right as part of their more specific sectoral interests. For example, the Access Initiative promotes access to information in support of its primary objective of openness in *environmental* decision-making.²²⁰ Similarly, Probe International is committed to exposing the environmental, social and economic effects of Canada's aid and trade abroad, but has strongly pushed the right to information agenda in an effort to open up the Canadian agencies in whose activities it is interested.²²¹

Working Together...

Campaigners working together have shown that the whole can be greater than the sum of its parts. There is strength in numbers. Solidarity amplifies voice, brings in diversity, harnesses a breadth of expertise and increases audience reach. Efforts have sometimes been organised as formal coalitions and sometimes as loose networks or event and opportunity-specific campaigns. The Campaign for Freedom of Information is a formal coalition of almost ninety members and has become a formidable resource and informed critic regarding the United Kingdom's information laws. Nigeria's Freedom of Information Coalition brings in more than seventy diverse civil society groups, ranging

from the International Press Centre to the Kaduna Chapter of Women in Nigeria.²²⁶ In Ghana, a coalition of NGOs has been formed to push the government to create access laws, even while each NGO is also separately promoting the right to information through their own constituencies. That so many different interest groups join hands so willingly highlights the value placed on the right to access information by all of society.

Networks have not been limited to single countries. As the momentum for access to information laws has gathered across the world, groups working in isolation have evolved to work collaboratively across provincial, national, regional and international levels. For example, ARTICLE 19 and the Commonwealth Human Rights Initiative, both international NGOs, successfully partnered with the nationally-based Consumer Rights Commission of Pakistan and Sri Lanka's Centre for Policy Alternatives to produce a reference report on the state of freedom of information in South Asia. The findings and recommendations were then promoted to governments and civil society at two international conferences in the region.

Networks that include and represent diverse interests – from business to social workers, subsistence farmers to industrialists – are very valuable. Each interest group brings in a special perspective that informs and enriches the interventions they make together. Coalitions accommodate a diverse range of people and can lend support to voices that might otherwise be ignored. This enriches the contributions of the whole group. Thus, while the presence of business representatives in a right to information coalition might highlight the need for commercial confidentiality exemptions, the presence of illiterate villagers groups might highlight the need for provisions that require government to provide essential information to citizens without being first requested. A common voice from so many different sources strengthens the messages being sent to government. In the long term, awareness seeded in varied communities also creates ready-made constituencies of users of access laws.

Donors – Friend or Foe?

Donors are increasingly making transparency a condition of loans and assistance. For example, Ghana's Poverty Reduction Strategy, developed in consultation with the World Bank, requires that a freedom of information law be adopted by 2004.²²² Although sometimes useful allies, aid agencies and multilateral organisations have also been key campaign targets. Their budgets are huge and their interventions often influence domestic political and economic agendas. Their distant decisions impact millions, but cannot be questioned by the populations most affected. Advocates have been 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 Centre²²³ and the Bretton Woods Project²²⁴ 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 an informal network aimed at overcoming the secrecy surrounding the operations of these international bodies.²²⁵

Case Study: Networking – Open Democracy Campaign Group, South Africa

In South Africa, a civil society that had recently been deeply engaged in the development of the post-apartheid constitution was already primed to promote access to information legislation. Shortly after the democratic South African government took office in 1994, it set up a Task Group on Open Democracy to draft an access to information law within three years, as required by the new Constitution.

A coalition of civil society organisations formed the Open Democracy Advisory Forum to work with the Task Group. Unfortunately, it foundered. It had tried to involve too large and diverse a range of organisations, without the funding to underwrite the campaign. For many of the organisations, the issues involved were also probably too far removed from their primary agendas to permit them to devote sufficient attention or resources to the issues. Though the Forum vanished, a number of organisations continued their involvement in the access to information law-making process.

In 1996, civil society organisations again rallied when the Parliamentary Information and Monitoring Service of the Institute for Democracy in South Africa (Idasa) brought together almost 30 organisations for a conference on civil society advocacy. Importantly, this meeting specifically recognised the importance of access to information to all future civil society activities and charged three organisations with analysing the – then stalled – Open Democracy Bill and designing a campaign to promote a strong law. This small coalition grew into the Open Democracy Campaign Group (ODCG), which included a diverse range of organisations concerned with social justice.

Over time the ODCG built relationships with the Task Group, parliamentarians (including the opposition) and committees considering the law. The ODCG took pains to provide constructive policy options, not just criticism. It developed a novel and useful technique for individual members' submissions to lawmakers. Termed the 'Twelve Days of Christmas' approach (because it drew upon the form of the Christmas carol which repeats previous lyrics as each new line is added), individual Group members quickly mentioned the chief points of previous submissions before their own detailed submission. This reinforced key points, as well as signalling their collective solidarity.

Differing priorities, varied political perspectives, conflicting views and diverse organisational cultures often resulted in slow progress with internal processes and communication. For example, large organisations such as COSATU, a giant labour federation, required time to endorse policy proposals, where small groups could quickly decide on their position. Fortunately, the slow pace of official deliberations on the draft Bill provided breathing space to meet regularly with a fairly steady group and create mutual understanding. Over time, the ODCG developed a high level of cohesiveness and trust, allowing individual constituents to focus on essential issues and overlook minor differences while working systematically on influencing the development of the law. The ODCG developed good information-sharing relationships that facilitated the convergence of perspectives on key issues. Its varied membership brought in a range of networks and connections and different sets of skills, interests and expertise. It also enabled in-house specialisation, as one or more of the ODCG would adopt one key issue and take the lead in co-ordinating research, policy formulation or lobbying.²²⁷

International Freedom of Information Advocates Network

Worldwide, many of the challenges that advocates are grappling with are common across jurisdictions. Recognising this, a group of advocates has formed the web-based FOIA Network. The Network is focussed on facilitating the flow of information between organisations and countries, including freedom of information news and developments internationally and nationally, updates on projects, research papers and draft bills. Most recently, the Network was active in celebrating Right to Know Day, 28 September, in countries throughout the world. Information on how to join can be found at www.foiadvocates.net.

A larger group working together brings in more experience and human and financial resources, reduces the duplication of work and enables all to benefit from specialised expertise within the group. However, despite the obvious value of working together, coalitions and networks often falter because of their very variety. Handling diversity can be difficult. Deliberate efforts need to be made to develop trust, create a common means of internal communication and accommodate uneven capabilities and finances, as well as diverse interests, agendas, and timetables. Careful attention to these things has resulted in some spectacular successes.

...To Get The Message Across

The advent of new forms of information and communication technologies has brought with it many opportunities for advocates. Of course, older forms of media, such as radio, television and newspapers also continue to be relevant. Experience shows that radio is an excellent advocacy and awareness-raising tool because it is able to reach even illiterate members of the population. Coverage can extend to even the remotest regions, which has made it particularly popular in areas such as the South Pacific where inter- and intra-island communication infrastructure can be poor. The internet is also an increasingly useful resource. In many countries it is inexpensive to run (although the infrastructure may not be), increasingly accessible both in terms of physical access and training in its use (sometimes even by the poor through development programs specifically aimed at extending its reach) and can be controlled by the advocate, rather than being reliant on sympathetic journalists and media owners.

The media has been a crucial resource for advocates because of its broad reach into the community and its ability to target a range of diverse interests, particularly politicians who dislike adverse press and are often prompted to respond to issues raised by the media that they would otherwise ignore. Experiences from coalitions, such as the United Kingdom's Campaign for Freedom of Information, South Africa's Open Democracy Advisory Centre and Nigeria's Freedom of Information Coalition, demonstrate that



successful media campaigns – where the media was primed to assist and could be used to arouse widespread public interest – usually resulted from careful cultivation of media contacts. Education campaigns have been specifically targeted at raising awareness in the media, and many advocates have drafted press releases and feature stories to make publication easier for journalists who may not be familiar with the issues.

[I]n itself, the issue of access to information does not have a natural constituency. What is required is to connect the issue with peoples' daily pressing concerns, and ensure that people see their right to information in the broader context of their right to development."²³¹

While getting the media to cover a campaign is useful, the media has also often been a very active partner in national campaigns because the right to access information so directly affects their work. For example, the Zambian Independent Media Association was part of the coalition that proposed an alternate Freedom of Information Bill for the country. Likewise, in Sri Lanka, the Free Media Movement and the Editor's Guild of Sri Lanka were instrumental in developing their Freedom of Information Bill. In the Fiji Islands, groups concerned with proposed government restrictions on the media included a demand for freedom of information legislation as part of their advocacy efforts.²²⁸ Similarly, in Papua New Guinea, journalists' associations, trade unions, NGOs and students rallied together to criticise a media bill introduced by the government which sought to impose restrictions on the media and hamper the right to freedom of expression and information.²²⁹ In Kenya, representatives of several journalists' associations – recognising the need for an access to information regime in Ethiopia, Kenya, Uganda and Tanzania – joined together at a regional conference in Nairobi in November 2000 and reaffirmed their support for the principles outlined in the 1996 International Federation of Journalists Harare Declaration on the right to know; principles which included the demand for a constitutional guarantee of the right to freedom of information without exceptions.²³⁰

From The Grassroots...

In democracies – even weak and oppressive ones – public opinion matters. The same politicians who need to guarantee the right to access information are the ones who must also rely on public support at election time. In this context, the presence of a large mobilised group of citizens has proved to be an effective tool for pressuring those in power to take action and has acted as a counter-weight to bureaucratic resistance.

Civil society organisations have done much to encourage the public to demand the right to information. Public opinion has mobilised when the lack of the right has been shown to be connected to the difficulties and adversities that people face in dealing with government. India is one of the only places in the Commonwealth where there has been strong grassroots mobilisation specifically around the issue of the right to information. No mobilisation of public opinion is perhaps as poignant or as powerful as that of very poor people fighting for their survival and recognising that access to information is not just an esoteric concept but critical to their very existence.

Case Study: Mass Mobilisation – Mazdoor Kisan Shakti Sanghatan in India

Mazdoor Kisan Shakti Sanghatan (MKSS), a workers and farmers solidarity group, works in Rajasthan, one of India's least developed states. In the course of their efforts to get fair working conditions for daily wage earners and farmers in the region, MKSS workers realised the government was exploiting villagers. Not only were they being denied minimum wages, they were also not receiving benefits from government-funded developmental activities earmarked for the area.

Under the slogan 'Our Money-Our Accounts', MKSS workers and villagers organised themselves to demand that their local administrators provide them with an account of all expenditure made in relation to development work sanctioned for the area. In the absence of a legal right to access the records, local officials, long-used to holding villagers in thrall and never being questioned, dug in their heels and refused to provide the documents. MKSS resorted to peaceful mobilisation to increase the pressure to release copies of official records – they organised sit-ins, demonstrations and hunger strikes. While there was resistance at all levels, gradually, as the pressure continued and the media began to take notice, the administration relented and finally provided the information requested.

MKSS used the information disclosed to organise 'social audits' of the administration's books. They organised public hearings to see if the information in the government's records tallied with the villagers' own knowledge of what was happening on the ground. Not surprisingly, it did not.

At each public hearing, a description of the development project, its timelines, implementation methods, budget and outputs would be read out along with the record of who had been employed, how long they had worked and how much they had been paid. Villagers would then stand up and point out discrepancies – dead people were listed, amounts paid were recorded as being higher than in reality, absent workers were marked present and their pay recorded as given, and thumb impressions that prove receipt of payments were found to be forged. Most tellingly, public works like roads, though never actually constructed, were marked completed in government books.²³²

Though many villagers were illiterate, through face-to-face public hearings they could scrutinise complex and detailed accounts, question their representatives and make them answerable on the basis of hard evidence. Local officials reacted badly. Determined to undermine the people's campaign for accountability, they appealed to class, caste and clan loyalties and even resorted to threats and violence.²³³ But the campaign persisted and eventually was successful in getting local officials to admit to corruption. Some officials returned misappropriated public funds and, in one case, an arrest was made for fraud.

Following this success, more and more people mobilised to hold similar hearings and this reached the state capital as a demand for an access to information law. Public pressure grew as the local and national media covered the campaign extensively.

The government eventually issued administrative orders implementing the right to get copies of local records. The main opposition party promised in its manifesto to create a state level law that would guarantee the right to access information. In power, however, they took three years to bring it on the books, and even then in fairly diluted form. Initially, the Government appointed a committee of bureaucrats to draft the bill. However, following much criticism about the lack of citizen involvement, it invited assistance from MKSS and the National Campaign for People's Right to Information. They held a series of public consultations that fed into the process which finally culminated in an Act.

Beyond the issue of sheer survival, the public has mobilised to demand systemic changes to open up government when issues have caught their attention at critical moments. Scandals involving corrupt use of public money or deliberate government fabrications have created public outrage and an outcry for more transparency and accountability, the adoption of laws that will ensure this and repeal of older legislation like the Official Secrets Acts.

The simple presence of the right person at the right time has been known to win the day. In the state of Maharashtra in India, the government had let its access laws lapse and failed to frame its rules. Several government initiatives to reform and review the Act had come and gone, but no progress was being made, despite promises of implementation. Anna Hazare, a well-known and respected campaigner against corruption and abuse of power, decided that enough was enough. He came to Mumbai, Maharashtra's capital, sat down in one place, and declared that he would fast there like his mentor Mahatma Gandhi until the government operationalised the right to information law. His moral credibility struck a chord with the public and whipped up the support of tens of thousands of people. A coalition of NGO supporters kept the issue in the media and liaised with government on his behalf during the fast. Four days into his ordeal, the Deputy Prime Minister of India cleared the draft state Right to Information Bill, which had been sitting idle for almost six months, and on the very same day the Indian President signed it into law. In a country not known for the speed of its bureaucratic processes, by the next day, the State Governor had given his assent and the bill was then immediately published.²³⁴ One person can make a difference!

A Dose Of Their Own Medicine

Canada's access law was passed primarily due to the push during the 1960s and 1970s from backbench members of Parliament via private members' bills and other parliamentary and extra-parliamentary techniques. In 1979, the Liberal government lost power, but was returned to office within months after the Progressive Conservative government lost a no-confidence vote. During their short period in opposition, the Liberals got a first-hand experience of the difference between being 'fully informed' in government and having to rely on the media for information when out of office. Having had a taste of closed government, they finally understood the necessity of providing citizens and opposition politicians with access to information. It was not an easy decision; certainly the central bureaucracy was upset and opposed. But, by July 1980 an Access to Information Bill was introduced in Parliament, and it was finally enacted in 1983.²³⁵

...To The Policy Level

Successful advocacy has relied on both generating demand at grassroots and creating a willingness to change within political circles and the bureaucracy. Advocates have used a multiplicity of methods whenever and wherever opportunities have arisen. Many successful efforts have concentrated on engaging with law-makers.

'Government' is so habitually remote from people that it is often perceived as a monolith made up of faceless, powerful people banded together to uphold 'the State' against all – especially the individual citizen. In fact, bureaucrats and politicians often have very different agendas and interests, with different hues of opinion and belief, and each individual can be an ally or an adversary. To maximise chances of success, serious energy has been devoted to understanding who in the political spectrum is most likely to support freedom of information and act as a conduit for civil society's views.

Successful campaigners have striven to develop relationships of trust and reliance with as many policy-makers as possible. Where the power imbalance between the ruling elite and the common person is very pronounced this can be hard to do; sometimes it is not within the culture to engage as equals, let alone question the wisdom of rulers. However, except in the most recalcitrant of governments, at least a few members of parliament – particularly those in opposition – may be receptive to suggestions.

Preparing the ground

Election time is particularly fertile for planting seeds of change and getting candidates to think about the value of access legislation. Advocates have worked to get commitments to enacting access to information laws into election manifestos by arguing that voters are likely to favour a politician who is committed to open government, tackling corruption and reining in bureaucrats. Honouring pledges, however, is another matter. In Nigeria, a campaign led by the Media Rights Agenda, Civil Liberties Organisation, Nigeria Union of Journalists and a broad coalition of other NGOs has not yet been able to get President Obasanjo to fulfil his May 1999 promise that “all rules and regulations designed to help honesty and transparency in dealing with government will be restored and enforced”²³⁶. The President side-stepped his commitment by passing responsibility for access to information to parliament, where the process stalled.²³⁷

Members of parliament can be targeted via their political parties, the houses of government in which they sit or as individuals. In Nigeria, the Freedom of Information Coalition has written personal letters directly to each of the 469 members of the House of Representatives and the Senate of the National Assembly. They have also held informal meetings with parliamentarians, including the leadership of both legislative chambers and members of relevant committees. Briefing documents have been distributed on a range of relevant issues, and legislators have been invited to formal meetings as well as seminars, conferences and workshops on freedom of information.²³⁸

Where governments are slow or disinterested, a private members’ bill introduced by an individual or small group of parliamentarians can help to create an opportunity for debate. Although these bills do not often succeed in becoming law, if the issue catches the public imagination, government may yet decide to take it forward. Busy parliamentarians welcome receiving drafts by interest groups and appreciate their support throughout the process, for example by providing detailed briefings, drafting their speeches and assisting with persuading other parliamentarians to support the cause. This strategy has been very skilfully used by the Campaign for Freedom of Information in the United Kingdom, which has been instrumental in the successful passage of four bills that served to increase citizen’s access to information.²³⁹ The laws were very useful in establishing an overall pro-disclosure environment, which was supportive of subsequent advocacy for an omnibus access to information law.



Case Study: Targeting Policy-Makers – Campaign for Freedom of Information, United Kingdom

The Campaign for Freedom of Information has worked tirelessly since 1984 to get access to information on to the legislative agenda. In 1997, the Campaign's hard work seemed to have paid off in the form of a commitment by the newly elected Labour Party to design and implement an open government regime.

Unfortunately however, good things rarely come easily – and the United Kingdom access to information law was no exception. It took four more years for a law to finally materialise. In that time, the Campaign was vigilant about remaining engaged in the legislative process and ensuring that their inputs were taken into account at every possible opportunity. Importantly, although the United Kingdom's access law was finally enacted in 2000, the Campaign continues to work to improve the law and encourage its proper and timely implementation.

The Campaign used a wide variety of advocacy techniques to maximise the impact of their contribution to the legislative process. Throughout, the Campaign was prolific in the material it produced and distributed. It pursued its agenda on all fronts, targeting the media, law-makers and the public. Recognising the importance of the media to successful advocacy, the Campaign specifically targeted the media, developing specific briefings for the media to develop their understanding of the issues. They also produced a constant stream of leaflets and booklets and drafted articles which were often published by *The Guardian* and *The Independent* newspapers.²⁴⁰ A Campaign website was maintained and has been a key resource for the public and other right to information advocates.

The Campaign specifically and regularly targeted officials and legislators, deliberately attempting to inform and influence law-makers directly. It encouraged the public to write letters to their Members of Parliament – a canny strategy which put pressure on politicians while at the same time raising awareness within the community. The Campaign itself also wrote personal letters to parliamentarians; it even sent one, signed by 40 of its members, directly to the Prime Minister – and actually received a response.²⁴¹

Briefing papers were regularly provided to MPs in both Houses of Parliament. They mostly dealt with specific amendments to the proposed Freedom of Information Bill, including detailed clause-by-clause analysis with suggested changes. The briefings also provided substantial comparative legal information from countries with proven and working FOI regimes. Briefing papers were distributed at the time of committee level debates in both the Houses of the Parliament, when the chances of amendments were greatest.²⁴²

The Campaign responded in writing to draft bills and Government and Committee reports, even going so far as to draft a Freedom of Information Bill, which was tabled as a private members' bill in 1998. Submissions were detailed and provided constructive suggestions for improvement as well as critical analysis supported by examples. The Campaign was recognised by law-makers as a leading authority on right to information. The Campaign continues to provide the same level of input at the implementation stage, keeping a close watch on progress.

Apart from parliament, the courts also provide a good venue for pushing the right to information. Civil society groups in various jurisdictions have approached the courts in a bid to effectuate the right to information via case law. In India, the Supreme Court recognised a right to information through its interpretation of the constitutional right to freedom of speech and expression almost two decades before the federal right to information law was passed.²⁴³ In Sri Lanka, despite the lack of a law, the Supreme Court has recognised the right to information as part of the constitutionally protected right to freedom of thought – “information is the staple food of thought”²⁴⁴. In Uganda, a recent case recognised that Article 41 of the Constitution, which guarantees the right to information, allowed a civil society group to litigate for the disclosure of certain government documents even though there is no specific law yet in place.²⁴⁵

Developing a law

Even when governments commit to enacting a law, they often need to be reminded that the process of entrenching the right to information is as important as the outcome. Involving a broad cross-section of people in the law-making process helps ground the law in reality. It helps people own the law, use it judiciously and protect and promote its best practice. Yet, ironically, one of the threshold obstacles that advocates of open government often face is piercing the existing veil of secrecy in which law-making is cocooned. Ugandan advocates report real difficulty in finding out whether a law is even being developed.²⁴⁶ In Zimbabwe, the government drafted their law with minimal public consultation. The result was a poorly drafted, weak Act that clearly shows the heavy hand of the bureaucracy hedging about every disclosure clause and ensuring that the final law has barely any use.

There are a multitude of government bodies and officials responsible for law-making which should be seeking the public’s input into the legislative process. However, it is civil society groups that have led the clamour for greater participation by the public, while governments have – except in a few cases – studiously avoided consultation. In Ghana, where the discussions around law-making were almost exclusively between government and a few elite urban groups, the Commonwealth Human Rights Initiative explained the implications of access to information law to people in the provinces and sought inputs to feed back into the discourse. Discussion with a diverse range of people identified public needs, the gaps in information and the obstacles faced by the public in getting information. This has nuanced and enriched the debate surrounding the issue.

Unfortunately, invitations from government to participate in the drafting process have been more the exception than the norm in the Commonwealth, as many governments have either wanted to continue to control the outcome, or have just not appeared to appreciate the value of civil society’s contribution. In any case, winning a place at the table provides no guarantee of being heeded –

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consultations have not always translated into getting important clauses included in the law. The government in the United Kingdom, for instance, has been heavily criticised for going back on promises that it made when in opposition after long consultations with campaigners. Civil society concerns were reflected in the Government's initial papers on access to information,²⁴⁷ but the final legislation and implementation timetable fell far short of expectations.²⁴⁸

In Zambia, a coalition of civil society organisations reviewed and redrafted a government bill to reflect international access standards. Advocacy was initiated around the bill and, following a stakeholders' workshop, a task force emerged to progress advocacy on the issue. However, in 2002 the government decided to introduce their own version and political considerations have since stalled the process.²⁴⁹ In 2001, following two years of consultations with the public, the Consumer Rights Commission of Pakistan, in collaboration with the Liberal Forum, fashioned a Freedom of Information Bill and presented it to the Ministry of Law. It still awaits enactment,²⁵⁰ and instead, the government has promulgated a very feeble Ordinance. Civil society is now attempting to improve the operation of the Ordinance by drafting supplementary business rules, but they have their work cut out for them to get the rules passed.

Despite these difficulties, it is positive that many governments are increasingly using parliamentary committees, taskforces, law commissions, and on occasion even constitutional review processes to open up public discussion around the right. These bodies provide valuable entry-points early in the process to present balanced arguments, make constructive suggestions, clarify misconceptions and address genuine problems

Implementation Audits: CSOs Staying Engaged Throughout

Implementation audits help monitor willingness and preparedness to comply with access laws. Soon after the state of Karnataka in India passed its freedom of information law, the Commonwealth Human Rights Initiative and the Bangalore Public Affairs Centre undertook an implementation audit. Citizens who agreed to participate in the audit were trained to use the law and then filed 100 applications across 20 government departments. These applications were tracked from the time of filing to see if the departments complied with the law.

The survey provided detailed information on the status of implementation, as well as the level of awareness of the parameters and application of the law amongst public officials. The audit revealed that over 80% of the applications were not responded to and in cases where information was provided it was only after repeated follow up by citizens and after the expiration of the 30 day time limit stipulated by the law. The experiences of the citizens and the data collected were presented in a public meeting to the heads of departments. The audit exposed the lack of awareness among officials about the law, as well as the lack of systems to deal with requests from citizens. The implementation audit was an effective mechanism for citizens to monitor the working of the right to information law in Bangalore and provide feedback to public authorities.

and misgivings surrounding the crafting of the law. Dialogue with government at a moment of concentrated attentiveness offers a chance to discuss the enactment of further supporting laws, training to change the mindset of government officials, timelines for overhauling records management and other issues for better future implementation.

In South Africa, the government specifically requested civil society involvement in their taskforce on the right to information.²⁵¹ As well as critiquing government proposals, the South African Open Democracy Advisory Centre also tried to offer constructive, timely submissions. Prompt responses were vitally important; if inaccurate or negative opinions were not addressed immediately, they quickly began to be treated as fact and were then much more difficult to challenge.²⁵²

In Jamaica, Jamaicans for Justice, Transparency International Jamaica and the Farquharson Institute for Public Affairs also made an influential submission to the Joint Select Committee of Parliament on the Access to Information Act.²⁵³ The International Commission of Jurists (Kenya) and other key civil society stakeholders have also drafted a freedom of information bill for consideration by parliament and their submissions on access to information to the Constitution of Kenya Review Commission actually resulted in the inclusion of an explicit section on freedom of information in the draft constitutional document.

Assisting with implementation

The existence of a law, without a change in mindsets and practical means for implementation, is like a seed cast upon stony ground. But once the inevitability of the law is accepted, governments are more willing to have civil society groups assist with training public servants. Advocates for open governance are often experts in the field and, in this era of out-sourcing, they provide a resource that governments can tap both when developing laws and when implementing them. Years of dedicated comparative research, knowledge of ground realities and useful international contacts position them well to bid commercially for government work because many are more knowledgeable of the intricacies of access to information law than public officials. South Africa's non-governmental Open Democracy Advice Centre provides specialised training on access to information to government departments and private bodies and assists with the development of in-house access manuals and whistleblower policies. Similarly, in the United Kingdom, the Campaign for Freedom of Information runs training courses for public authorities and private users. The International Records Management Trust, as its name suggests, regularly assists governments to put in place effective systems for the management of official records.²⁵⁴

Testing the boundaries of new laws through litigation is also one of the ways that civil society has worked to support implementation – developing best practice by establishing precedents for disclosure, clarifying ambiguities, identifying areas requiring amendment



and, quite simply, ‘kickstarting’ the use of the new law. The South African History Archive is expressly committed to testing the boundaries of the South African *Promotion of Access to Information Act*. Since the law came into force in 2001, it has submitted over 100 requests, ensuring a growing expertise in the use of the Act; undertaken the first successful High Court action to force the release of state documents; and has already generated a substantial archive of released materials, mainly Apartheid-era security records.²⁵⁵

An Affirmation of Democracy

Citizens and civil society groups have a vital role to play in creating genuinely responsive access to information regimes. Civil society organisations are effective at raising public awareness, embedding the value of the right in the public psyche and breaking down resistance within government. In many Commonwealth countries, civil society has actually been responsible for putting access to information on the agenda of governments. Unfortunately, though the Commonwealth has time and again acknowledged the role of civil society, in many countries public involvement in policy development is still not valued. Involving people in the law-making process not only generates legislation and systems that are in tune with people’s needs, it also enhances the general level of awareness among citizens and helps create an environment of openness which gives real meaning to participatory democracy. Advocates for the right to information should not need to battle for space. Rather, their presence should be welcomed by governments.

Useful Links

This list of links is not exhaustive. For more links, please visit CHRI’s website.

International

- Special Rapporteur on Freedom of Expression and Opinion
www.unhchr.ch/html/menu2/7/b/mfro.htm
- Commonwealth Human Rights Initiative
www.humanrightsinitiative.org
- Article 19
www.article19.org
- Bank Information Centre
www.bicusa.org
- Bretton Woods Project
www.brettonwoodsproject.org
- FreedomInfo.org
www.freedominfo.org
- Freedom of Information Network
www.foiadvocates.net
- Transparency International
www.transparency.org
- International Records Management Trust
www.irmt.org

National

- FOI Home Page (Australia)
www.law.utas.edu.au/foi/index.html
- Information Commissioner of Canada (Canada)
www.infocom.gc.ca
- Jamaicans for Justice (Jamaica)
www.jamaicansforjustice.org
- Office of the Privacy Commissioner (New Zealand)
www.privacy.org.nz
- Consumer Rights Commission of Pakistan (Pakistan)
www.crcp.sdnpk.org
- Open Democracy Advice Centre (South Africa)
www.opendemocracy.org.za
- Media Institute of Southern Africa
www.misa.org
- Freedom of Information Website (Trinidad & Tobago)
www.foia.gov.tt
- Campaign for Freedom of Information (United Kingdom)
www.cfoi.org.uk