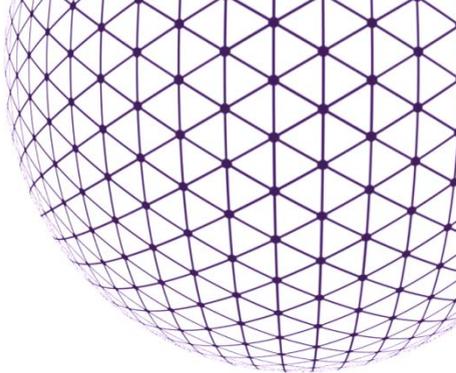


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Towards open and transparent government

International experiences and best practice

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1. Introduction

Openness and transparency have become defining features of democracies around the world. Governments that are open and transparent are more accountable to their citizens and less corrupt. What is more, openness generates trust in government and also paves the way for meaningful participation by citizens and more informed and better policies.

The basis of any open government lies in the public's freedom to access information: the right to information is the precursor to openness. By enshrining the right to access information into a country's laws, citizens are given the right to know what their government is doing in their name.

Over the last two decades there has been a dramatic shift in the thinking around the right to information. Freedom of information laws were previously perceived as good governance tools. Now, having access to information is recognised as a right for all human beings and governments are being reminded that they are *guardians* of information that ultimately belongs to us, the public.

The number of countries with right to information laws is growing and there is an increasing body of international treaties and conventions putting pressure on nations to adopt them. Around 90 countries now already have RTI laws in place, but there is an obvious dearth of them on the African continent and in the Middle East region. The need for a model right to information regime in these regions is striking.

Creating an open government regime does not happen in a political vacuum. Contexts matter, but so do the actors instigating the reform. The momentum to create an open government regime, therefore, needs to come from three separate groups of actors to ensure the most progressive results. There needs to be the political will and buy-in from politicians. There needs to be a competent and committed body of public bureaucrats that can implement and manage open government systems. And there needs to be a push from the bottom, from civil society, to put pressure on the government and to raise public awareness around the issues.

With this in mind and drawing on experiences and examples from across the globe, this paper lays out three strands of focus for creating an open and transparent government: right to information laws that establish the legal right for the public to access the information that they want; proactive transparency where governments publish as much information as possible; and open data systems allowing anyone to re-use data in ways that are more relevant to them.

1.1. The benefits of openness and freedom of information

Transparency and openness based around access to information hold significant benefits for governments and citizens alike¹:

Participation: Freedom of information fosters participation in the democratic system. Giving the public access to information about decisions, activities and policies is a substantial step towards empowering them to take part in political dialogue and decision-making processes.

Increasing accountability, limiting corruption: Governments need to be accountable for their actions and spending. Allowing access to this information puts a government under the scrutiny of the people and reduces corruption. Decisions are far more likely to be objective rather than for the benefit of specific interest groups. Transparency not only creates checks on what is spent and where, but it can also generate competition around procurement and makes for more efficient spending of public resources.

Trust in government: Disclosing information to the public signifies a ‘nothing to hide’ attitude on the part of government. Being able to access this information significantly reduces suspicion and generates trust in government. In countries moving from repressive regimes to democracies, opening information up also creates an obvious and necessary break from the past.

¹ Darbshire, H., 2010. *Proactive Transparency, The future of the right to information? A review of standards, challenges, and opportunities*, Washington, World Bank Institute

Banisar, D., 2006. *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, Privacy International

Mendel, T., 2008. *Freedom of Information: A Comparative Legal Survey*, Paris, UNESCO

Adhering to the rule of law: Publishing information on laws and policies is key to ensuring that people understand them and obey them – openness in this sense has a direct impact on the rule of law.

Making government work better: The process of organising information and making it accessible actually assists in general information management as it requires good internal information systems. In a secretive government, public officials have little idea about what information the administration holds, and this increases the transaction costs of government business. An effective information system means that governments have a better handle on the information that they possess. Policies and decisions are more informed therefore and suited to the population's needs.

Access to services: Governments are better able to inform citizens about the services that they are providing so that citizens know what these services are and how to access them. This not only benefits individual citizens, but is also a way for government to display the tangible steps it is taking for its constituents, and this is evidence of positive change for voters.

1.2. The obstacles to transparency

The momentum to create an open and transparent government needs to come from three sets of actors: top level politicians and ministers; middle level public officials and bureaucrats; and of course, civil society. Without the buy-in and participation of one of these levels, the road to transparency will be hampered. Making sure that all three groups are involved is crucial, but there are a number of potential barriers to their involvement that could affect the transparency process:

A culture of secrecy that permeates not just government, but society too. Officials grow up believing that secrecy equates to power and is a mark of their authority. They often believe that transparency weakens their influence. Public scrutiny is an alien concept therefore. Rather than demanding information, the public fear punishment for exposing information. During the Moi-era in Kenya, power was derived through a general fear of asking for or giving information and the Kiswahili word for government – *serikali* -

became synonymous with the word – *sirikali* - meaning top secret.² Countries transitioning from repressive regimes that previously thrived on secrecy have the weighty task of replacing their culture of secrecy with a culture of openness in both government and society.

Limited institutional capacity and poor records management systems mean that public bodies often do not know what information is there - if it is there at all. As such, they are less able to manage information requests.

Lack of political will. Government cannot be open if the leaders, responsible for putting right to information laws in place and establishing open government systems, lack the political will to do this. Lack of political will may be driven by several factors including: a fear of scrutiny; fear of exposure of the failure of government programmes and policies; the threat to personal and special interests (such as exposing the extent of military control over an economy); or increased vulnerability to political opponents.

Scarce resources and competing priorities. In countries where resources are scarce, there are the frequent fears that establishing and implementing right to information laws and systems for proactive disclosure will be costly. Access to information and openness then have to compete against other domestic priorities.

Right to information laws are undermined. This often happens when the mechanisms to enforce right to information laws are either not in place, or there are other laws such as secrecy laws that render the right to information laws obsolete. There are countries with very good laws that in practice have no mechanism to put them into practice.

Limited capacity within civil society. When civil society is too weak to advocate for more open government and reduced corruption, governments are unlikely to reform.

² International Commission of Jurists (Kenya), The State of Freedom of Information in Kenya, in B. Wamalwa Muragori & Chesoni, A., 2003. *The need and value of access to information*, CHRI unpublished, p. 45.

Low levels of awareness among the public, who do not know that information belongs to them and they have a right to access it, severely limits the demand for greater transparency and the pressure on government to deliver on it.

Political leaders and the 'messiah complex'. Open systems of government are rejected by leaders who believe that they know what is best for the country and that citizens are too ignorant to contribute to making important decisions.

2. The process of open government

Making government more open and transparent is a process involving three, important areas of focus:

- **Right to information laws** – this establishes the constitutional/legal right for a citizen to access the information that they want;
- **Proactive transparency** – this commits governments to publishing as much information as possible in an accessible form;
- **Open data approach** – this enables us to reconfigure government data into forms that provide useable and accessible information.

These three strands are not separate, chronological steps; rather they work together in tandem. The more sophisticated and better applied they are, the more open and transparent government tends to be.

There are, therefore, degrees or stages of openness combining all three areas of focus. An open government should, at a minimum, recognise the right to information in law. There should be a legal mechanism that allows the public to request information and that requires at least core classes of information to be published.

More progressive steps to openness require a developed legal framework for the right to information with proper mechanisms to ensure it is being translated into

practice. Governments should also voluntarily publish more than just the core classes of information.

Maximum openness would involve speedy request systems and an advanced proactive publication systems (including open data portals), and advanced information management systems.³

2.1. Establishing right to information laws

Right to information laws establish the public's *legal* right to access government held information (subject to certain very limited categories). They form the very basis of a transparent and open government by establishing the citizens' right to know what government is doing in their name. The right to information is not only a right in itself, but it is a right that protects individuals' other rights⁴, such as the right to food or to security. In India, for example, RTI laws have been used to uncover the ration card scams that have depriving some of India's most poor of their food entitlements.⁵ In Canada, having access to information about threats to one's personal safety is recognised as a crucial element of the right to security.⁶ Quite simply, though, the right to information helps to guard against negligent, corrupt and exploitative government by threatening exposure. As one US Supreme Court judge puts it: 'Sunshine is the best disinfectant'.

In the last decade there has been a crucial shift in attitudes to access to information. Previously it was viewed as a tool or indicator for governing⁷, a

³ Based on the 'Initial Steps' 'More Substantial Steps' and 'Most ambitious steps' for openness through the right to information in: Access Info Europe and The Centre for Law and Democracy, 2011. Right to information, in: J. McCarthy (ed.), 2011. *Opening government: A guide to best practice in transparency, accountability and civic engagement across the public sector*, London, Transparency & Accountability Initiative

⁴ Banisar, 2006. p. 7

⁵ Kejriwal, A., 2003. More stories of Parivartan, *India Together*, April 2003 [online] <http://indiatogether.org/2003/apr/gov-rtidelhi.htm> [Accessed: 29/11/2011]

⁶ Ontario Court (General Division), *Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al.*, Court File No. 87-CQ-21670, Judgment July 3, 1998

⁷ Article 19, *Freedom of Information*, Article 19 [online] <http://www.article19.org/pages/en/freedom-of-information-more.html> [Accessed: 05/11/2011]

‘legislative “luxury” enjoyed by a few advanced democracies’⁸. Access to information is now being claimed as a right and the issue has been taken up by civil society. This represents a profound shift from seeing information government property to seeing information as citizen property. Government is merely a guardian of information.⁹ The mantra ‘knowledge is power’ has been swapped for ‘information is ours’¹⁰ and governments are now seen as being obliged to provide citizens with the information that they require.

Simply establishing right to information laws, however, does not guarantee the right in practice. To guarantee this right, the law need to be enforced with appropriate oversight and record management mechanisms. And citizens need to be willing to exercise their right to request information – something that might be termed ‘a culture of wanting to know’. In countries where a culture of secrecy has prevailed this is perhaps one of the most significant barriers.

2.1.1. Mapping right to information laws globally

In 1990, 13 countries had right to information laws in place. Today this number stands at around 90.¹¹ A further 53 countries either have draft legislation pending or strong lobbies for legislation.¹²

⁸ Hazell, R., and B. Worthy, 2010. Assessing the performance of freedom of information, in *Government Information Quarterly*, No. 27, p. 352

⁹ Article 19

¹⁰ Mendel, T., 2010. The Right to Information a Human Right, [online] http://www.law-democracy.org/?page_id=61 [Accessed 5/11/2011]

¹¹ Figures vary slightly. See: Open Society Justice Initiative, *Countries with Access to Information Provisions in the National/Federal Laws, and Dates of Adoption and Significant Amendments*, Access 2 Info [online] <http://right2info.org/laws> [Accessed: 6/11/2011] state that there are 89 countries as of September 2011 plus five countries with actionable ATI regulations and 2 countries with actionable constitutional provisions.

Vleugels, R., 2011 (9 October). Overview of all FOI laws, *Fringe* (Special Issue) [online] <http://right2info.org/laws> [Accessed: 6/11/2011] states that there are 88 national FOIAs..

¹² Vleugels, 2011.

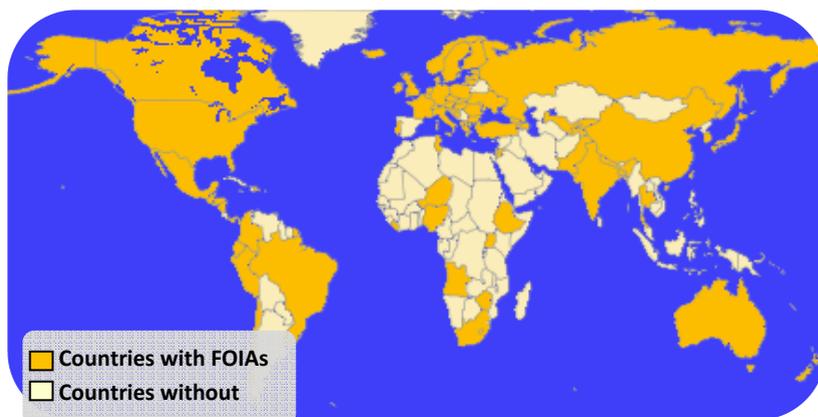


Figure 1. Countries in the world with Freedom of Information Acts¹³

In Western Europe, 17 countries now have RTI acts, from the earliest adopter Sweden (1766) to the most recent ones including the UK (2000) and Germany (2005).¹⁴ A significant proportion of new right to information laws – around 20¹⁵ - have come from Eastern Europe after the collapse of the Soviet Union and the wave of democratisation in the 1990s.

Progress in the Global South is mixed. The Americas have shown considerable interest in freedom of information. 19 of the Americas (excluding the US and Canada) have access provisions in federal laws/state laws.¹⁶ Brazil is the most recent addition to this list, passing its Access to Information Act on 22 November, 2011. Nearly all the remaining countries in the Americas now have pending legislation. Furthermore, Mexico is heralded as a leader in the access arena not just regionally, but globally with ‘one of the strongest laws in the world’.¹⁷ In Asia, the last ten years have seen a growing trend in RTI laws. India, which only passed its RTI law in 2005, is already seen as a model right to information regime.

RTI laws are lacking in both Africa and the Middle East, however. In fact, the Middle East has only two countries with RTI laws - Jordan and Israel -¹⁸ and the

¹³ Based on the 88 countries with FOIAs stated in Vleugels, 2011. With the addition of Brazil.

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Banisar, 2006, p. 19

¹⁸ Vleugels, 2011.

Jordanian law is regarded as weak as its impetus came solely from the government and no input from civil society¹⁹. In Africa there are now nine countries with RTI legislation: Angola (2002 2006); Ethiopia (2010); Liberia (2010); Niger (2011); Nigeria (2011); South Africa (2001); Tunisia (2011); Uganda (2006); Zimbabwe (2002). In Zimbabwe, though, this law is used to restrict access to information and freedom of expression rather than facilitate it. It is a tool for repression rather than openness and transparency.²⁰ And while in Latin America the news of a new Brazilian RTI legislation is cause for celebration, the news in Africa is less promising. The South African government is in the final phase of passing a new secrecy bill that undermines its access to information legislation and freedom of speech in the country.

It is clear that there remains a gap, therefore, in both the Middle Eastern and African regions for a model national RTI regime that facilitates open government. There is the opportunity for Egypt, therefore, to show regional leadership on the issue.

2.1.2. International and regional standards and laws

Pressure on countries to adopt freedom of information laws is coming from the international arena with an increasing number of treaties, declarations and agreements. The right to information is recognised at the international level in several instances:

Both The 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights are both legally binding treaties and in similar ways both guarantee a right to freely express ourselves and a right to seek and impart information²¹. But the earliest recognition of the RTI in international law was in 1946, with the **UN** General Assembly Resolution 59(1) where freedom of information was proclaimed as ‘a fundamental human

¹⁹ Right2Info, *Access to information: Overview and statutory goals*, [online] <http://right2info.org/access-to-information-laws/access-to-information-laws-overview-and-statutory> [Accessed 5/11/2011]

²⁰ Open Society Justice Initiative, 2011; Banisar, 2006.

²¹ Universal Declaration of Human Rights. General Assembly Resolution 217 A (III) of 10 December 1948; International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966. [online] http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [Accessed: 6/11/2011]

right and ... the touchstone of all the freedoms to which the UN is consecrated.'

The three special mandates on freedom of expression – being the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – came together in 1999 and adopted a joint declaration recognising that the RTI is an implicit and crucial element of the right to freedom of expression. They have explicitly called on all countries to adopt right to information laws and have issued joint statements annually since their first one.

Several regional conventions also recognise the right to information and require the adoption of RTI laws by member states:

The **Council of Europe** has been pushing for member states to facilitate access to information for over 30 years. In 2002, it recommended a set of principles for national access to information laws including its General Principle on Access to Official Documents stipulating that the public should have access to all information and documents held by public bodies. In 2001, the European Parliament, Council and Commission Regulation 1049²² gave any EU citizen or resident the right to access the institutions' documents. There is, however, no EU obligation to member states to adopt RTI laws. Instead, there are directives that require all EU member states to adopt access laws around specific issues such as public procurement, the re-use of public information, environmental protection and consumer protection.²³

The **African Commission on Human and Peoples' Rights (ACHPR)** endorsed the public's right to access information when it adopted the ACHPR - Declaration of Principles on Freedom of Expression in Africa in 2002. The declaration not only asserted the public's right to information held by public bodies as the 'custodians of the public good', but also stipulated that it be

²² Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. [online] http://www.europarl.europa.eu/register/pdf/r1049_en.pdf [Accessed 21/11/2011]

²³ Banisar, 2006, p. 12

guaranteed by law. The right to information is also covered in Article 9 of the African Charter on Human and Peoples' Rights.

In 2004, the **League of Arab States** adopted the Arab Charter on Human Rights (replacing a 1994 charter that was not ratified by any member countries). The Charter also builds on the right to free speech in the UDHR, and specifies the right to information.²⁴ The Charter came into force in 2008 when it was ratified by seven member states.²⁵

The **Organisation of American States (OAS)** has frequently recognised the right to information. Article 13 of the American Convention on Human Rights includes the right to information in the right to freedom of expression. The General Assembly also endorsed resolutions in 2003 and 2004 that called on member states to adopt right to information laws. The 2000 Inter-American Commission on Human Rights - Declaration of Principle on Freedom of Expression lays out the right to access information and the obligation of the state to guarantee this right. It also provides that individuals have a right to access their own information whether held by public or private bodies.²⁶

Anti-corruption and environmental protection treaties now mostly all include provisions that require signatories to adopt laws around public access to information.

The 2003 **UN Convention on Anti-Corruption** was ratified by 30 countries and adopted in 2005. It stipulates that countries should take measures to combat corruption including publishing information, simplifying administrative procedures, and creating access procedures. It goes a step further in Article 13 and stipulates that states should promote active participation in fighting corruption.²⁷ The **SADC** Protocol Against Corruption is another example. It was signed in 2001 by the 14 SADC nations and went into force in 2005 after being ratified by nine countries.²⁸

²⁴ Banisar, 2006. p. 14

²⁵ Rishmawi, M., 2010. The Arab Charter on Human Rights and the League of Arab States: An Update, in *Human Rights Law Review*, Vol. 10, No. 1

²⁶ Banisar, 2006. p. 15

²⁷ Banisar, 2006. p.8-10

²⁸ As of July 2007: Transparency International, *Southern African Development Community (SADC) Protocol against Corruption*, [online]

There have been some important environmental protection treaties in the last two decades that recognise the importance of access to information about the environment in order to promote sustainable development and public participation in environmental governance. The 1992 Rio Declaration on Environment and Development stipulated that individuals should 'have appropriate access information on hazardous materials and activities in their communities, and the opportunity'. In 1998 this was followed up with the legally binding Aarhus Convention which came into force in 2001 and was signed by member states of the United Nations Economic Commission for Europe (UNECE) and the European Union. The Convention states that the right to information on the environment is a requisite of the right to live in a clean environment. It sets out provisions in Article 4 on access to information and binds all signatories to create legal mechanisms to implement these provisions.²⁹

2.1.3. Best practice

The danger lies in creating a freedom of information law for the sake of it. Many RTI laws are today merely 'paper' laws. They have been passed in response to international and/or domestic pressure, and are not adequate to promote meaningful access to information. Common problems include out of date laws that neglect advances in technologies; limited mechanisms to implement the law; the remaining culture of secrecy leftover from previous repressive regimes; exploitative fees; broad exemptions to the law; government delay tactics in processing information requests; and laws such as secrecy laws that undermine RTI laws.

To make sure that RTI laws are more than just symbolic they should be drafted to reflect international principles and best practice. While there are no standardised RTI laws and practices around the world, a minimum set of standards is emerging. The organisation - Article 19 – has created an exemplary set of principles to reflect both international standards and the common features of more progressive RTI laws. They are summarised as follows:³⁰

http://www.transparency.org/global_priorities/international_conventions/convention_s_instruments/sadc_protocol [Accessed 7/11/2011]

²⁹ Banisar, 2006; Mendel, 2008.

³⁰ Mendel, T., 2008. *Freedom of Information: A Comparative Legal Survey*, Paris, UNESCO

Article 19's Right to Information Principles

Principle 1: "Freedom of information legislation should be guided by the principle of maximum disclosure."

The principle of maximum disclosure creates the founding rationale for RTI legislation. It assumes that all information held by public bodies should be accessible. The principle is specified in several national laws. Anybody denying access to information is obliged to give legitimate proof that this information should be withheld. The principle also requires that the law should be broad and should extend to everyone (not just citizens) without the need to prove the need for specific information. The type of bodies obliged to disclose information should also be broad in scope.

Principle 2: "Public bodies should be under an obligation to publish key information."

It is not only up to the public to request information. Public bodies should be obliged to proactively publish information (this is discussed in more detail under proactive disclosure)

Principle 3: "Public bodies must actively promote open government."

Steps need to be taken to inject a culture of openness, particularly in countries emerging from repressive and secretive regimes. This involves training public officials and sanctions for those who unlawfully refuse access. Promotion of open government also involves informing the public about what their rights are and how they can realise these rights. This can be done through the media and public education campaigns and guide notes. Up-to-date and reliable information is an important element of governing. Promoting better records management and handling amongst officials is therefore key to promoting open government.

Principle 4: "Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict 'harm' and 'public interest' tests."

This is a contentious area in the field of access. A broad set of exceptions has the ability to undermine a law. But at the same time it is recognised

that some information is legitimately secret and may be dangerous if made public. There is, though, a test for exceptions:

- 1: Aims or exceptions should be clearly and narrowly defined in the law. And they should be justifiable. Defining these aims is problematic. The Council of Europe Recommendation outlines some specific limitations including: national security, defence and international relations; public safety; the prevention, investigation and prosecution of criminal activities; privacy and private interests; and commercial and other economic interests (public or private).
 - 2: Disclosing information must also be harmful to the above aims.
 - 3: And finally, the public interest should be an overriding factor in decisions. Even if information is harmful to an aim, not disclosing it to the public can cause even greater harm. In these circumstances information should be disclosed.
-

Principle 5: “Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.”

This requires that the decision-making process should be clear and

subject to independent review. The law should also make provisions for those unable to place requests in writing. There should be specific and relatively short timelines. Any denial of information should be justified. There should also be an appeals process that extends to the courts and a complaints process.

Principle 6: “Individuals should not be deterred from making requests for information by excessive costs.”

Fees should not be barrier to access to information. They need to be consistent and should be set centrally to ensure this. Fee systems vary depending on what the law stipulates: in some instances fees depend on the information categories, in other instances a certain number of pages are provided free and in other cases fees have caps on them.

Principle 7: “Meetings of public bodies should be open to the public.”

While it is rare for this to be included in RTI laws, it is an important principle because it recognises that information is not confined to documents alone but also to the

discussion and the processes of making decisions.

Principle 8: “Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.”

Access to information laws are frequently undermined by laws such as secrecy laws that override them. Since the global ‘war on terror’, several countries have established these secrecy laws.³¹ Laws that restrict disclosure of information should be reviewed and made consistent with a country’s RTI laws. Any RTI law that includes a carefully considered set of exceptions does not need accompanying secrecy laws.

Principle 9: “Individuals who release information on wrongdoing – whistleblowers – must be protected.”

This principle is crucial to uprooting a culture of secrecy where openness invokes punishment. Any individual or group who releases information should be protected under RTI laws. Creating this security means that public interest information,

particularly about wrongdoing, will be made public.³²

³¹ Banisar, 2006.

³² For a full list of principles see Mendel, 2008.

2.1.4. Mechanisms for right to Information laws

Adopting legislation may be a significant step, but it is by no means a guarantee of the right to information. The mechanisms that enforce and implement these laws are just as important as the legislation itself.

Records management

‘Records management is the systematic control of all records from their creation or receipt, through their process, distribution, organisation, storage and retrieval, to their ultimate disposition.’³³

The entire premise of access to information is reliant on information being there in the first place, and being archived and indexed properly so that it can be easily found and retrieved. How records are managed is therefore intrinsic to the process of accessing information. Public bodies need to have not just the capacity to disclose information, but the capacity to collect, store and retrieve information too. More and more records are being produced in electronic format. As technology advances better ways of storing and accessing information are created. In this sense, records management is an evolving process. The components for good record management, however, remain the same:

- Clear, centralised records management policy and strategy including on information security and archiving;
- Plain guidelines on how to keep and manage records for staff and managers;
- Identify and manage appropriate systems for holding information;
- Adequate resources and capacity to properly manage records;
- Consistency during organisational or national transitions (for example from one government to another);
- Centralised classification schemes;
- Clearly defined retention and disposal policies and schedules

³³ Hagan, H., 2011. Developing Records Management in Support of Access to Information, National Records of Scotland [online]
<http://www.cgu.gov.br/acessoainformacao/arquivos/Hugh-Hagen-Desenvolvendo-um-sistema-de-gestao-de-registros.pdf> [Accessed 15/11/2011]

- Procedures for systematic reviews and assessments.³⁴

Appeals and oversight

Independent commissions are generally viewed as the best form of oversight for enforcing acts and appeals. They tend to be attached to the office of the Presidential or Prime Minister's office, Parliament, or another government body. Commissions tend to deal with both appeals and general oversight of access to information including public awareness campaigns, trainings and revisions. Their power does vary from country to country, though. Some have no power to enforce decisions, such as in France and Canada. But in countries like Mexico, Serbia and the UK the Information Commission has the power to issue binding decisions.

There are a range of other mechanisms for oversight and appeals to consider that may be more appropriate depending on the country context. In most countries the first stages of appeals are reviewed internally primarily; a relatively quick and inexpensive system. The second stage is then external review. In several countries this is by an independent Ombudsman, appointed by Parliament but with no power of enforcement reviews decisions. There could alternatively be a special tribunal - such as in Australia - that behaves like an informal court process and makes appeals faster and more efficient. In Jamaica, however, the tribunal system is too formalised and creates delays rather than speeding up the process.

The last point of call for external review is often in the courts. Some countries use the courts as the only external reviewing body.³⁵ But this can be a time-consuming and costly process not available to the poor and marginalised sections of society. A court appeals process in such cases can act as a significant barrier to accessing information.

Sanctions

Sanctions are a means of ensuring compliance with the law. In a secretive government no one is ever punished for withholding information – they are punished for releasing it. Sanctions are a useful way of reversing this assumption.

³⁴ Adapted from Hagen, 2011.

³⁵ Banisar, 2006. p. 23-24

Most right to information laws have sanction provisions for public authorities or individuals who withhold or delay information unlawfully. Sanctions vary from fines to imprisonment and can be imposed either against an administrative body or specific individuals.

In India, Information Officers who refuse or delay information requests under the RTI Act are now fined by the Information Commission if they have no legitimate reason for withholding information. In systems like the US, withholding information can lead to sanctions through the courts whereby information requestors are compensated their legal costs.³⁶

In **India**, sanctions are an extremely effective tool for ensuring that RTI Act is implemented properly. They are so effective, in fact, that the RTI Act is now being used by ordinary citizens to tackle corruption. It gives the public the power to challenge all levels of government. Indian social activist, Aruna Roy, describes the RTI Act as ‘the most fundamental law this country has seen as it can be used from the local *panchayat* (a unit of local government) to parliament, from a nondescript village to posh Delhi, and from ration shops to the 2G scam.’³⁷ In the Act’s first two and a half years, 2 million information requests were filed across India³⁸ for a variety of reasons such as: exposing corruption; uncovering resource misuse; examining state decisions and policies; or accessing social and economic entitlements such as pensions. In India, sanctions make the RTI Act nearly as powerful a tool as bribery. A controlled experiment in Delhi found that ration card applicants who filed information requests following up on their application forms were almost as successful as those who paid upfront bribes. What is more, they were treated on a par with middle class citizens, something that bribery could not affect. It is clear that: ‘For many, particularly India’s poor and disadvantaged, the simple

³⁶ Banisar, 2006, p.24-25

³⁷ Freedominfo.org, 11 March 2011. Indian RTI Activists Gather for National Meeting, [online] <http://www.freedominfo.org/2011/03/indian-rti-activists-gather-for-national-meeting/> [Accessed 22/11/2011]

³⁸ RTI Assessment & Analysis Group (RaaG) and National Campaign for People’s Right to Information (NCPRI), 2009. *Safeguarding the Right to Information: Report of the People’s RTI Assessment 2008*, [online] <http://www.centreforcommunicationrights.org/images/stories/database/debate/india-safeguarding-executivesummary.pdf> [Accessed 28/11/2011]

act of filing an RTI application is empowering and often leads to tangible results.³⁹

2.2. Proactive disclosure

Enabling citizens to request information might be described as a system of *reactive disclosure*: the individual requests information and the government or public body provides this information in response.⁴⁰ This places the onus on the individual and not the public body. A large part of opening up government, however, is making it easier for people to access information. As a result many governments and public bodies now recognise that they have a responsibility to publish information on their own initiative without it being requested by the public first. This is *proactive disclosure*.⁴¹

2.2.1. Benefits of proactive disclosure

There are several benefits to governments disclosing their information proactively.

Limiting corruption: Publishing information about government actions and spending puts government and public officials under the constant watch of the public, allowing them to track what resources are spent, who contracts are awarded to and so on.

In **Canada**, for example, proactive disclosure of public registers and civil servants' private earnings and expenses is written in law. In 2003, senior government officials were required to publish all travel and hospitality expenses. Publication of all contracts over CA\$10,000 and grants and contributions over CA\$25,000 is also required. This information can be accessed via the Treasury Board of the Canada Secretariat.⁴²

³⁹ Surie, M.D., 28 September 2011, Right to Information in India: An Effective Tool to Tackle Corruption, *In Asia* [online] <http://asiafoundation.org/in-asia/2011/09/28/right-to-information-in-india-an-effective-tool-to-tackle-corruption/> [Accessed 28/11/2011]

⁴⁰ Darbshire, 2010. p. 3

⁴¹ *Ibid*

⁴² Darbshire, p. 12

Disclosing this kind of information forces governments to be more accountable and less corrupt.⁴³ Publishing information around procurement also increases efficiency in spending because openness around contracts and prices can generate competition.

This is being done in **Chile** where transparency is considered an important factor in driving economic growth in the country post Pinochet regime. In 2003, the government established an electronic public procurement system, ChileCompra, to increase the transparency of state spending. In 2006, all public bodies were required to disclose information on contracts - amongst other information such as public spending and staffing - and to link this information to ChileCompra.⁴⁴

The rule of law: Proactive disclosure plays a significant and practical role in the rule of law. It ensures that the public knows and understands the laws and policies that it must abide by.⁴⁵

In **France**, the LegiFrance is an in depth resource for French, European and International laws, norms and regulations. It also publishes news up-dates on relevant legislation and online versions of France's *Official Journal*.

Ensuring that this information reaches the majority of the population means that governments have a responsibility not only to publish this sort of information, but to make it is accessible for people of different languages, ability, and literacy or education level.

Increasing participation: Proactive disclosure is also important to foster citizen participation in the decision-making process across all levels of government. By giving the public the information they need to take part in these processes, decisions and policies are more likely to benefit them and less likely to

⁴³ Banisar, 2006

⁴⁴ Banisar, 2006

⁴⁵ Darbshire, 2010, p. 3

be hi-jacked by special interest groups. Of course participation is more than a one-way channel of information from government to citizen, it is a two way exchange, a process of dialogue and more mechanisms are needed for this.

Peru adopted its 'Framework Law on Participatory Budgeting' in 2003 requiring municipal and regional governments in the country to undertake a participatory budget (PB) process every year. The Peruvian PB initiative was inspired by a PB experiment in Brazil's Puerto Alegre from the late 1980s though till the 1990s.⁴⁶ After Peru's return to democracy, the government created 'consultative spaces' allowing civil society to take part in major policy making. One of the more successful spaces created were the 'Mesas de Concertación para la Lucha contra la Pobreza' (MCLCP): roundtables at the local, regional and levels dedicated to fighting poverty in the country.⁴⁷ These roundtables play an important role in monitoring PB implementation. In 2005, the government also launched an interactive website to track PB implementation.⁴⁸ Peru's PB initiative does have its weaknesses. For example it restricts who from civil society can legitimately participate.⁴⁹ The combination of the PB law and access to information law in Peru, though, has lead to noticeable progress in proactive disclosure. A study in 2009 revealed that half of authorities used websites to publish at least 70 per cent of legally mandated information.⁵⁰

Better access to services: Society also needs to be informed about the services that its government is providing. This not only benefits the individual who needs access to these services, but is also a way for government to display the tangible steps it is taking for its constituents. Information about services is not information that can be published on an individual basis; it needs to be done on scale. Digital communications technologies have played a significant role in this area and have allowed governments to not only inform citizens about services,

⁴⁶ Hordijk, M.A., 2009. Peru's Participatory Budgeting: Configurations of Power, Opportunities

for Change, *The Open Urban Studies Journal*, No. 2, p. 43

⁴⁷ *Ibid*, p. 47

⁴⁸ *Ibid*, p. 50

⁴⁹ *Ibid*, p. 49

⁵⁰ Darbshire, 2010. p. 13

but to even distribute information - such as on HIV/AIDS health information- as part of those services.

Equality in access: Proactive disclosure makes information available to the public rather than the individual. It serves the information needs of several rather than one. It also means that the cost and inconvenience associated with filing information requests are avoided.

Security: Publishing information also protects the security of individuals within society. Requesting information for some individuals can sometimes be dangerous, particularly if it threatens powerful interest groups. Publishing information gives anonymity to individuals who seek to root out instances such as of corruption.⁵¹

Improving information management: Proactive disclosure is also a more efficient means of disclosing information than processing individual information requests both in terms of the number of people it reaches and the public administration burden.⁵² In any new regime focused on opening up government, proactive disclosure is an effective way of anticipating and delivering on citizens' demands for information. It also helps speed up the process of reactive disclosure because officials have the information readily available to deal with requests.⁵³

Creating an information cycle: Finally, proactively publishing information gives a greater understanding of the society that it seeks to inform. It allows other actors - such as academic institutions or other civil society institutions - to re-use information, build on it and to generate more information. Open data initiatives, which are explored in more detail in the next section, are a key way of re-using and interpreting it in ways that are relevant to the public. This information in turn can be used by public bodies to inform decisions and policies and has significant political value in any democracy where votes are gained through measurable progress and policies that react to citizens' needs.

⁵¹ *Ibid*, p. 4

⁵² Banisar, 2006. p. 7

⁵³ Darbshire, 2010.

In **Croatia**, civil society groups created a citizen, user-friendly version of the state budget. Croatia's Ministry of Finance have now adopted this version and altered the way in which they present their information.⁵⁴

2.2.2. Making proactive disclosure law

'Including stronger proactive disclosure provisions has been part of [an] expansion of the right to information.'⁵⁵ More progressive RTI laws do include provisions around proactive disclosure. This means that public authorities have a legal obligation to not only respond to information requests but to publish information. In several countries, the classes of information required for proactive disclosure are specified: India's RTI Act specifies 18 classes of information for proactive disclosure.⁵⁶ Countries that with RTI laws in place, but with weak provisions around public disclosure have rectified this through additional laws: Hungary's Electronic Freedom of Information Act (2005), for example, stipulates proactive disclosure obligations that missing from its 1992 RTI law.⁵⁷

International standards and treaties are now emerging around proactive disclosure. At the regional level, the Council of Europe's 2009 Convention on Access to Official Documents requires member states to publish public official documents regularly in a number of formats including ICTs, and it suggests classes of information. In the Americas, the OAS Inter-American Juridical Committee's 2008 Principles on the Right of Access to Information also outline soft-laws and guidelines for proactive disclosure. Sectoral treaties such as the UN Convention Against Corruption and the Aarhus Convention also both include provisions.⁵⁸

2.2.3. The role of ICTs

ICTs have opened up a host of opportunities for providing the public with access to government information. Both websites and portals provide a resource for governments and departments to publish information in a timely way, at low cost

⁵⁴ *Ibid*, p. 17

⁵⁵ *Ibid*, pp. 15-16

⁵⁶ See <http://www.righttoinformation.gov.in/>

⁵⁷ Darbshire, 2010. p. 16

⁵⁸ Darbshire, 2010. p. 20

and on a large scale. More and more, governments are turning to transparency portals. These can be centralised – such as in Estonia where citizens have access to the main 20 state registers via The Citizen’s Portal – or by sector or department.⁵⁹

Mexico’s Transparency Obligations Portal was launched in 2007 by the office of the Information Commission (the oversight body). The portal is both a means to provide the public with information, but also allows the Information Commission to ensure compliance with the rules on proactive disclosure outlined in the Federal Law on Transparency and Access to Information (2002). The portal cost \$300,000 to build and was not an obligation under the law. The portal has given the public access to millions of registers, the most popular of which is the directory of public servants which includes details of salaries. There are plans to further develop the portal such as by building in more sophisticated searches and providing access to archived information and data. As well as the transparency portal, Mexico also has a separate portal for filing information requests: InfoMex^{60 61}.

2.2.4. Guiding principles for proactive disclosure

When designing proactive disclosure systems there are five principles governments should follow.⁶² Information needs to be: available, findable, relevant, comprehensible, low cost or free and up-to-date.

To make information **available**, governments can and should publish information in multiple formats. Information can be published via the media (both print and broadcast), notice boards, leaflets, public meetings, on websites and via mobile phones. In countries where internet access is low or mobile phone tariffs are high, ICTs should not replace other modes of publishing information.

The **South African government** has established a network of 165 Thusong Centres with the explicit aim: 'To bring government information and services closer to the people to promote access to opportunities as a basis for

⁵⁹ *Ibid*, p. 13

⁶⁰ Previously named SiSi (System of Information Requests)

⁶¹ Darbshire, 2010. p. 24-26

⁶² Based on recommendations outlined in Darbshire, 2010.

improved livelihoods⁶³. The centres are distributed across the country including in more remote, rural areas. In a country where only 12.3 per cent of the population have access to the Internet⁶⁴, Thusong centres are an innovative means getting information on government services, decisions and policies out to the public in both urban and rural areas. 20 per cent of the centres do not have internet connectivity themselves⁶⁵ because of a lack of infrastructure, and this emphasises the importance of the centres and the need to disclose information using more traditional formats.

The user needs to be able to **find information easily**. This should influence how information is disseminated, such as whether it should be displayed on a central web-portal or by department or sector.

The classes of information should have value to the end user and need to be presented to them in a meaningful way: information should be **relevant**. In this sense, governments need to consider the multiplicity of potential users. This is why consultation with civil society, businesses, educational and other institutions is important.

Information should be **comprehensible** and presented clearly in all official, national languages. It should also be accessible for a range of disabilities. In countries where literacy levels are low, alternative ways of displaying information should be considered, such as audio-visual methods.

All electronic information should be **free**. Hard copy formats of core classes of information should also be free. And any other information in hard copy format should at least be reasonably priced.

⁶³ Thusong Service Centres, About, [online]

<http://www.thusong.gov.za/news/success/laingsburg2.html> [Accessed 22/11/2011]

⁶⁴ ITU ICT EYE, 2010. *Estimated Internet users, fixed Internet subscriptions, fixed broadband subscriptions* [online] <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx> [Accessed 25/08/2011]

⁶⁵ At the beginning of 2010. Mphindi, H., 2008. *Digital Divide and e-governance in South Africa*, Tshwane University of Technology [online] http://www.ais.up.ac.za/digi/docs/mp hindi_paper.pdf [Accessed 15/09/2011]

Information often has an expiry date so it needs to be **timely and correct** otherwise it has limited value. Information, in electronic or hard-copy format, needs to be dated so that the public know how current that information is. Digital platforms need to be designed so that information can be systematically and regularly up-dated.

2.2.5. Choosing what information should be published?

While all public information could in theory be published (apart from exceptions); the sheer volume of information in practice makes this difficult to do. Governments therefore have to prioritise what should be published.

Core set of classes: A World Bank study identifies a minimum set of classes of information for proactive disclosure based on a comparative country study of Hungary, Mexico, India and the United Kingdom. These core classes include public service information; public procurement information; lists registers and databases; and budget information among others and the full list can be found in Annex 1.⁶⁶

User driven approach: The government can use filed information requests as a way of prioritising information. Requests provide an indication of the kind of information that citizens want to know and can help to shape proactive disclosure policy. In some cases, laws actually stipulate that frequent public requests for information should result in proactive disclosure of that information. One example is the Mexican Federal Law on Transparency and Proactive Disclosure. This law is implemented by tracking information requests made on the country's information request portal – Infomex.

2.2.6. Resources, training and oversight

Setting up systems for proactive disclosure often means high start up cost. In the long-run, though, these systems can save money. Once digital systems are in place it will become increasingly easy to publish this information. While most new information is electronic, governments also need to consider what resources will be needed to digitise older records.

⁶⁶ Darbshire, 2010. pp. 21-22

Especially in the early years, public bodies will require support in setting up systems and adapting to them. Public officials will need training and guidance and best practices should be established.

Governments could consider a progressive approach, publishing only core classes of information at first. As capacity and technology develop, though, they can begin to publish other classes of information and more complex datasets.

The right mechanisms also need to be in place to enforce public disclosure obligations and to monitor levels of proactive disclosure. Information officers or information commissions are used several countries including Mexico and India and they have oversight of provisions on proactive disclosure. These bodies should have the power to undertake independent investigations, to deal with complaints, to monitor levels of disclosure and to order appropriate action to ensure compliance.

2.3. Open data approach

Advances in ICTs have introduced exciting opportunities for more open government. The Internet and mobile platforms make publishing government information possible at low-cost and on a major scale. Developments such as the semantic web and linked data⁶⁷ are making it easier for us to find, share and amalgamate information. ICTs are also changing the relationship that people have with information and the way in which they access and interact with it. As a result of these developments, there has been a new wave of open data initiatives around the world.

Governments have now started publishing their information as machine-readable datasets. These datasets then have the potential to be 'mashed up' or re-used by community groups and software developers. They re-use this data and interpret it in user-friendly formats that give meaning to data. Adding geo-spatial data to the equation is significant because it allows information to be displayed according to

⁶⁷ Linked data allows somebody working on a dataset to link their data to web addresses that are created specifically for that subject. Other datasets can be linked to the same web addresses and anyone can find out more about the specific area by linking through to the web address without that information being copied into their original dataset.

location and area right down to the very local. The more local the information is, the more relevance it tends to hold for individuals and communities. In the UK, the publishing of crucial geo-spatial data was a transformative moment for open data communities.⁶⁸ By opening up data, governments allow this information to be manipulated so that it is relevant to its individual citizens: it can in fact become an alternative way of engaging them in political processes.

Government open data initiatives are a very recent phenomenon. In countries where they exist, they have in large part come about due to pressure from civil society groups and ‘civic hackers’ – communities of civic-minded software and system developers.⁶⁹ Until 2011 only five governments had launched open data systems: the US (2009), New Zealand (2009), the UK (2010), Catalonia/Spain (2010), Australia (2010). In November 2011, there were 31. In the MENA region this includes Saudi Arabia, the United Arab Emirates, Morocco and Bahrain. In Sub-Saharan Africa, only Kenya has an open data platform.⁷⁰ The example of Kenya, though, provides useful insight the process of creating a national open data platform in the Global South, including where the impetus came from, the actors involved, choice of data and challenges faced.

The Government of Kenya launched the ***Kenya Open Data Initiative***⁷¹ in July 2011. What makes the case of Kenya interesting is that this gesture of openness and transparency comes before Kenya has passed any access to information law. Despite this, the initiative is a direct attempt to improve government accountability and transparency, to provide a basis for evidence-based policy-making, to stimulate economic growth by improving efficiency and service delivery, and to encourage innovative applications which make use of the data.⁷²

⁶⁸ Hogge, B., 2010. *Open data study: New technologies*, Transparency & Accountability Initiative [online]
http://www.transparency-initiative.org/wp-content/uploads/2011/05/open_data_study_final1.pdf [Accessed 23/10/2011]

⁶⁹ *Ibid*

⁷⁰ Data.Gov, 2011. *International Open Data Sites*, [online]
<http://www.data.gov/opendatasites> [Accessed:18/11/2011]

⁷¹ <http://opendata.go.ke>

⁷² World Bank Institute, 2011. *WBI in Action: Driving Force Behind Kenya's Open Data Initiative Speaks of the Effort*, [online] <http://wbi.worldbank.org/wbi/stories/driving->

The impetus for the initiative came from all levels. Kenyan civil society, and its burgeoning technology and developer community were instrumental in pressuring the government for greater transparency and access to information.⁷³ Ihub, the Nairobi technology incubator was an important force in driving the creation of the open data platform. It made repeated requests for access to data in order to develop new applications.⁷⁴ At the same time, there was commitment within government. Bitang Ndemo, Permanent Secretary at the Ministry of Information, lead on the Open Data Initiative. Ndemo's commitment to the project played a key role in driving the project through government.⁷⁵ These two levels of influence were important. The project also had international support from the World Bank and Google; significant in particular from the funding point of view.

Data for the site comes from various government ministries, the National Bureau of Statistics and the World Bank. The site uses the platform Socrata (www.socrata.com), a widely used open data platform used by several US state data platforms, and which will be used for the next version of the national U.S Open Data platform.

As of November 2011, there are 472 datasets available on the site, all of which are geo referenced so that they can be visualised at the county level.⁷⁶ Granted this figure is not as impressive as the almost 400,000 datasets available in raw or geospatial format on the U.S open data site - *Data.gov* . It is, nevertheless, encouraging given that in the four months since its launch, the number of datasets on the site has more than tripled, from 150 to 472⁷⁷. Data is

force-behind-kenya%E2%80%99s-open-data-initiative-speaks-effort [Accessed 17/11/2011]

Opendata.go.ke , 2011. *Open Data: The bigger picture*, [online] <http://opendata.go.ke/> [Accessed: 17/11/2011]

⁷³ WBI, 2011

⁷⁴ Interview with Dr Bitang Ndemo, Permanent Secretary at the Ministry of Information in: Berkowitz, E., and R. Paradise, 2011 (September). *Innovation in government: Kenya and Georgia*, *McKinsey Quarterly* [online] https://www.mckinseyquarterly.com/Innovation_in_government_Kenya_and_Georgia_2865 [Accessed 26/09/2011]

⁷⁵ WBI, 2011

⁷⁶ Opendata.go.ke, 2011

⁷⁷ WBI, 2011

downloadable in a variety of formats and can be visualised in different ways. Access is also given to the API (Application Programming Interface) so that developers can visualise and combine the data in any way they want and create mobile-phone based applications using the data. The site includes detailed public expenditure and community development fund expenditure and datasets ranging from poverty rates per county to the proportion of children immunised in each county. Access to information on expenditure by county is particularly important as this has been a source of contention in the past and is seen as an area where nepotism and corruption are rife⁷⁸.

A key aim of making the data available is so that community groups and software developers can access, analyse, combine and create applications which give meaning to the data and can be used for social change⁷⁹. The US open data site has 1119 government-developed and 236 citizen-developed applications so far. Many of the community developed applications focus on visualising and mapping data, for example a national obesity comparison tool, which maps obesity by county. Kenya has a strong technology and developer community, itself, which puts it in a good position to make good use of the data (Ihub has a membership of 4000 developers).⁸⁰ Applications have already been developed to map the location of MPs who avoid paying tax, to monitor and visualise community development projects and an SMS service to allow non-internet enabled mobile phones to access information from the databases. The Kenya ICT Board is encouraging this process by offering grants to developers of 'high impact' applications which make use of the data.⁸¹ There have been to date 143 requests from the public for additional data they would

⁷⁸ Ninua, T. 2011 (15 July). Kenya champions open data in Africa, *Space for Transparency* [online] <http://blog.transparency.org/2011/07/15/kenya-champions-open-data-in-africa/> [Accessed: 17/11/2011]

⁷⁹ Venkatachallam, U. 2011 (14 November), *Kenya Open Data Initiative (KODI) Heralds a New Era for Access to Information*, Partnership for Transparency Fund [online] <http://ptfund.org/kenya-kodi-information-access/> [Accessed: 17/11/2011]

⁸⁰ *Ibid*

⁸¹ Provost, C. 2011 (13 July). Kenya opens its books in revolutionary transparency drive, *The Guardian* [online] <http://www.guardian.co.uk/global-development/poverty-matters/2011/jul/13/kenya-open-data-initiative> [Accessed: 17/11/2011]

like access to⁸², suggesting that the foundations of an engaged community are in place.

Although there is much to commend in Kenya's Open Data Initiative, there several challenges remain. If the benefits of an open data system are to be felt across Kenya, and not just in urban centres, there needs to be a renewed focus both on internet access in rural areas and a programme of education and awareness-raising about the data portal and possible applications.⁸³

Additionally, while making data available is a commendable aim, open data is only useful if the data provided is reliable and of the highest possible quality. Processes to ensure data quality and that data are kept up-to-date are being developed, but are yet to be implemented.⁸⁴ Core categories of information (as outlined in the previous section) - such as Organisational Information and information on Public Procurement – are also missing. **Data.gov.uk**, the UK open data site, is a good model for the publishing of detailed information about government processes and the way government works. Data.gov.uk, for example, provides full details on the structure of government including job roles and remuneration for every government employee⁸⁵, and all government tenders and contracts are provided online. In an effort to further increase transparency lists of the meetings of every MP are available to shed light on lobbying activities. There is also detailed expenditure for different departments. Hopefully, the Kenya Open Data Initiative will act as a catalyst for the Kenyan government to expand its disclosure policy in similar ways.

⁸² Opendata.go.ke, 2011b. *Dataset suggestions*, [online] <http://opendata.go.ke/nominate> [Accessed: 22/11/2011], Figure correct as of 22/11/11

⁸³ Sunday, F., 2011 (14 July). Kenya: Open Data Portal's Success Hinges On High Speed Internet, AllAfrica.com [online] <http://allafrica.com/stories/201107141106.html> [Accessed: 17/11/2011]

⁸⁴ The World Bank, 2011b (11 October). *Open Data: Kenya, Moldova Yield Lessons for Developing Countries*, World Bank [online] <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23020989~pagePK:34370~piPK:34424~theSitePK:4607,00.html> [Accessed: 17/11/2011]

⁸⁵ See <http://data.gov.uk/organogram/cabinet-office>

Civil society and RTI regimes

Civil society can play a powerful role in promoting access to information. In several countries civil society groups have been doing this through advocacy around RTI legal reform; drafting and contributing to legislation; raising citizen awareness around the right to information; building a popular support base; and acting as a watch dog for the implementation of access to information. There is no set formula for a best civil society strategy, however. This is highly dependent on context.

In **Mexico**, for example, the access to information was picked up by the Oaxaca Group - an elite group of experts representing a cross-section of interests. The group was involved in lobbying for and drafting a RTI law, and was replaced by more established NGOs when the law was passed. In the **UK**, the campaign for a Freedom of Information Act was spearheaded by a specialist and established NGO: the Campaign for Freedom of Information. The Act was passed in 2000.⁸⁶

In contrast, in **South Africa**, the RTI campaign was the work of a coalition of NGOs and formed part of a wider movement for progressive constitutional change after the end of Apartheid. Access to information, though, was an issue that held its own significance in South Africa. During apartheid the systematic denial of information actually helped enable racial, social and economic oppression. The right to information was, therefore, enshrined in the country's 1997 Constitution after the end of Apartheid. In 2000, the legal instrument to implement the constitutional right to information was passed: the Promotion of Access to Information Act (PAIA). It was the product of a lengthy campaign by a coalition of NGOs. The first formal coalition – the Open Democracy Advisory Forum (ODAF) - was dissolved early on and replaced by the Open Democracy Campaign Group (ODAG), which was active for four years until the Act was passed. The coalition represented a broad range of civil society voices and included: the South African NGO Coalition; Congress of South African Trade Unions (COSATU); Human Rights Committee, Legal Resources Centre,

⁸⁶ Puddephatt, A., 2009. *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom*, Washington DC, World bank Institute

Environmental Justice Networking Forum; Black Sash; Institute for Democracy Association in South Africa; National Association of Democratic Lawyers; South African Council of Churches; and the South African Catholic Bishops Council. The group created positive dialogue and interaction with parliamentarians and worked hard to reassure them that RTI systems were not a threat to government. The group also carried out extensive research on other countries' experiences, international best practice, and examples of successful campaigns. The diversity of the group gave it considerable momentum too. While this diversity had the potential to make coordination difficult, there was a systematic division of tasks between experts that prevented this. The ODAG also used the media well. The media became a crucial voice piece for the campaign and prevented it from becoming swept up in party politics.⁸⁷

India is one of the few developing countries where the adoption of a formal RTI regime was driven by grassroots groups. The widespread campaign for access to information actually evolved from anti-corruption campaigns at the grassroots level aimed at improving conditions for the rural poor.

The strength of India's civil society sector grew out of the post Independence era when the state attempted to incorporate 'people's institutions' in official programmes. Eventually, the failure of the state led to these groups campaigning to defend the interests of the poor. Despite many years of effort there has been little positive change for the poor in rural India and millions remain mired in terrible poverty. It was the desire for greater local transparency and accountability to combat corruption, particularly in rural areas, that led civil society in India to fight for the right to information. Specific concerns included corruption in implementing rural development, for example by using fewer materials in construction than shown in published estimates; payment to fictitious workers; and awarding permits, licenses, house allotments, gas, water and electricity connections, contracts in exchange for bribes. Another specific concern was the arbitrary exercise of power whereby those who benefited from public spending were selected on a patrimonial basis.

⁸⁷ *Ibid*

As a result of intense and prolonged campaigning by civil society organisations such as Mazdoor Kisan Shakti Sangathan (MKSS), right to information legislation was introduced in nine Indian states during the 1990s. Many of the key actors involved in advocating for and securing state-level legislation later became actively involved in lobbying for and commenting on drafts of the national RTI law which came into force in 2005.

MKSS, is a grassroots organisation working in rural Rajasthan and was formed in 1990 by farmers and rural workers who were mainly illiterate and impoverished. The organisation was set up to work on behalf of the rural poor in demanding minimum wages for workers that were not being paid their entitlement because this money was being siphoned off by public officials. The strategies that were adopted by MKSS have been widely emulated. They included sit-ins, rallies, and lobbying government. Innovative ways in communicating these ideas to the poor were used such as music, puppetry, and village theatre. Early on MKSS won the right to inspect records of development programmes. This enabled them to expose wholesale irregularities and corruption. From this they formulated a strategy of social audits through *jan sunwais* (public hearings) held in each village where the records were read out to villagers exposing the fraud. This has subsequently been used by other civil society movements to bring about right to information in other Indian states.⁸⁸

At the same time there were also other civil society groups rallying around the issue of access to information in India. These voices included groups working for consumer protection – for example Ahmedabad, the Consumer Education and Research Council; environmental groups such as the CHIPKO movement, demanding transparency and accountability in environmental governance; resettlement movements, such as the Narmada Bachao Andolan; campaigns to end hunger, such as the Right to Food Campaign; and broad-based anti-corruption movements such as Bhrashtachar Virodhi Jan Andolan in Maharashtra state. Several prominent figures also gave power to the movement by giving their support for the adoption of a comprehensive

⁸⁸ Mishra, N., 2003. *People's Right to Information Movement: Lessons from Rajasthan*, Human Development Resource Centre, [online] <http://data.undp.org.in/hdrc/dis-srs/Rajasthan/Right%20to%20Info.pdf> [Accessed 22/11/2011]

transparency law and the right to information: lawyers and retired supreme and high court judges such as Justice P. B. Sawant and Justice H. Sur esh; retired bureaucrats; and senior media professionals, such as Ajit Bhattacharjea.

Since the passing of the Act, civil society has been instrumental in raising awareness around the RTI Act and helping citizens to use it to file information requests. Satark Nagarik Sangathan (SNS), a Delhi-based NGO, assists residents and slum dwellers in South Delhi to file information requests. SNS has run successful campaigns to improve public services such as the public distribution system and water and sanitation. Civil society has also been responsible for uncovering high level corruption. The Housing and Land Rights Network in Delhi used the RTI Act to reveal that the Delhi government had partly funded infrastructure development for the 2010 Commonwealth Games using resources diverted from social welfare programmes.⁸⁹

These case studies highlight the intrinsic role played by civil society in pushing RTI country agendas. But they also highlight that there is no one fixed model. With the exception of India, expert groups spearheaded campaigns for access to information. As well as contributing to draft legislation and the passing of RTI legislation, civil society also has a prominent part to play in raising public awareness around the right to information and its role in bringing about transparency and openness.

Civil society though, also needs to understand its limitations. While its potential to drive the process is substantial, it is unlikely to singlehandedly pass ATI legislation especially where there is a hostile or indifferent government, or a government with several competing priorities. Rallying support across sectors and interacting with government bodies is therefore extremely important. In short, civil society can be a substantial driving force in promoting the right to information, transparency and openness, but the process needs buy-in from all levels to properly achieve an open government regime.

⁸⁹ Surie, 2011.

3. Conclusion

The right approach to creating an open and transparent government is highly dependent on the country's democratic maturity and local context. Any approach needs to be tailored to local conditions.

Effectively forming a system of openness is also not just a technical tick-box process. All reforms operate in a political context that can either drive or hinder reform. And so political will is integral to creating open government. If the political will is not there already, then it needs to be generated or nurtured even. At the same time there needs to be a set of competent and committed public officials to create and manage the information systems for an open government. Just as important too is the involvement of a strong civil society who can put pressure on government and raise public awareness and support. Buy-in from all three sets of actor is crucial.

There is a danger also that the opening up government becomes only a superficial process. Access to information laws can become merely 'paper' laws if they are not then properly implemented or are undermined by other laws. The right mechanisms to ensure implementation are just as important as the laws themselves.

By proactively publishing information governments have the potential to satisfy the information needs of the public en masse rather than just the individual. Not only does this make it easier for us to find and access public information, but it reduces the administrative burden that information requests put on public bodies. Proactive disclosure also requires information management systems that end up making government more efficient. In other words it helps government to know more about the people it governs. ICTs have made it easier to organise and publish large amounts of government data. And open data initiatives allow information to be presented in ways that are useful to people at a very local level. In countries where access to digital communication technology is low, though, information still needs to be published in more traditional formats such as notice boards, leaflets or radio and television.

The culture of secrecy is one of the biggest challenges to opening up government. This culture not only permeates government and officials who believe that

information is their source of power, but society as well. In secrecy regimes, no one is ever punished for withholding information only disclosing it. This needs to be reversed. Creating a culture of openness is, therefore, a central step towards a functioning open government system. The virtues of access to information need to be sold to politicians and public officials before they believe that it can help them to govern better. At the same time, the public needs to be taught about the right to information and how to use this right. Only then will they begin to expect and to demand it.

4. Annex 1

Core classes of information for proactive publication⁹⁰:

- 1. Organizational information:** Organizational structure including information on personnel, and the names and contact information of public officials.
- 2. Operational information:** Strategy and plans, policies, activities, procedures, reports, and evaluations—including the facts and other documents and data being used as a basis for formulating them.
- 3. Decisions and acts:** Decisions and formal acts, particularly those that directly affect the public - including the data and documents used as the basis for these decisions and acts.
- 4. Public services information:** Descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees and deadlines.
- 5. Budget information:** Projected budget, actual income and expenditure (including salary information) and other financial information and audit reports.
- 6. Open meetings information:** Information on meetings, including which are open meetings and how to attend these meetings. Decision-making & public participation: Information on decision-making procedures including mechanisms for consultations and public participation in decision-making.
- 7. Subsidies information:** Information on the beneficiaries of subsidies, the objectives, amounts, and implementation.
- 8. Public procurement information:** Detailed information on public procurement processes, criteria, and outcomes of decision-making on tender applications; copies of contracts, and reports on completion of contracts.
- 9. Lists, registers, databases:** Information on the lists, registers, and databases held by the public body. Information about whether these lists, registers, and databases are available online and/or for on-site access by members of the public.
- 10. Information about information held:** An index or register of documents/information held including details of information held in databases.
- 11. Publications information:** Information on publications issued, including whether publications are free of charge or the price if they must be purchased.
- 12. Information about the right to information:** Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.

⁹⁰ From Darbshire, 2010.

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Transparency and Egypt's Transition Phase

Problems and Challenges

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There is no consensus on a common definition for transparency, with disagreement amongst scholars on the subject. However, it is agreed that transparency is an essential element of democracy as it entails equal access to information and the creation of equal opportunities for citizens. Among several of the definitions of transparency is the dissemination of information around citizens' rights and the services that they are entitled to have, as well as the methods of accessing and assessing these rights. This requires the provision of accurate information that is timely and accessible for all⁹¹.

On another level, transparency is seen as opening up the public sector and other sectors to public scrutiny. Whereby specific mechanisms are in place so that the public can easily identify political and administrative roles in the government and the division of responsibilities between the different levels of government as well as the relation between the Executive, Legislature and the Judiciary⁹².

In this sense, International Monetary Fund (IMF) experts view transparency as openness to the public around government structures and functions, economic and political intentions and public sector accounts. This can promote accountability, emphasise credibility, and mobilise support of political and economic forces by the informed public⁹³.

From the different definitions of transparency, a number of parameters of the concept can be identified:

1. Freedom of information
2. Combating corruption
3. Accountability
4. Participation

Based on these indicators, a set of indicators for the political system can be identified to measure the extent of transparency in the system:

⁹¹ "Egypt is no. 111... and bribery became a fact in life", Transparency International (TI): on the following link <http://www.boswtol.com/politics/news/10/may/10/13002>

⁹² Definition of Transparency, Iraqi newspaper entitled *Al Umma*, on the following link <http://ummaiq.com/old/modules.php?name=News&file=article&aid=15395>

⁹³ Public Finance Report 2007, IMF, on the following link: <http://www.imf.org/external/np/fad/trans/ara/manuala.pdf>

1. Circulation of information: The degree of difficulty in terms of citizen access to information and the absence of freedom of information, emphasises that Egyptian citizens are not provided with the necessary mechanisms. Hence, a public disclosure system is necessary for the implementation of government transparency.
2. Corruption and the existence of anti-corruption and prevention mechanisms: The absence of such mechanisms leads to the fragility of the political system and the magnification of the role of the state which does not accept opposition.
3. Accountability and the capacity to impose censorship/control through interaction with the government: In light of the weakness of accountability mechanisms and the domination of the Executive on the other government branches, there needs to be a group of principles and rules that aim to support imposing financial and legal control on government financial resources and expenditure. Government accountability can be defined as all the processes of proving, collecting and spending government resources, then submitting periodical reports around these processes and their results to the different bodies. Government accountability aims at providing concerned bodies with government financial data⁹⁴; it differs from control/censorship, which is defined as controlling information and ideas that spread in society⁹⁵ and is one of the important elements of effective government disclosure.
4. Political regime openness, which allows real public participation and empowerment of civil society to perform its role: This is the cornerstone of freedom of expression and the space available to the media and journalists.

This highlights the importance of the concept of transparency in Egypt; as it is an essential component to develop and enhance as part of the transition towards and pursuit of democratic development in Egypt. Those interested in studying transparency view the idea as greatly linked with the concept of democracy itself,

⁹⁴ Definition of government accountability, Faculty of Accounting, on the following link: <http://www.mfhom.com/vb/t16865.html>

⁹⁵ An article entitled "What is Control?", website of the international campaign on freedom of internet on the following link: gildc.org/speech/osistudy/censorship

but recognise that democracies are not necessarily transparent and can indeed be characterised by great degrees of lack of transparency⁹⁶. Naturally, levels of corruption decrease in democratic regimes. Although the disease of corruption spreads in many democratic regimes, controlling it in democratic regimes is easier because of the availability of information. In addition, the concept of transparency is broader than a mere mechanism to expose corruption. Instead it is a mechanism to measure the level of good governance and society's righteousness. Transparency is one of the main elements of bureaucratic accountability, as a result of which all available public accounts and accounting reports are put under accurate public scrutiny. Transparency provides protection against government mistakes and committing mistakes in estimating resources and the corruption associated with use of these resources.

Despite the fact that Egypt was among the first signatory states on the Convention against Corruption in 2003 and the fact that the concept of transparency is greatly linked with combating corruption⁹⁷, this initiative did not contribute to providing a general atmosphere of transparency in Egypt. This resulted in Egypt being ranked 115th⁹⁸ out of 180 states in transparency statistics from 2009. In order to measure the lack of transparency in Egypt, the above indicators should be measured in the context of Egypt since the signing of Convention and before the revolution of January 2011 (which erupted to confront oppression and corruption). This can be done at four levels: the legislative level, the structural level, the practical level, and finally the cultural dimension of institutions and society.

⁹⁶ As article entitled: "Is Transparency Necessary to Abolish Corruption?" by Fawzy Nasr, Al Hewan Al Motamaden Magazine, issue 1431- 15/1/2006, on the following link:

<http://www.ahewar.org/debat/show.art.asp?aid=54819>

⁹⁷ Promoting transparency and integrity in the Arab Region, Egypt in the focus, Transparency International:

http://www.transparency.org/regional_pages/africa_middle_east/current_projects/mabda_ar/focus_countries/egypt

⁹⁸ Corruption files after stepping down, Hussam Ramadan, on the following link:

<http://www6.mashy.com/home/tahrir-egypt/corruption-files>

First: Circulation of information in Egypt

1. The Legislative Level:

It is important to make a separation between the practical implementation and the provisions of the law in relation to freedom of information. An examination of Egyptian laws, shows that while they do provide a degree of freedom of information to the ordinary citizen, the state reserves the right to obscure information in the custody of "national security" of the country. The last Egyptian Constitution (1971) did not stipulate freedom of information in its articles, except in Article 210 around journalists' freedom in accessing news and information according to the conditions stipulated in the law. Also Article 106 stipulated that peoples' assembly sessions are public and that sessions may be secret at the request of the President of the Republic, the Prime Minister, its Chair or at least twenty of its members. Therefore, publicity, and not secrecy, was the original rule. Relevant to this, Article 169 in the Constitution stipulated that court sessions are public unless the court itself decides otherwise taking general order or ethics into consideration and in all cases the verdict is made in a public session. However, there are no criteria for both cases and things are left in the hands of the Executive bodies, which puts this right under arbitrary usage. In addition, Article 49 of the Constitution stipulated that the state ensures freedom of scientific research and literary, artistic and cultural creativity and providing the methods to encourage it.

On the other hand, constitutional amendments conducted in March 2007, added issues that could support more financial transparency in relation to the state public budget and final accounts than before. Article 115 - regarding the way and timing of state public budget presentation in the Peoples' Assembly - was amended in order to allow Parliament to amend it without prior approval from the government and to increase discussion time and examination of the budget by obligating the government to present it three months, instead of two, before the beginning of the new fiscal year.

In addition, there are some laws that support freedom of information including the Law of Tenders and Auctions: Every general auction and practice is controlled by the principles of publicity; equal opportunities; equality; free competition and

the Law on the Central Bank, the Banking Sector and Money. Quarterly financial bank statements are prepared and published in two daily newspapers and a brief auditor report is attached to them, according to the Egyptian auditing and accounting standards. In addition to this, according to the Capital Market Law, every company shall publish a detailed summary of bi-annual reports and annual financial statement in two widely spread daily morning newspapers, at least one of them is in Arabic. These examples of laws clarify that the Egyptian legislator was keen to disseminate basic information and data widely. However, all information falls in the economic sphere. Even though this is important, other areas are regulated by laws which ensure that information is obscured and that seek to punish whoever publishes information. This includes Law no. 35 on Statistics and Census⁹⁹ and the Civil Servants Act¹⁰⁰.

It could be logical that these laws exist to protect government information and secrets in order to maintain the country's national security; which is one of the main obstacles facing freedom of information in any country. However, what matters in this is the actual implementation of these laws and how they are used to decide on issues relating to available information to citizens. In the Egyptian case, the law was implemented firmly to an extent that limits freedom of expression and state security was confused with security of the system so as to punish or imprison anyone who published any information that opposed the regime. One of the methods used was obscuring information and developing red tape chains in order to access information.

⁹⁹ Article three of the above-mentioned law indicated that “No individual, or public or private body shall inspect personal data related to any confidential statistics or census, and such confidential statistics or census shall not be used for non-statistical purposes, along with the prohibition of publishing any individual related data thereof, except with the written permission of those concerned. Further, no statistical data should be used as a basis to aggregate tax or any other associated burdens nor should it be used as evidence in court or as the basis for any business”. In addition, “Amended Article 4 of the law no. 28 of the year 1982/ stipulates that anyone who discloses secret statistical data or any of its individual components, or a secret of industry or trade or any other business methods which they may have encountered as part of their work in statistics and censuses will be punished by imprisonment (for at least a month and no more than six months) and receive a penalty (no less than L.E. 100 and no more than L.E. 500)”

¹⁰⁰ Article 77 stipulates: “Clause 7) prevents civil servants from disclosing any statement or announcement pertaining to the internal mechanisms of his job, be it through newspapers or any other method of publication, unless he has a written permission from the relevant authority. Clause 8) prohibits civil servants from disclosing subjects that they have witnessed on the job, especially those of a sensitive nature, and to continue secrecy even after leaving government employment”.

2. The Structural Level:

Scholars and media personalities in Egypt agree that it is not easy to access information in our country; information is not available to everybody. In order to access a file, an individual shall get a permit from the concerned body and this has not only remained the same as before but has worsened. Hiding information became a part of the Egyptian culture and the type of information that became difficult to access was not related to the government. For example, in the National Archives of Egypt, students are not allowed to access some documents that are more than hundreds of years old or to use any of them in research work except through a permission from the University to be approved by the National Archives and some other documents are not accessible in the first place.

3. The Practical Level:

Freedom of information is not limited to making information accessible to individuals. The quality of information also matters. In Egypt, most often the available information is superficial and incomplete and in some cases conflicts with other information issued by the same government bodies. This could be a result of obscuring information and imposing secrecy. For example statistics on newspaper dissemination is considered by some officials to be related to national security especially with regards to national newspapers, and therefore, believe that this information should not be circulated. Others issue figures on the number of publications issued by national newspapers, but these are exaggerated in a way only apparent to a statistician or knowledgeable observer. In addition there is secrecy around job positions and vacancies within faculties. No one knows the details of his grades in the police academy exams and military colleges, be it those who passed or did not. This is similar for exam results for joining the judiciary and diplomatic bodies (Ministry of Foreign Affairs), even though this information is not considered a national security secret in any other state in the world. In other cases, information details are not disclosed, even though this data may be easily available in other countries.

4. The Cultural Level:

As mentioned previously, there are many examples in which information is mainly dealt with as secret and that its circulation is the exception and not the rule. This is caused by a culture of centralisation that results in the creation of a patriarchal state with a bureaucratic system in Egypt. This also results in a lack of criteria justifying why information is classified as “national security” or “public interest”, and leaves interpretation open to administrative bodies in which the culture of obscuring information grew.

Second: Combating corruption and its mechanisms in Egypt

1. The Legislative Level:

Egyptian law does not address the issue of accountability and combating corruption in a way so as to ensure its effectiveness. Despite discussions and suggestions by prominent thinkers, and specialists¹⁰¹, and civil society, on anti-corruption monopoly prevention laws, - both before and after the revolution - these laws were then found to be left in the drawers of officials’ offices as they were frozen, hidden and obscured in very debatable ways. New laws or suggestions for other laws with similar names have been presented by Egypt’s transitional governments, but they are superficial. This could be justified by the fact that none of these governments have represent the transformative of the revolution, as they have come about in an attempt to reform a general route, without actually changing it or without conviction of the possibility of change.

2. The Structural Level:

The integration of business into political life gives rise to political corruption. Therefore, any state that seeks to achieve growth and that respects its citizens, should separate authority and wealth; as the main

¹⁰¹ Check example for the Abdel Mo’ty Ahmed follow up, entitled: “moving a bill to combat corruption”, Al Ahram newspaper dated: 8/4/2011, on the following link: <http://digital.ahram.org.eg/articles.aspx?Serial=466092&eid=5379>

criteria for reducing corruption statistics to their lowest levels. However, an explicit marriage between power and wealth occurred in Egypt in the last decade of the Mubarak regime.

This then resulted in the creation of a favourable environment for the growth/increase of corruption to its fullest extent. Power alone is an irresistible source of enticement for any official, appointed based on loyalty and disavowal of the ruling regime, let alone the temptation of wealth as indicated by a government in which one third of its members were businessmen - similar to the government of Ahmed Nazif. The size of corruption and the number of corruption cases under investigation in Egypt and in which most of these officials and their families are involved emphasises the problem. During the revolution, these government businessmen fled the country¹⁰². Those who are now under investigation in corruption cases are businessmen who were integrated in the political process in one way or another. In addition, the percentage of businessmen in the Peoples' Assembly and the Shura Council in 2005 and 2010 was huge. Not to mention the natural marriage between power and wealth within the state including the Judiciary, which made corruption the main issue of this decade showing that power and wealth were to be found in all facets of state institutions.

3. The Practical Level:

If corruption had been widespread at the structural level without extending to practice, it may not have had much impact on the early quest for change sought for by the revolution. But in fact, structures cannot be separated from practices whereby individuals become tools in implementing regulations and laws that are naturally corrupt, encourage corruption and do not adopt even minimum levels of transparency¹⁰³. The public employee who lives in this context turns himself into

¹⁰² Rashid Mohamed Rashid Minister of Trade and Industry who was nominated to be PM during the first eighteen days of the revolution fled to Emirates as well as Botros Ghali who fled to London.

¹⁰³ What the Supreme Council of Armed Forces (SACF) did in publishing decrees and laws related to Al Azhar Shiekh and presidential elections dated before the elected Peoples' Assembly was effective in the Executive authority and the blackout around whether they were published in an official newspaper or not is an example for this.

a victim of corruption, whether through employment and promotion procedures or even holidays and benefits. This is because with the frequent and steady continuation of corrupt practices in the institution where the employee works, corruption becomes his culture. Hence, the choice between integration by being corrupt or leaving the job becomes difficult. This is all in the context of a culture that favours government jobs¹⁰⁴- despite extreme inequality in state wages -; the systematic and deliberate rise in prices; and the vision of the state to employ people belonging to low income classes. There is in addition the perceptions of other citizens, who are mostly from even poorer income classes and who embark in “brown-nosing”¹⁰⁵ with government employees. This makes even the most junior government employee, an person of power and creates a dictator that is corrupt and seeks to pass on power to his sons using all available methods. He uses the same brown-nosing tactics that people use on him on his own boss. And so the manager of any public institution controls the destinies of its employees while at the same time being under the complete control of the person who provided him with the post. Corruption - in the form of selling land in Palm Hills and Toshka, to selling gas to Israel, to corrupt practices in drafting provisions in agreements, the forging of contracts or electoral fraud, - usually goes unnoticed because the conditions are such the vast majority of citizens are preoccupied with searching for bread to eat or gas for cookers, let alone searching for the reason for the crisis that they are facing.

4. The Cultural Level:

Structures, laws, the spread of bribery and favoritism in all of Egypt’s state services are not the only sources of corruption. Culture plays a vital role even as a subordinate reason behind the absence of transparency and the spread of corruption. The citizen views the corrupt employee as helpless – which may in part be true but should not be used to justify the latter’s corruption. Hence, bribery is not a prohibited or negative act; rather it is viewed as a benefit and as proof for a citizen’s pride and honor when he pays it in front of people. In

¹⁰⁴ The proverb “If you missed the government job, you will soak in soil” means that a person will get into hardship if they missed getting appointed in a government/public sector job. (translator’s note).

¹⁰⁵ In the Arabic document it was mentioned: “if the dog has something you need, call him hag Bayoumi” which is an Arabic proverb for “brown nosing”. (translator’s note)

addition, the employee himself believes that the agency that he belongs to deserves to be stolen from, believing that as it did not give him certain rights, he should take these away from citizens however he sees fit. Given the amount of work he does, it could be argued that even the little that he takes is not justifiable. Fatwas emerged to allow bribery being the only way to fulfill needs. While this may have been the case, Fatwas have been used by many to justify corruption and to make it the only way to access rights.

Third: Accountability and control in Egypt

1- The Legislative Level:

There are many regulators or control agencies in Egypt each with their own area of specialisation including: administrative control, public funds investigation, illegal profiting apparatus, the Central Bank of Egypt, judiciary inspection, control of local administrations. However, the general apparatus responsible for regulation is the Central Auditing Organisation (CAO); it is responsible for supervising the work of administrative, financial and technical services and employees, and it issues decisions necessary for the organisation and management of its work.

The responsibilities of the CAO have increased greatly since it was established in 1942, represented by the fact that they controlled state income and spending. Now it has the following controls:¹⁰⁶

- 1- Financial control, both accounting and auditing. Control of the administrative service units and local administration units of the state. And control of public service bodies, parties, syndicates and unions.
- 2- Performance control and monitoring and follow-up of implemented plans. Control of public money based on saving, effectiveness and efficiency standards. This includes final audits, financial status and budgets of agencies under its control in order to identify whether they are correct and how

¹⁰⁶ <http://ecesr.com/wp-content/uploads/2011/08/%D8%A3%D9%8A%D9%86-%D9%83%D8%A7%D9%86-%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%B2-%D8%A7%D9%84%D9%85%D8%B1%D9%83%D8%B2%D9%89-%D9%84%D9%84%D9%85%D8%AD%D8%A7%D8%B3%D8%A8%D8%A7%D8%AA.pdf>

whether activities have occurred. This is based on common accounting systems, observing mistakes, irregularities and deficiencies in the implementation of the law; regulations and decisions; and ensuring the correct implementation of a unified accounting system with correct ledgers, and the appropriate processes in accordance with accounting standards towards achieving the correct financial results.

- 3- Legal supervision of the decisions made about any financial irregularities. The CAO is responsible for inspecting and reviewing the decisions made by the agencies under its control regarding financial irregularities. This is to ensure that those responsible for these irregularities are identified and punished.
- 4- As clarified, the organisation is not authorised to punish and does not have the right to investigate. Its role is limited to providing concerned bodies with reports; that is it is limited to a supervisory role.

5- The Structural Level:

The existence and conflicting mandates of the various regulators in Egypt has been frequently raised as an issue. The dangerous question lies in the independence: of the CAO. Despite the fact that previous laws have asserted the independence of the CAO, amendments carried out to these laws gave the President of the Republic the power to appoint its head on a renewable four-year term basis. Hence, while the CAO's main responsibility was to supervise the Executive, it fell under the power of the President, who also heads the Executive itself. Following the 25th January revolution, countless corruption files have appeared showing that the CAO was subordinate to the Executive and did not perform the needed work. The additional absence of any form of freedom of information, led us to conclude that the stealing of public funds and corruption cases were wide spread, especially given a lack of citizen supervision.

6- The Practical Level:

Observers describe Egyptian regulators as ink on paper as they are always linked with the decisions of the political leadership. Their reports were inevitably destined to be "buried in the dust of storage areas". The question is how is it possible for these agencies to supervise the performance of the government, and then to present their reports to the same government, represented by the

“responsible minister”. Is it not logical that they are submitted to the General Prosecutor to conduct his investigations?¹⁰⁷ This has led to an absence of effective accountability not only in the crimes surrounding the waste of public funds, but also in crises such as Al Dowiqa rock slide on the residents of Dowiqa as a result of sanitation issues, or Al Salam Ferry that sank with its passengers as a result of neglect and maintenance failure with added deaths as a result of delays in rescuing passengers and so on.

7- The Cultural Level:

The fact that Egyptian culture has a tendency towards secrecy and obscurity is a harsh realisation for any scholar of transparency and freedom of information. It is a culture based mostly on secrecy. ,Scarcely anyone knows the salary of his father, mother, son or family member, unless he is the accountant paying the salary. For the most part, employees of private companies do not know the salaries of their co-workers working at the same level because salaries are given individually and directly by the financial manager and so no one knows them except the personnel manager and the financial manager. This culture is supported by mistaken interpretations of religious texts, especially around the issue of envy. Despite our denial, people tend to exaggerate the significance of these beliefs and make them the basis and determinant for most of their actions and relations.

If the revolution erupted to combat the cancer of corruption, the main it faces is the attitude to dealing with corrupt people where the principle is “let bygones be bygones” without considering the size or seriousness of these crimes. This allows us to argue that Egypt has been transformed into a big corruption factory. The approach of some - whether officials or public opinion leaders - towards reconciliation with investors involved in corruption cases in return for meager compensations is part of this culture and it leads to violent revolutionary waves to confront it and to bring about structural change that is consistent with the revolutionary spirit of reform.

¹⁰⁷ http://www.elghad.com/Read.asp?News_Id=2010100003271

Fourth: Political openness in Egypt

1- The Legislative Level

For one ruler to remain in power and control all forms of authority, public employees then become a group of beneficiaries of this ruler and his cronies. This is aside from those leaders with membership in the administrative apparatus - also known as the ruling party - as this trait given to them by default and the law overtly expresses that those who are part of the administrative apparatus are also necessarily members of the ruling party. In fact, for one ruler to remain in office for thirty years with an arsenal of laws that embed corruption in Egypt is a corruption in the law itself. Saddat, himself, amended the Constitution in 1981 to stipulate that the number of terms for a presidential period is infinite, even though he did not go onto serve a second term in line with the 1971 Constitution. He created a fertile base for corruption and tyranny, which was encouraged by cultural tendencies, mentioned-above. And this base was concretised by the arsenal of legislations, laws and Constitutional amendments in March 2005 and May 2007, that made the law and Constitution protectors of tools for corruption and tyranny; as well as the intervention of the President in the judiciary, during the Mamdouh Mar'ie's era, who is said to have turned the judiciary into an Executive apparatus.

With regards to freedom of expression and the space provided for media, the Egyptian Constitution stipulates freedom of expression in Article 47 as well as the articles relevant to journalism from Article 206 to 211¹⁰⁸. However, severe restrictions in several laws, such as Article 76 and Articles 6, 7 and 21 that touch on freedom of publication and journalism, render the stipulations of the Constitution and the International Covenant on Civil and Political Rights, obsolete, except in Egyptian government reports and statements presented to international bodies or UN commissions.

The most salient example of legal restrictions on freedom of expression in Egypt is the restriction on issuing newspapers According to Law 96, of 1996 - concerning the regulation and organisation of journalism and press functions - the Higher Council of Journalism, which was formed and dominated by the government, is

¹⁰⁸ - http://hccourt.gov.eg/Constitutions/Egyptian_Constitution.asp

authorised to provide licenses for newspapers. The right to issue newspapers is limited to political parties and public and private legal persons with unrealistic conditions. Meanwhile, if newspapers are issued, the Higher Council performs a patronising, censorship assessments of journalists and journalism institutions. The Council also sets the allocation of newspapers numbers as well as their prices¹⁰⁹.

2- Structural Level

The Executive and the ruling party tightened their grip on those institutions responsible for holding the government accountable and obstructed them from performing their responsibilities, as already mentioned. This is in addition to the domination of labour trade unions through the General Labour Federation, whose members are identified by security services and professional syndicates based on affiliation with the regime, and who ensure a win by promising services and support from the government for all members. This is similar to what took place in the journalist syndicate with “Makram Mohamed Ahmed”, the Bar Association with “Hamdi Khalifa”, or by creating a system of guardianship for specific people for years in a way that makes it difficult for the government to penetrate as happened in the the engineers’ syndicate. This is in addition to the state domination of the media through the Ministry of Information and the Higher Council of Journalism, to the keys to which were in the hands of the Shura Council that was in turn dominated by the National Democratic Party (NDP). Finally, is the issue of the independence of the Judiciary, which was undermined by the Mubarak regime by linking it with the Executive.

3- The Practical Level

There are several cases where the state has detained journalists and confiscated newspapers. Several reports reveal the low levels of freedom of expression in Egypt. The report issued by the Association for Freedom of Thought and Expression” (AFTE) in Egypt monitored 55 cases of violation of freedom of thought and expression in the second half of 2009. The regime’s grip tightened on information, news and opinion reaching the street by punishing individuals for information or opinions that was written or published. One example is the suing of a journalist who published information on the former president’s health that it

¹⁰⁹ -<http://old.openarab.net/ar/node/207>

endangered state security and spread rumors about the president. During the revolution of 25th January, official media coverage was not objective and there was a high degree of censorship, which highlights the extent of control that the Executive has on the media and its attempt to direct public opinion in a specific direction.

Conditions remained the same as before the revolution, despite expectations of change after the revolution. However, they remained the same and a number of violations were reported against some channels, journalists even bloggers; such as what place with Michael Nabil who was sued There were some demonstrations in solidarity with him that were covered by the media. However, protesters' cameras and footage for satellite channels – such as Al Jazira - were confiscated¹¹⁰. Media repression was not limited to this event only but also occurred during the recent Maspiro incidents when only the state media was allowed to cover incidents and other satellite channels were prevented from covering it. Two channels were broken into as a result of their attempts to cover the incident (25th January and Al Hurra).

4- The Cultural Level:

The development of civil society in Egypt has followed a similar path to civil society in other countries. At the same time, globalisation has seen the role of the state diminish either in favour of larger entities such as the European Union or as a result of the process of decentralisation such as in the developing world. Before the revolution, there were around 24,000 civil society organisations registered by the Ministry of Social Solidarity (MOSS) in Egypt. Civil society groups played an effective role in carrying out development and charitable work – among these were some model organisations such as Al Jam'iyah Al Shar'iyah (the legitimate organisation¹¹¹), the Orman Organisation and Misr Al Khir (Egypt Charity). These organisations, among others, have carried out social activities for decades, filling the gap left by the state as a result of its failure to provide support and services to

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<http://translate.google.com.eg/translate?hl=ar&sl=en&tl=ar&u=http%3A%2F%2Fen.rsf.org%2Fegypt-respect-for-freedom-of-expression-05-10-2011%2C41126.html&anno=2>

¹¹¹ One of the biggest Islamic charity organisations in Egypt and the Islamic world (according to the Wikipedia Arabic Page http://ar.wikipedia.org/wiki/%D8%A7%D9%84%D8%AC%D9%85%D8%B9%D9%8A%D8%A9_%D8%A7%D9%84%D8%B4%D8%B1%D8%B9%D9%8A%D8%A9)

the marginalised. In addition, civil society - which now stands accused of corruption based on false charges - works on awareness, education, training and capacity building. Foreign funding exists in most countries in the world and it is dealt with clear transparency around budgets, resources and expenses. These associations - charged with training activists to change the regime - previously worked under this regime without legal prosecution or fuss, to the extent that the Prime Minister now considers the situation more severe than the defeat of the Six-day War in 1967. Some even considered civil society as the reason for the problems that Egypt is facing so that the revolution is now perceived in the media as a conspiracy led by civil society against Egypt, while the military council and Ganzoury government are viewed as saviours¹¹². Newspapers use this material almost daily to ensure a continuous stream of captivating headlines and high newspaper sales. This is a media that does not care little for the truth and is preoccupied with distribution and circulation rates. All of this is happening against a backdrop of constant inquiries and investigative committees to discuss various crises and that is characterised by censorship and secrecy without consideration for citizens' thirst for knowing the truth which is itself a means for solving crises.

Conclusion

While Egypt has adopted laws and signed agreements relevant to transparency, practical implementation remains inconsistent with these commitments. Following the revolution of 25th January, several corruption files appeared - in which the involvement of the previous regime was proved - which emphasised that political, social and economic corruption was systematic. In addition, the government's obscuring of information - with the excuse of protecting national security - weakened the institutions that were responsible for questioning the regime and holding it to account or for publishing information that could help citizens control the decisions made by their government. The government agency concerned with statistics and information was protected by a set of bureaucratic laws that made access to any information that exposed the regime very difficult, and which still plague the trials of individuals from the previous regime. These laws extend even to regular information that does not relate to the political

¹¹² Check Al Masry Al Youm issue dated Monday 13th February 2012, article entitled: "Field Marshal demands that Ganzoury calms in the NGOs issue", on the following link: <http://www.almasry-alyoum.com/article2.aspx?ArticleID=328241&IssueID=2410>

regime and make it difficult to get this regular information. This can be explained by the fact that obscuring information has become part of Egyptian culture. In addition to this, regulators are dominated by the Executive. They are not fully independent in monitoring the government, and even if they practiced control they could not hold the government to account, which perpetuates a system of secrecy.

As for freedom of expression, the Executive has played an important role in defining laws “ensuring transparency and freedom of information”. However, the previous authoritarian regime managed to get around these laws and to enact parallel laws that allowed the president the authority to control bodies charged with supervising the Executive. Hence, there is a need for reform at four essential levels: the legislative level, the structural level, the professional level and the cultural level.

1- The Legislative Level:

- Activate laws that support both elements of transparency: namely freedom of information and combating corruption.
- Cleanse the legislative system of laws that are inconsistent with the concept of transparency.
- Develop clear criteria for what should be considered secret and not for disclosure.
- Issue a set of laws to complete the system of legislation combating corruption (conflicts of interest, disclosure laws...etc).
- Support civil and community initiatives working in this field.

2- The Structural Level:

- Develop government structures by creating transparency and disclosure mechanisms.
- Ensure the neutrality of state services by developing structures that are independent from the Executive and the Legislature.
- Ensure the independence of regulators from the executive and legislative branches, and transfer them into a source for information.
- A degree of decentralisation that allows circulation of information.
- Regarding the private and civil society sectors, address ownership and transparency issues, especially in the media.

3. The Professional Level:

- Create monitoring mechanisms for the quality and accuracy of information.
- Create coordination mechanisms between the different bodies working in relevant fields to ensure that information about the same issue is not contradictory.
- Create mechanisms to develop, modernise disclosure methods and the handling of data.
- Build employee capacity in this area.

4. The Cultural Level:

- Eliminate secrecy through relevant deterrent laws.
- Empower and enable citizens to access information directly or electronically.
- Educate citizens about their right to access information.
- Develop mechanisms to simplify information and facilitate access to information for ordinary citizens as a core civil society role.

Creating a system of transparency in Egypt needs institutional reform that is based on three major goals. The first requires the removal of members from the first and second leadership of the old regime who were directly involved in financial, political and security corruption, rather than those in lower levels. The second involves restructuring institutions to achieve three main objectives: a degree of decentralisation that allows for specialisation, making institutions independent of both the Executive and Legislative authorities in order to ensure the neutrality of state agencies and thirdly for these structures to allow complete transparency making circulation of information from these institutions available whether internally or in front of the whole society. The third goal is around rehabilitation and focuses on two dimensions; professional rehabilitation to increase the efficiency of staff in these agencies and cultural rehabilitation. This not only requires changing ideology or doctrine in the case of security institutions, but also persuading them that change is in their favor: That is to create a link between their interests and the process of reform that holds into consideration the interests of society as a whole