

Access to information: Case studies from the field

chair:

Ann Florini, Senior Associate, Carnegie Endowment for International Peace, USA

Panellists:

Edet Ojo, Director, Media Rights Agenda, Nigeria
Richard Calland, Head of Political Information Monitoring Services, Institute for Democracy in South Africa
Aruna Roy, Coordinator, National Campaign for People's Right to Information, Rajasthan, India
Nikhil Dey, activist, Mazdoor Kissan Shakti Sangathan, India
Kavita Srivastava, General Secretary, People's Union for Civil Liberties, Rajasthan, India
Ken Bhattacharjee, Legal Officer, ARTICLE 19, United Kingdom

The workshop was introduced by the Chair, **Ann Florini**. The focus of the discussion was on how to make governments, intergovernmental organisations, international financial institutions, and corporations more transparent. What strategies can be used to access information held by these bodies? It is not an easy battle to win, but it is winnable. The panellists, who represented civil society groups, discussed how they work to promote transparency and access to information in their respective countries.

The first panellist was **Edet Ojo**, Director of Media Rights Agenda in Nigeria, who discussed the campaign for freedom of information in Nigeria. In law and practice, there is currently no right to information in Nigeria. In fact, quite the opposite; there are laws which restrict the disclosure of information to the public. The most prominent such law is the Official Secrets Act, which is of colonial origin, but which has been retained by post-independence governments. The main problem with the law is that it does not define classified information. In practice, publicly-held documents are routinely labelled as "classified". This has engendered a culture of secrecy in government in Nigeria. The media has tried to depend on getting information from official sources, but there is no legal protection for confidential sources in Nigeria. This means that people are afraid to be sources because their identities can be revealed.

Last week, a public hearing was held on the Freedom of Information Bill in Nigeria, which was first introduced in July 1999 after the restoration of democratic rule. The Bill is currently before Parliament. When it is passed, it will be sent to the Senate. The Bill establishes the process for requesting official information, which must be disclosed unless it falls under an exemption.

Civil society organisations, including Media Rights Agenda, have run a public campaign on access to information. The reason why progress has been slow is because the government is reluctant to open itself to scrutiny. Why is freedom of information important? It rests on the principle that in a democracy, the people have a right to know what the government is doing on their behalf. It will enhance the participation of the people in the political process.

In Nigeria, the freedom of information law will address two problems. First, when things are done in secret, corruption flourishes. In recent annual surveys on corruption, Nigeria was found to be most corrupt or second-most corrupt country in the world. Second, when people cannot participate in government, it reduces the democratic legitimacy of the government.

The second panellist was **Richard Calland**, Head of Political Information Monitoring Services, Institute for Democracy in South Africa, who discussed the Access to Information Law in South Africa. Access to information and whistleblowing are two sides of the same coin. Whistleblowing protection is essential for disclosure of information in the public interest. Work on these issues has to begin at home, but at the same time, globalisation is weakening the nation state. It is important that during the current crisis (the War against Terrorism) that civil liberties, which have come about as a result of a long struggle, are not lost.

The right to information is an enabling right. It helps people to realise socio-economic rights such as the right to clean water, to food, to adequate health care, etc. People around the world are talking about the right to access information, rather than freedom of information because "freedom" refers to protection of the individual, while "the right to access" is proactive.

We have to look at where "power" is. It can be found in intergovernmental organisations (e.g. the European Union and the African Union), international financial institutions (e.g. The World Bank), and

transnational corporations. The World Bank is reviewing its Information Disclosure Policy. We need to lobby The World Bank to make it a "good example" of an information disclosure regime. Many transnational corporations have larger "economies" than the economies of some countries.

In South Africa, the Access to Information Act not only provides for the right to information held by public bodies, but also a "horizontal" right to access private information where it is required for the exercise or protection of any right. It is a unique law, an unprecedented experiment. It provides an opportunity for strategic alliances. For example, investigative journalists from other countries could use the South African law to access information held by transnational corporations who have offices in South Africa.

ARTICLE 19, an international freedom of expression NGO, has started a Global Campaign for the Right to Information, which was recently launched at seminars in South Asia, Africa and Eastern Europe. In South Africa, the Open Society Advice Centre has brought access to information cases to the courts. For example, the South African government ordered a blackout on statistics on crime. It was damaging to those NGOs who work on issues around crime such as rape or assistance to victims. The government backed down. The Centre has also trained civil society groups on how to use the Access to Information Act to support their core work (e.g. HIV/AIDS).

Three activists from Mazdoor Kisan Shakti Sangathan, a local campaign for the right to information at the grassroots level in India, showed a documentary film on access to information in the state of Rajasthan. The documentary, "The Right to Know, The Right to Live", shows how ordinary people have contributed to the struggle for access to information. Former Prime Minister, Radjiv Gandhi, stated that only 15% of development funds reached the people. The rest was presumably siphoned off by corrupt officials. The MKSS accessed government records on expenditures in villages in Rajasthan, which showed that structures had been built and villagers paid for work on public projects. Activists from MKSS went to villages with government records, interviewed people, and discovered that, contrary to what the records stated, structures had never been built and villagers had never been paid for work. A public hearing was held where villagers confirmed this.

The third panellist was MKSS activist, **Aruna Roy**, who is also the Rajasthan coordinator of the National Campaign for People's Right to Information. She provided more details about the local grassroots campaign in Rajasthan. In order to maintain its independence, MKSS will not accept funding from institutions and governments. It only accepts donations from and funds raised by individuals/ordinary people.

India is a democratic country in the sense that there are democratic elections and a free press, but there are other components which are missing. In particular, there is still a lack of access to minimum needs for a majority of the population. Corruption in the Southern countries such as India destroys access to health care, education and other minimum needs. Therefore, if poor people do not get access to information, their lives are in peril. In other words, the right to know is the right to live. Furthermore, the struggle for the right to information is for the right to participate in democracy.

MKSS looked at wages being paid to villagers in 1988-90. It was clear that villagers, who worked on public projects, were not being paid the minimum wage. The government's response was that this allegation was a lie. It therefore became clear that villagers needed to access the information that the government held on payment of wages to villagers. Two hundred villages and four hundred organisations were involved in a forty-day sit in for the right to information in Rajasthan. The demand was for transparency in accounts, accountability and return of missing funds. The Chief Minister of Rajasthan promised a new law. The campaign broadened and the Press Council, editors, journalists, politicians, and other grassroots movements became involved and supported it. The law was passed last year and came into effect this year. Six states in India now have access to information laws. At the national level, a Freedom of Information Bill is currently before Parliament.

The fourth panellist was MKSS activist, **Nikhil Dey**, who also spoke about the grassroots right to information campaign in India. The campaign across the country has created hope but it has also raised questions and dilemmas. The reason why public hearings were held by MKSS was that it created a situation where the government would be forced to act because its corruption had been discovered. This was successful, but it raised the issue whether other, less scrupulous organisations or the government would hold less effective and participatory public hearings. Another question which was raised was whether there should be a public audit and what form it should take. Giving money which was siphoned off back to villages was one suggested remedy.

It is useful to link the right to information campaign to other campaigns (e.g. campaigns against displacement of people by dam projects), so that other rights can be realised through access to

information. It also needs to be recognised that the right to information must extend from the smallest village to the largest international institutions. For example, the World Bank has provided a loan for a project in villages in Rajasthan. It is, of course, a loan, meaning we, the people, will ultimately have to pay it back. The project has apparently been going on for seven years, with consultancy fees paid, etc., but villagers have not seen any concrete results. It has no accountability. Villagers have a right to access the information which the World Bank holds about this project.

The fifth panellist was MKSS activist, **Kavita Srivastava**, who is also the Rajasthan General Secretary of the People's Union for Civil Liberties. She also provided more details about the grassroots campaign for the right to information in India. The right to information is linked to other issues. It has, for example, been raised by the anti-nuclear and anti-war movements. When the defence sector buries nuclear waste in the deserts of Rajasthan, villagers who live there have a right to know what is being buried and what impact it will have on their health and communities. When the defence sector holds nuclear tests, the people have a right to know what is being done. Despite the enormous impact that the burying of nuclear waste and nuclear weapons testing have on people's lives, the defence sector in India is extremely opaque and even unaccountable to Parliament in certain areas. The right to information is also linked to environmental issues. For example, factories are supposed to inform the public about the pollutants they are releasing, but often do not.

One problem with access to information legislation in India is the area of exemptions. A number of state laws have far too many exemptions. The Supreme Court of India has held that the right to access information held by the State is a part of the right to freedom of expression under Article 19 of the Constitution. Article 19 sets out the narrow circumstances when freedom of expression may be restricted, but many of the state laws go far beyond this.

The Freedom of Information Bill, which is currently before the Indian Parliament, also has problems. The list of exemptions is too wide. We also want the Bill to cover not only information held by the public sector, but also the private sector, NGOs, transnational corporations, and multilateral institutions. The Bill should also provide for punishment and penalties for refusal to disclose information. There needs to be time frames for disclosing or refusing information. There needs to be an appeal mechanism, which cannot be solely paper-based because much of the population of the country is still illiterate.

The sixth speaker was **Ken Bhattacharjee**, Legal Officer with ARTICLE 19, an international freedom of expression organisation. He discussed ARTICLE 19's Principles on Freedom of Information Legislation, which are based on international standards and comparative best practice. These Principles have been endorsed by the UN Special Commissioner on Freedom of Opinion and Expression and the OAS Special Commissioner for Freedom of Expression. The Principles set out standards for national and international regimes which give effect to the right to information.

The Principles are as follows:

Principle 1: Maximum disclosure
Freedom of information legislation should be guided by the principle of maximum disclosure, which involves a presumption that all information held by public bodies is subject to disclosure, and that exceptions apply only in very limited circumstances.

Principle 2: Obligation to publish
Freedom of information requires public bodies to do more than accede to requests for information. They must also publish and disseminate key categories of information of significant public interest. These categories include operational information, costs, information on complaints, procedures for public input, and the content of decisions affecting the public.

Principle 3: Promotion of open government
Freedom of Information legislation needs to make provision for informing the public about their access rights and promoting a culture of openness within the government.

Principle 4: Limited scope of exceptions
Requests for information should be met unless the public body shows that the information falls within a narrow category of exceptions, in line with a three-part test:

- The information must relate to a legitimate aim listed in the law
- Disclosure must threaten substantial harm to that aim
- The harm must be greater than the public interest in disclosure.

Principle 5: Process to facilitate access
All requests for information should be processed quickly and fairly by individuals within the public bodies responsible for handling requests and complying with the law. In the case of denial, a procedure for appeal to an independent body should be established.

Principle 6: The cost of access to information should never be so high as to deter requests. Public interest requests should be subject to lower or no fees, while higher fees may be charged for commercial requests.

Principle 7: Open meetings
Freedom of Information legislation should establish the presumption that all meetings of governing bodies are open to the public so that the public is aware of what the authorities are doing, and is able to participate in the decision-making processes. Meetings may be closed, but only where this can be justified and adequate reasons provided.

Principle 8: Disclosure takes precedence
Other legislation should be interpreted in a manner that renders it consistent with the disclosure requirements of freedom of information legislation. In particular, in the event of a conflict between the freedom of information law and a secrecy law, the former should prevail.

Principle 9: Protection for whistleblowers
Freedom of information legislation should include provisions protecting individuals from legal, administrative or employment-related sanctions for releasing information on wrongdoing.

Ann Florini wrapped up the panel discussion by stating that, even though the panellists come from countries in the South, this is not an issue which divides itself on North-South lines. Transparency and access to information issues also exist in countries in the North. In the United States, for example, there is a massive problem with over-classification in the area of secrecy. One high-level US official recently implied that there was link between the terrorist attacks on 11 September and leaking of information. When pressed by reporters on what the link was, he was unable to do so, and conceded that there was no such link. This shows why the civil society has to be eternally vigilant.

Questions/answers/comments section

Questions were asked about whether courts can be an impediment to access information; whether a bad law is better than no law; and what are the elements of the Global Campaign for the Right to Information. The panellists answered the first two questions by stating that it depends on context and the third question by stating that the campaign has just begun by creating links between different groups around the world.

Comments by members of the audience included:

- Laws impose; if there is to be transparency, information has to be willingly disclosed. It is the attitude of enforcement rather than the letter of the law which is important in practice.
- Everyone should have a right to access information across borders. For example, 35 years ago, a left-wing Moroccan activist was assassinated in Paris. Both the governments of France and the US hold information about this case, which has not been disclosed.

Main Themes Covered

1. What is the source of the right to information?
2. Who is obliged to disclose information?
3. What standards are applicable to freedom of information legislation and information disclosure policies?
4. What is the most effective way to campaign for a right to information?

Main Conclusions

1. Under international and domestic law, the right to information is part of the right to freedom of expression, but it is also derived from the recognition that democracy and the whole system for protection of human rights cannot function properly without the right to information.

2. Everyone has the right to access information held by domestic and international public bodies, including local, state/provincial and national governments, intergovernmental organisations, international financial institutions, and intergovernmental trading bodies. Private sector bodies should be required to disclose information where the information is required for the exercise or protection of a human right or there is a risk of harm to a key public interest such as health or the environment.
3. All governments should pass access to information laws and all international public bodies should have information disclosure policies. These laws/policies should be consistent with international standards and comparative best practice as set out in ARTICLE 19's The Public's Right to Know: Principles on Freedom of Information Legislation.
4. Campaigns for the right to information should be grassroots- and broad-based. Links should be made with other campaigns protecting and promoting human rights and the public interest. A Global Campaign on the Right to Information has recently been launched by ARTICLE 19.