

Chapter 1

The Right to Information: Touchstone for Democracy and Development



“The great democratizing power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed.”

— Kofi Annan, Secretary-General, United Nations¹

In 2003, the Commonwealth has a deficit of both democracy and development. In Abuja, the Commonwealth Heads of Government will – not for the first time – be searching for ways to solve these problems. Open government is the answer; and entrenching the people’s right to access information is the most practical way of achieving it. Without enabling people to access information as *of right*, the Commonwealth will struggle in its quest for robust democracy and rapid development.

A Public Resource

This is the age of information affluence. Technology, with its capacity for storing, simplifying and communicating information with astonishing speed, has, more than ever, put information at the centre of development.

In a government... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... have a right to know every public act, everything that is done in a public way, by their public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

— Justice K. K. Mathew, Supreme Court of India²

Information is a global resource of unlimited potential for all. Government is a vast storehouse of this resource. The information kept by government holds the memory of the nation and provides a full portrait of its activities, performance and future plans. Government information includes: international accords; negotiating briefs; policy statements; minutes of discussions with investors, donors and debtors; cabinet deliberations and decisions; parliamentary papers; judicial proceedings; details of government functioning and structure; intra-governmental memos; executive orders; budget estimates and accounts; evaluations of public expenditure; expert advice; recommendations and guidelines; transcripts of departmental meetings; statistical data; reports of task forces, commissions and working groups; social surveys and analyses of health, education and food availability; assessments of demographic and employment trends; analysis of defence preparedness and purchases; maps; studies on natural resource locations and availability; proof of the quality of the environment, water and air pollution; detailed personal records; and much, much more.

Information is a public good like clean air and drinking water. It belongs not to the state, the government of the day or civil servants, but to the public. Officials do not create information for their own benefit alone, but for the benefit of the public they serve, as part of the legitimate and routine discharge of the government’s duties. Information is generated with public money by public servants paid out of public funds. As such, it cannot be unreasonably kept from citizens.

Hoarded by the Powerful

It is well documented that the majority of people in the Commonwealth live in poverty. Yet the majority of the Commonwealth’s citizens are not only materially poor, but also information poor. This deprivation is partly because many are unlettered or do not have ready access to mass communication like newspapers, radio or television. However, in

the main, the poverty of information has been created because the large stockpile of valuable information lying with the government is deliberately held away from people. In much the same way as depriving people of food starves physical development, depriving human beings of information robs them of one of the basic means by which they can become all that they should be.

Unfortunately, the assumption that information is secret has always been a major premise of the relationship between ruler and ruled in the Commonwealth. Chieftains and tribal leaders have long been unaccountable arbiters of their people's governance. In some Pacific Island countries for instance, the king or chief is traditionally seen as so omnipotent that his decision-making is beyond question.³ Colonial authorities owed no duty to subject populations and purposefully used distance to signal their power. A culture of secrecy permeated government, and systems to withhold information became so embedded that they were perpetuated post-independence. In Kenya for example, during the Moi era, fear of the consequences of asking for or giving information culminated in power being consolidated around the presidency to the extent that *serikali* (the Kiswahili word for government) became synonymous with *sirikali* (top secret).⁴

Although a few countries have reformed, most still enthusiastically retain and indeed embrace secrecy as a symbol of supremacy, as if there has been no intervening change from colonial to constitutional governance. Anti-terrorist legislation, criminal defamation laws, overly indulgent contempt and privilege laws, media and privacy regulations and restrictive civil service rules all remain very much intact. Broadly-worded official secrets acts linger unamended on statute books, ready to swiftly punish any breach of government confidentiality. Former Chief Justice of Zimbabwe, Justice Gubbay, recalls: "...a member of Parliament with an interest in ecology was convicted under the [Official Secrets] Act for trying to get a civil servant to disclose the State's plans for setting up a national park in the north-east of the country, plans which had nothing to do with State security. So wide is the ambit of the Act that unauthorised disclosure of the number of cups of tea drunk daily by civil servants – or even disclosure of the fact that civil servants drink tea each day – would amount to a criminal offence."⁵ Unfortunately, most governments still do not accept that the public has an automatic right to access information; nor do they recognise that government has a duty to make sure that information is routinely available to all.

No Information, No Power

Since 1983, hundreds of thousands of Sri Lankans affected by long years of civil war have been forced to leave their homes to live in camps or unfamiliar resettlement areas. As 'internally displaced people' they were dependent on government to protect their basic rights and needs, like food and shelter. However, government distribution was often shrouded in secrecy and delays were common. Food rations were subject to sudden embargoes and often stopped for unknown reasons. People had to rely solely on hearsay to know if they would get food, how much, when and where it would be distributed, and what rules to follow to access it. Lack of a right to access information denied them the opportunity to know their rightful entitlements and question the government about its policy on food distribution. This, it was widely felt, allowed for discrimination and arbitrariness and, since the government owed no duty to inform people, it could not be questioned or held accountable for denying food.⁶

A Fundamental Human Right

Lack of information denies people the opportunity to develop their potential to the fullest and realise the full range of their human rights. Individual personality, political and social identity and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognised by the United Nations at its very inception in 1946, when the General Assembly resolved: "*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*".⁷ Enshrined in the Universal Declaration of Human Rights, the right's status as a legally binding treaty obligation was affirmed in Article 19 of the International Covenant on Civil and Political Rights which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".⁸ This has placed the right to access information firmly within the body of universal human rights law.

The right to access information underpins all other human rights. For example, freedom of expression and thought inherently rely on the availability of adequate information to inform opinions. The realisation of the right to personal safety also requires that people have sufficient information to protect themselves. In Canada, a court has recognised

Right On!

It is important that access to information is recognised as a *right* because it:

- Accords it sufficient importance, as being inherent to democratic functioning and a pre-condition to good governance and the realisation of all other human rights.
- Becomes part of the accepted international obligations of the state. This means that the right to access information attracts the *guarantee of protection* by the state.
- Distances it from being merely an administrative measure by which information is gifted by governments to their people at their discretion since a legally enforceable right cannot be narrowed or ignored at the whim of government.
- Creates a duty-holder on the one hand and a beneficiary of a legal entitlement on the other. Non-disclosure of information is therefore a violation and the beneficiary can seek legal remedy.
- Signals that information belongs to the public and not government. The idea that everything is secret unless there is a strong reason for releasing it is replaced by the idea that all information is available unless there are strong reasons for denying it. The onus is on the duty-holder to prove its case for refusing to disclose documents.
- Sets a higher standard of accountability.
- Gives citizens the legal power to attack the legal and institutional impediments to openness and accountability that still dominate the operations of many governments. It moves the locus of control from the state to the citizen, reinstating the citizen as sovereign.

that the right to security creates a corollary right to information about threats to personal safety which would be violated if the police force knew of a threat and failed to provide that information to the threatened individual.⁹ The right to food is also often reliant on the right to information. In India for example, people have used access laws to find out about their ration entitlements and to expose the fraudulent distribution of food grains.¹⁰ Quite simply, the right to information is at the core of the human rights system because it enables citizens to more meaningfully exercise their rights, assess when their rights are at risk and determine who is responsible for any violations.

The right to information holds within it the right to seek information, as well as the duty to give information, to store, organise, and make it easily available, and to withhold it only when it is proven that this is in the best public interest. The duty to enable access to information rests with government and encompasses two key aspects: enabling citizens to access information upon request; and proactively disseminating important information.¹¹

Commonwealth Action

To their credit, the members of the Commonwealth have collectively recognised the fundamental importance of the right to access information on a number of occasions. As far back as 1980, the Commonwealth Law Ministers declared: “public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.”¹⁴ Policy statements since then have encouraged member countries to “regard freedom of information as a legal and enforceable right.”¹⁵ The Commonwealth Secretariat has even prepared guidelines¹⁶ and a model law¹⁷ on the subject.

The Official Commonwealth – that is, the intergovernmental agencies and meetings – has recently been making efforts to open itself up to the public, but it has a long way to go. In particular, the Commonwealth Secretariat should lead by example and adopt an explicit and comprehensive policy of maximum disclosure. In the absence of such a policy, the Commonwealth will continue to struggle to rid itself of its reputation for aloof disinterest in communicating with its citizens.

When Is Private...Public?

In a world where non-state actors – such as public and private corporations, non-governmental organisations (NGOs), quasi non-government organisations and international institutions – influence the destinies of millions, the ambit of the right to information needs to encompass more than just governments. Some Commonwealth countries have extended the coverage of their laws to some private bodies,¹² recognising that the issue needs to be “resolved by reference to its role in protecting the fundamental interests of citizens, and not by reference to the provenance or structural characteristics of the institution holding the contested information.”¹³

As more and more public functions, like provision of health care, supply of water, power and transport, and even prison management, are privatised, people need to be able to get information from the bodies performing these services. Often, agreements between government and service providers do not require them to make information about their activities available. This removes information from the public domain that would otherwise have been covered under access laws. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if they affect people’s rights. For example, the public should be able to access information on a factory’s environmental management policies to ensure the factory is managing toxic waste appropriately and therefore, not diminishing their right to health.

Status of the Right to Information in the Commonwealth

Access Regime	No Access Regime		
	Constitution: Specific guarantee	Constitution: Part of speech & expression	No Access Law
Australia Belize Canada India Jamaica ⁺ New Zealand ⁺ Pakistan South Africa [#] Trinidad and Tobago United Kingdom Zimbabwe ^{*+}	Ghana Malawi Mozambique Papua New Guinea Uganda United Republic of Tanzania	Antigua and Barbuda The Bahamas Barbados, Botswana Cameroon Cyprus Dominica Fiji Islands Grenada Guyana Kenya Kiribati Lesotho Malta Mauritius Nigeria Seychelles Sierra Leone Solomon Islands Sri Lanka St Kitts and Nevis St Lucia St Vincent and the Grenadines Tuvalu Zambia	Bangladesh Brunei Darussalam The Gambia Malaysia Maldives Nauru Namibia Samoa Singapore Swaziland Tonga Vanuatu

+ Not yet fully operational.

Pakistan promulgated a Right to Information Ordinance in October 2002 but no access legislation has yet been passed.

* The Zimbabwe law is so heavily qualified that it is tantamount to having no access legislation.

Limited Progress

There should be no need to recall to the governments of the Commonwealth the importance of the right to information. Yet there is. Over fifty countries throughout the world now have specific laws that protect the right to access information,¹⁸ and many recently crafted constitutions also contain specific provisions granting the right. But at the time of writing, only 11 of 54 Commonwealth nations – Australia, Belize, Canada, India, Jamaica, New Zealand, Pakistan, South Africa, Trinidad and Tobago, the United Kingdom and Zimbabwe – have passed legislation guaranteeing the right to information. Of these, some contain serious deficiencies. For example, Zimbabwe's law is seriously flawed and Pakistan's and India's lack key provisions. In the United Kingdom, Jamaica and India, although access legislation has been passed by Parliament, the laws have not yet been operationalised fully, if at all.

For the most part, open government is notoriously absent in the Commonwealth; governments continue to drag their heels. When forced to react, some have slowly given ground, often refusing to guarantee the right through explicit legislation, delaying as much as possible and where conceding, providing only a limited right. A handful of other Commonwealth countries are currently considering passing access laws,¹⁹ but progress has been slow.

The Key to Democracy and Development

The reluctance of so many member countries to enshrine the right to access information is surprising considering open government offers the key to deepening democracy and quickening development that the Commonwealth is so desperately seeking. The right to information lays the foundation upon which to build good governance, transparency, accountability and participation, and to eliminate that scourge upon the poor – corruption. As such, it should be embraced as much by the hard-headed economist as by the high-minded reformer.

Making Participatory Democracy Meaningful

To be a member of the Commonwealth, a country must comply with the values and principles set out in the 1991 Harare Declaration, which recognises “the individual’s inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives.”²⁰ However, while all members of the Commonwealth have made that commitment to democracy, in many countries the democratic principles of good governance, transparency and accountability are largely

Knowing Who You Are Really Voting For

As in many countries, Indian law disqualifies people convicted of serious criminal offences from standing for elections but does not bar those indicted and awaiting trial or appeal. In the 2002 state election in the Indian state of Gujarat, one in every six candidates fielded by major political parties had serious criminal charges pending against them! Twenty-five from the ruling party won, and some have even gone on to hold ministerial posts. Alarmed by the number of people with questionable backgrounds entering parliament and state assemblies, a group of enterprising academics applied to the Supreme Court to direct India’s Election Commission to change nomination requirements and make it compulsory for candidates to disclose any charges of serious crimes pending against them.

The Supreme Court agreed, finding that the right to information is inherent to democracy and that the voter has a constitutional right to know a candidate’s background. The Election Commission immediately made the necessary changes to the nomination process. However, in a rare show of unanimity, all political parties came together to resist this development and the Government passed an ordinance that effectively nullified the Election Commission’s orders. Citizens immediately went back to the Supreme Court and appealed against the Ordinance, arguing that it diminished their constitutionally guaranteed human rights. Once again, the Court agreed and struck down the new Ordinance, holding that the fundamental right to know could not be restricted in such an unreasonable manner. Now all candidates, at the time of nominating, must file an affidavit disclosing if they have been charged with serious crimes, their educational qualifications and the extent of their wealth and liabilities. This information must be made widely available.²¹

Lies, Damned Lies

It is small wonder that citizens today are so distrustful of government. The 2003 Hutton Inquiry, held in the aftermath of the apparent suicide of Dr David Kelly, a highly placed civil servant, at the height of the controversy surrounding the United Kingdom Government's justifications for the country's involvement in the Iraq war, saw an unprecedented amount of information laying bare the working of government and the thinking of civil servants. Revelation after revelation contained in the cascade of documents released during the Inquiry indicated the degree to which governments 'manage' information to suit current political needs. By no means is 'spin doctoring' a new or unusual phenomenon. During the Scott Inquiry, set up in 1992 to investigate arms sales to Iraq, the former Foreign Secretary, Lord Howe, candidly maintained that government should not be criticised for "incompatibility between policy and presentation of policy" and that "in circumstances where disclosure might be politically or administratively inconvenient, the balance struck by the government comes down, time and time again, against full disclosure." During the 1998 inquiry into 'mad cow disease', the Ministry of Agriculture similarly advised that it had adopted a policy of "positive censorship" about the disease, preventing its scientists from even discussing their findings with outside experts. The Inquiry reported that "had there been a policy of openness rather than secrecy, this might have led to a better appreciation of the growing scale of the problem and hence to remedial measures being taken sooner."²³

absent. The fact is that periodic elections and a functioning bureaucracy do not in themselves ensure that governments are responsive and inclusive. Something more is needed. Access to information is the key for moving from formal to consultative and responsive democracy. In 2002, the Commonwealth Law Ministers specifically recognised that "the right to access information was an important aspect of democratic accountability and promoted transparency and encouraged full participation of citizens in the democratic process".²²

Information is often withheld even when people are engaged in exercising that most basic of democratic rights, the vote. In the absence of a continuous flow of information that accurately reveals how ministries are functioning, how politicians have performed or the experience and qualifications of new candidates, elections may end up promoting only narrow interests as voters fall back on tribal, clan, religious

or class affiliations as the basis for their choice. Likewise, in the absence of a right to scrutinise the financial details of political party funding – some of it no more than bribes – citizens are unable to ensure that special interest groups, including criminal elements, do not co-opt their representatives for private gain. Better-informed voters mean better-informed choices, more responsive legislators and better governance.

Cementing Trust In The Government

Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. This is a crucial aspect of effective governance – without the support and trust of the people, governments will be more likely to face resistance to their policies and programmes and implementation will be more difficult. It is a concern therefore, that a Commonwealth Foundation study in 1999 which sought the views of some 10,000 citizens in over 47 Commonwealth countries showed that there is a growing disillusionment of citizens with their governments: "Citizens are suspicious of the motives and intentions of their governments. They feel ignored or

even betrayed by their elected representatives. Indeed, they feel suspicious of the very programmes and agencies created to meet the needs they have. They feel neglected, ignored and uncared for.”²⁴ The integrity of governments needs to improve – and be seen to improve. Open government and access to information provide a means of achieving both these ends.

Enhancing people’s trust in their government also goes some way to minimising the likelihood of conflict. Over the years, instability and conflict have resulted in huge setbacks to development in the Commonwealth. Openness and information-sharing contribute to national stability by establishing a dialogue between citizens and the state, reducing the distance between government and people and thereby combating feelings of alienation. Systems that enable citizens to be part of, and personally scrutinise, decision-making processes reduces their feelings of powerlessness and weakens perceptions of exclusion from opportunity or unfair advantage of one group over another.

Supporting People-Centred Development

At the turn of the century, all members of the Commonwealth came together in their broader membership of the United Nations and pledged their commitment to the Millennium Development Goals (MDGs) – the most comprehensive poverty reduction and development agenda the international community has ever forged. At Coolum in 2002, the Commonwealth Heads of Government made a commitment “to work to eliminate poverty, to promote people-centred and sustainable development, and thus progressively to remove the wide disparities in living standards among us.”²⁵ Sadly, in 2003, poverty remains the hallmark of the Commonwealth. Almost two thirds of the people living in the Commonwealth still live on less than US\$2 a day.²⁶ Half of the 130 million children in the world who do not have access to primary education live in the Commonwealth.²⁷ Sixty per cent of HIV/AIDS cases worldwide are found in the Commonwealth.²⁸ Sub-Saharan Africa and South Asia (home to more than 85% of the Commonwealth) have within them the largest concentrations of hungry people in the world.²⁹ With just seven years to go to reach the MDG targets, many countries are slipping far behind schedule.

The sad fact is that while poor people throughout the Commonwealth have strong views on their own development destinies,³⁰ they remain excluded. Tragically, this has often resulted in governments taking advantage of the marginalised populations they should be helping. For example, from the Pacific to Africa to South Asia, the rural poor and indigenous communities who are so heavily reliant on their local natural resources for survival have often been excluded from decisions about their use and sale which have been made by governments dominated by urban elites who have then co-opted the benefits.

Millennium Development Goals*

- Between 1990 and 2015:
 - Halve the proportion of people whose income is less than \$1 a day
 - Halve the proportion of people who suffer from hunger
 - Ensure that children everywhere will be able to complete a full course of primary schooling
 - Eliminate gender disparity in primary and secondary education
 - Reduce the under-five mortality rate by two-thirds
 - Reduce the maternal mortality ratio by three-quarters
 - Have halted and begun to reverse the spread of HIV/AIDS and the incidence of malaria and other major diseases
 - Halve the proportion of people without sustainable access to safe drinking water
- By 2020, have achieved a significant improvement in the lives of at least 100 million slum dwellers
- Integrate principles of sustainable development into country policies and programmes and reverse the loss of environmental resources
- Develop a global partnership for development

* This is a summary of the Millennium Goals and Targets. For a full list see UNDP (2003) *UNDP Human Development Report 2003*, New Delhi, pp. 1-3.

Likewise, women, who battle discrimination across the Commonwealth, continue to be ignored and their contribution to development undervalued. With assured information, marginalised groups will be given their rightful voice and a powerful tool to scrutinise and engage with the development processes being directed at them.

Much of the failure of poverty reduction and development strategies to date can be attributed to the fact that, for years, they have been designed behind closed doors by governments who consulted with 'experts' but shut out the very people who were supposed to benefit. Even a parliamentarian in Ghana complained that the interim Poverty Reduction Strategy Paper required by the World Bank, as well as crucial decisions to take advantage of the Highly Indebted Poor Country Initiative which will affect government policy directions for years to come, were not referred to Parliament at large.³¹ Donors have been complicit in keeping development planning processes closed. Multilateral institutions, such as the World Bank and the International Monetary Fund, are now beginning to open up following pressure from civil society groups, but much more work still needs to be done.



Power To The People!

Instead of being dependent on vague suppositions and assumptions, people armed with sound factual information have the confidence to take on those in power. Even the most marginalised can act in their own interests. For example, a daily wage earner can ask to see work registers to check if they are being paid what a contractor is claiming on their behalf from the government. A parent can challenge the basis on which school admission is given. A pensioner can check if personal records held by government are accurate or misinterpret their entitlements. A small business can sue for compensation if it discovers that a tender it lost was corruptly awarded to another bidder. A resident can question the quality of a road being laid in their locality against specifications stated in the government contract. A citizens group can examine the viability of a development project because it can access documents that indicate if a project would have a detrimental impact on the environment.

Facilitating Equitable Economic Growth

The Commonwealth is relying on free markets to quicken development. But markets, like governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of 'perfect information' and 'perfect competition'.

Foreign and local investors need to be able to rely on the routine availability of timely and accurate information about government policies, the operation of regulatory authorities and financial institutions and the criteria used to award tenders, provide licences and give credit. Easy access to fulsome information that is not mired in bureaucratic processes creates long-term investor confidence in the local economic environment. A guaranteed right to information supports the market-friendly good governance principles of transparency and accountability, which in turn encourage strong growth.

Notably, not merely economic growth, but also economic equity is promoted by access to information. At Coolum in 2002, the Commonwealth called on governments to "work to reduce the growing gap between rich and poor" and declared that "the benefits of globalisation must be shared more widely and its focus channelled for the

Plugging Leaks By Opening Up The System

Despite increased expenditure in the 1990s, an expenditure tracking survey revealed that, during a five-year period, 87% of all funds meant for primary schools in Uganda went into the pockets of bureaucrats, while enrolment remained less than 50%. Astonished by these findings, the national government began publicising details about monthly transfers of grants to districts through newspapers and the radio in a bid to curb the siphoning of funds. At the other end, primary schools were required to post public notices on receipt of all funds. Primed with this information, parents were in a position to monitor the educational grant programme and demand accountability at the local government level. In five years, the diversion of funds dropped phenomenally from 80% to 20% and enrolment more than doubled from 3.6 million to 6.9 million children. Schools with access to newspapers were able to increase their flow of funds by 12 percentage points over other schools. Information dissemination, though a simple and inexpensive policy action, enforced greater accountability in local government and ensured proper use of taxpayers' money.³²

elimination of poverty and human deprivation."³³ The liberation from government of information that would otherwise have remained unutilised increases economic opportunity for the less powerful as much as for the big player. A worker can access information about labour regulations and their entitlements, a businessperson can find out about licensing requirements, taxation and trade regulations; or farmers can get hold of land records, market trend analysis and pricing information.

Tackling Corruption

A guaranteed right to access information is an essential and practical antidote to corruption, which is rife in too many Commonwealth countries. Corruption is destroying the rule of law and has created a mutually supporting class of overlords who need secrecy to hide their dark deeds in dark places. In the worst instances, it has led to the 'criminalisation of politics' and 'the politicisation of criminals', turning elections into futile exercises which merely legitimise bad governance and bad governors.

Corruption is leaching away the economic lifeblood of many Commonwealth societies. The World Bank estimates that corruption can reduce a country's growth rate by 0.5 to 1.0 percentage points per year. Transparency International estimates that over US\$30 billion in aid for Africa – an amount twice the annual gross domestic product of Ghana, Kenya and Uganda combined – has ended up in foreign bank accounts.³⁴ The need to give 'speed money', 'grease' or 'baksheesh' in return for public services or rightful entitlements amounts to an additional illegal tax. Corruption is especially severe on the poor, who are least capable of paying the extra costs associated with bribery and fraud or surviving the embezzlement of scarce public resources.

It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with access to information laws are also perceived to be the least corrupt. In 2003, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than nine had legislation enabling the public to access government information. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning access to information regime.³⁵ The right to access information acts as a source of light to be shone on the murky deals and shady transactions that litter corrupt governments. It enables civil society and especially the media to peel back the layers of bureaucratic red tape and political sleight of hand and get to the 'hard facts.'

Corruption In The Commonwealth

Transparency International's Annual Corruption Perceptions Index surveys the degree of corruption in a country as perceived by business people and risk analysts. Scores range between a top of 10, which is considered very clean, to 0 or highly corrupt. In 2003, 31 of the countries surveyed were from the Commonwealth – more than half the Commonwealth's members. Of these, only eight – just over 25% – got past the halfway mark of 5. The remaining 23 countries scored extremely poorly, with corruption ratings ranging from moderate to rampant. Nigeria and Bangladesh ranked at the very bottom of the entire list of 133 countries.³⁶

Rank	Country	CPI Score
3	New Zealand	9.5
5	Singapore	9.4
8	Australia	8.8
11	Canada	8.7
	United Kingdom	
27	Cyprus	6.1
30	Botswana	5.7
37	Malaysia	5.2
41	Namibia	4.7
43	Trinidad & Tobago	4.6
46	Belize	4.5
48	Mauritius	4.4
	South Africa	
57	Jamaica	3.8
66	Sri Lanka	3.4
70	Ghana	3.3

Rank	Country	CPI Score
83	India	2.8
	Malawi	
86	Mozambique	2.7
92	The Gambia	2.5
	Pakistan	
	Tanzania	
	Zambia	2.3
106	Zimbabwe	
113	Sierra Leone	2.2
	Uganda	
118	Papua New Guinea	2.1
122	Kenya	1.9
124	Cameroon	1.8
132	Nigeria	1.4
133	Bangladesh	1.3

Bolstering Media Capacity

In robust democracies, the media acts as a watchdog, scrutinising the powerful and exposing mismanagement and corruption. It is also the foremost means of distributing information; where illiteracy is widespread, radio and television have become vital communication links. Unfortunately, this power to reach the masses has often been perceived as a threat by closed governments, which have carefully regulated private ownership of the press and attempted to curb the media's ability to gather news, investigate and inform. Zimbabwe's repeated attempts to close the independent *Daily News* newspaper is an example of this sinister tendency. Satellite television and the internet are making slow inroads, but even the content of these are sometimes restricted.

Where the media is unable to get reliable information held by governments and other powerful interests, it cannot fulfil its role to the best of its abilities. Journalists are left to depend on leaks and luck or to rely on press releases and voluntary disclosures provided by the very people they are seeking to investigate. Lack of access to information also leaves reporters open to government allegations that their stories are inaccurate and reliant on rumour and half-truths instead of facts. A sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and is as much in the interests of government as it is of the people.

But Resistance Persists

Despite the obvious benefits of open government for democracy and people-centred development, bureaucrats and politicians unused to opening themselves to scrutiny still offer many justifications for not allowing citizens to access information as of right. None are compelling.

Officials argue that access to information on policy development would inhibit decision-making, because the threat of public scrutiny would curb free and frank discussions, inhibit the candour of advice and therefore seriously hamper the smooth running of government. But the area of official decision-making – how criteria are applied, assessments made, contracts awarded, applications rejected, budgets prepared, or benefits distributed, whose advice counts and whose is ignored – is traditionally an

A Powerful Tool For The Media

A 1995 study in Australia found that 16.6% of hospital admissions suffered an "adverse event"; of these, 13.7% resulted in permanent disability, 4.9% in death and 51% were judged as highly preventable. Government action in response to these findings was excruciatingly slow. In June 1998, two reporters from *The Age* newspaper attempted to bring things to a head in the state of Victoria by lodging freedom of information requests with six health care networks. They were interested in statistics that would enable comparisons between hospitals for infection rates, falls by patients, medication errors, needle stick injuries and so on, as well as information on how hospitals dealt with mistakes.

It took 18 months for their requests to be finally determined, but not without a legal battle that ended in the Victorian Civil and Administrative Tribunal. Even then, the reporters were given only some information and not the detailed documents they had requested. Regardless, their final story revealed such a serious problem with infection rates at one hospital that a state commission was ordered to look into cases. A second inquiry was ordered when the reporters used the Freedom of Information Act to uncover that some Australian hospitals were not using so-called 'safety syringes', such that doctors and nurses were at increased risk of contracting HIV and hepatitis.³⁷

area prone to bias and abuse of power. Without the possibility of disclosure, there is little possibility of checking these tendencies. Conversely, it has been shown that just the threat of disclosure improves the quality of government decision-making. A 1995 report of the Australian Law Reform Commission found that: "the FOI Act has focused decision-makers' minds on the need to base decisions on relevant factors and to record the decision-making process. The knowledge that decisions and processes are open to scrutiny... imposes a constant discipline on the public sector."³⁸ Doing public business in public also ensures that honest public servants are protected from harassment and are less liable to succumb to extraneous influences.

Many governments appear to be wary that open government will result in the disclosure of sensitive high-level communications between senior officials or even with other states. They argue that it is not in the public interest to disclose information that would weaken them in the eyes of the world, especially in the areas of national security, foreign relations or negotiations with international financial institutions. While there may be value in protecting these interests, access laws can easily be crafted to do so. What they will not do though, is protect officials from inconvenient disclosure or criticism that could affect the electoral fortunes of ruling regimes or cause embarrassment to individual government leaders or bureaucrats. Perhaps it is actually a fear of the latter that is at the heart of many governments' resistance to openness.

Concerns are also raised about breaching privacy rights or damaging important commercial interests. But there is no special mystique attached to these communications. Indeed, it is increasingly recognised that the mere fact that something is certified as politically or commercially 'sensitive' is not enough to keep it out of the public eye. Transparency in the public interest is increasingly preferred to secrecy in the private.

Much of the debate over the sensitivity of disclosure is only valid in relation to a very narrow selection of information held by government. In reality, the bulk of government-held information does not fall into sensitive categories where real harm may be caused by its release. Much that is requested by the public is either about personal matters or is uncontroversial: what a person's welfare entitlements are; how government insurance schemes calculate the cost of their premiums; what additives are permissible in food; and so on. In any case, well-drafted access laws inevitably provide for exemptions for certain types of sensitive information, allow for the balancing of competing interests in difficult cases and permit external adjudication where there is a dispute. For example, while it may not be in the national interest to know where a squadron of new aircraft is to be deployed, there is no reason why, merely because the defence department is involved, citizens should not be given copies of the purchase agreement and information on how much an air force jet cost, who is being paid a commission, of what amount and on what terms.

Officials, particularly in developing countries, often argue that guaranteed access to information is a luxury that must await better times. This ignores the truth that access to information is, in fact, a fundamental precondition for development and democracy. Cash-strapped countries also argue that the cost of managing and disseminating information is an insurmountable barrier to open government. While this argument may initially appear to have some merit, especially where nations are struggling just to feed their populations, it is actually seriously flawed as good record-keeping is in any case a basic duty of government. It also overlooks the amount that governments already spend on creating systems of secrecy and distributing their own propaganda. For example, in the mid-1990s it was estimated that the Freedom of Information Act in Victoria, a state of Australia, cost about \$3 million to administer, compared to the \$75 million spent each year by government departments distributing their own glossy brochures.³⁹ The costs to private business and individuals of paying bribes to access everyday information can also not be ignored. Expenditure incurred in opening up government is more than offset by the many benefits – economic and social – that result from greater openness. Adequate information regimes are a long-term investment, which not only pay for themselves many times over, but also generate more wealth for the country as a whole.

The War On Terror: A War On Information?

In the wake of 'the war on terror', the impetus to rewrite access laws has gathered momentum. Developed and developing countries alike have been quick to introduce draconian anti-terrorist laws or strengthen existing ones to give sweeping powers to government agencies. An outstanding feature is the curbs imposed on access to public information.

For example, in Canada a new law empowers the Minister of Justice to conceal all information related to terrorism and gives the Minister overriding powers to terminate any investigation launched by the Information Commissioner.⁴⁰ In India, the *Prevention of Terrorism Act 2002* now allows the annual reports of central and state governments to exclude information they believe "would be prejudicial to the security of the country or to the prevention or detection of any terrorist act."⁴¹ Trials under the Act can also be conducted in camera and orders can be made for proceedings in court not to be published if it is "in the public interest."⁴² While this is envisaged for the protection of witnesses, it severely constrains the public's right to know whether trials are conducted in a fair manner.

National security and the need to protect the public from harm are of course important considerations for any government – and for citizens too. But the temptation to expand protective provisions to stifle all disclosures is a matter of profound concern. Nations must remain steadfast in their commitment to open government and not give in to knee-jerk instincts to claw back hard won rights at the first sign of danger, citing 'security considerations'. To continue this dangerous trend allows the mere threat of terror to realise the very objectives of the terrorists.

Old Habits Die Hard

Resistance to change is not limited to countries new to the notion of providing information as a right; it remains strong in countries that have had access laws on the books for decades. In a recent review of Canada's *Access to Information Act* 1983, the Information Commissioner ruefully reported that, despite their law being over 20 years old, "there remains a deep nostalgia in the bureaucracy for the days when officials controlled information and the spin of the message. Officials have not given up the fight to weaken the law, but they have come to realize that the only effective strategy left to them is to rewrite the law".⁴³ Such a strategy is in train and it prompted the Information Commissioner to submit a Special Report to Parliament waving a flag of concern about the Government's proposals to rewrite the Act.

Governments Have a Duty to Act Right Now!

Perhaps the most serious obstacle to transforming closed and often corrupt government is lack of political will. Without it, little can change. New, transitional and established democracies all have work to do. Many are failing to live up to the long established democratic ideals and declarations of the Commonwealth to promote democracy and development.

Knowledge is too valuable a common good to be a monopoly of the few. In this interconnected information age, the combination of technology and easy availability of know-how – coupled with guaranteed access to information – offers unprecedented opportunities for the radical overhaul of governance. Shared equitably and managed to the best advantage of all, information offers a short cut to development and democracy. The means are available, but sadly the commitment is often not. This must change.