

EXECUTIVE SUMMARY

Open Sesame



Looking for
the **Right to Information**
in the Commonwealth



A Report of the International Advisory Commission of the Commonwealth Human Rights Initiative
Chaired by Professor Margaret Reynolds

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. CHRI was founded by Commonwealth Associations in 1987 because they felt that while the member countries of the Commonwealth had a common set of values and legal principles from which to work, and also provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority issues.

The nature of CHRI's sponsoring organisations* – journalists, publishers, broadcasters, lawyers, legal educators, health professionals, trade unionists, and parliamentarians – ensures both a national presence in each country and a local network. More importantly, these are strategic constituencies, which can effectively steer public policy in favour of human rights by incorporating human rights norms into their own work and acting as a conduit for the dissemination of human rights information, standards and practices. As such, their individual members and collectives are themselves capable of affecting systemic change. In addition, these groups bring knowledge of local situations, can access policy makers, highlight issues, and act in concert to promote human rights. The presence of eminent members of these professions on CHRI's International Advisory Commission assures CHRI credibility and access to national jurisdictions.

Originally based in London, United Kingdom, CHRI moved to New Delhi, India in 1993. It now has offices in London and in Accra, Ghana.

* Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Medical Association, Commonwealth Parliamentary Association, Commonwealth Press Union and the Commonwealth Broadcasting Association.

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Open Sesame: Looking for the Right to Information in the Commonwealth

“Freedom of Information is a fundamental human right and is the touchstone for all freedoms to which the United Nations is consecrated”

— United Nations General Assembly, 1946

The 2003 report by the International Advisory Commission of the Commonwealth Human Rights Initiative, Chaired by Professor Margaret Reynolds

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Foreword

The Commonwealth Human Rights Initiative's 2003 report on the right to information is extremely timely as it coincides with an era of global volatility when governments are responding by placing further restrictions on their citizens and their access to public information.

Democracy depends on open, accountable government and the opportunity for citizens to actively participate, but this cannot occur unless we insist that the right to information is fundamental to this process.

A number of governments throughout the world have introduced a range of legislative measures to guarantee citizens' access to information, but unfortunately only ten of them are in the Commonwealth. Even the Commonwealth Secretariat itself does not have a disclosure policy. Public release of information is entirely at the discretion of this administrative body and member states.

The Commonwealth must promote the right to information as a core activity providing technical expertise to governments to help establish appropriate mechanisms which reflect the principle and practice of the right to information.

The Commonwealth itself must set an example by implementing openness and transparency at all its meetings to ensure that its functioning is in conformity with these ideals. An important first step for CHOGM 2003 would be full disclosure of both the agenda and decisions taken by Commonwealth leaders.

A specific time-bound commitment by CHOGM 2003 to implementing the right to information in all its member states would facilitate an increased level of communication and understanding between Commonwealth citizens and their governments.

The Commonwealth needs to move from words to actions to enhance greater respect for its work. We expect Commonwealth leaders to enhance their strategies of good governance by adopting a coherent policy which fully accepts citizens' right to information. Failure to do so violates peoples' rights and undermines democracy.



Professor Margaret Reynolds

Chair, International Advisory Commission
Commonwealth Human Rights Initiative

Chapter Summaries

The Commonwealth Human Rights Initiative's 2003 report, "Open Sesame: Looking for the Right to Information in the Commonwealth", contains the following chapters:

Chapter 1 The Right to Information: Touchstone for Democracy and Development

A liberal information-sharing regime guaranteed by law is the practical answer to the Commonwealth's present search for deeper democracy and people-centred development. Access to information is both a practical short cut to achieving the goals of poverty eradication and good governance and a long recognised human right. Human beings need information in order to realise their full social, political and economic potential. Information is a public resource, collected and stored by government in trust for people. The challenge is to share it equitably and manage it to the best advantage of all of society. But the human right to access information remains undervalued in the Commonwealth, both by member states and the Official Commonwealth. Only a handful of member countries promote and protect the right. The institutions of the Commonwealth do not yet have disclosure policies. This situation needs to change as a matter of priority.

Chapter 2 Balancing the Scales of Power: Legislating for Access

Commonwealth countries must put in place domestic laws that entrench the right to access information. Key principles which should be reflected in all access to information laws, along with examples from throughout the Commonwealth, are provided to give direction to law-makers and activists on developing people-friendly laws. The Commonwealth has some of the best-crafted laws to draw upon. International standards and guidelines also provide assistance.

Chapter 3 Making it Work: Entrenching Openness

Legislation is a valuable first step towards putting in place an access regime, but it is not enough. Opening up government requires complementary systems that support administrative reform. Conflicting laws must be amended. Removing obstructions to open government needs independent arbiters to monitor performance, adjudicate conflict, educate the public and promote good practice and training within bureaucracies. Most of all open government needs political will to overcome long-standing cultures of government secrecy because experience shows that changing mind-sets has proved very difficult.

Chapter 4 People Power: Civil Society Advocacy Experiences

Whether working at the grassroots to support demands for economic justice, exposing scandals that save nations millions of development dollars, helping governments to craft laws, or working across jurisdictions to promote best practice, the spur for open government has often come from civil society. The techniques and strategies these groups have used and their success and setbacks are sources of inspiration, as well as providing practical ideas, for other groups across the Commonwealth.

Recommendations

Executive Summary

The Commonwealth has a deficit of both democracy and development. In Abuja in 2003, the Commonwealth Heads of Government will – not for the first time – be searching for ways to deal with these problems. Open government is the answer; and entrenching people's right to access information is the most practical way of achieving this. CHRI's report, "Open Sesame: Looking for the Right to Information in the Commonwealth", advocates the immediate adoption and fulsome implementation, by every member state, of liberal access to information laws developed by people and governments working in close cooperation. The Report also urges the institutions of the Official Commonwealth to set an example and put in place progressive disclosure and information sharing policies. Without this, the quest for robust democracy and rapid development will never be realised.

The Right to Access Information is a Fundamental Human Right

To deprive human beings of information is to rob them of an important opportunity to develop their potential to the fullest and is a violation of their human rights. Human beings need information to become what they should be. Their individual personalities, political and social identities and economic capabilities are shaped by the information available to them.

For more than fifty years, the international community has recognised that the right to access information underpins the realisation of all other rights. At its inception, the United Nations called the right to freedom of information "*the touchstone for all freedoms to which the United Nations is consecrated.*"¹ Later enshrined in the Universal Declaration on Human Rights, its 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." Over the years, the importance of the right to access information has been acknowledged time and again in myriad international agreements, including the African Charter on Human and Peoples' Rights, the European Convention on Human Rights and the Inter-American Convention on Human Rights.

The right to information holds within it the right to seek information as well as the duty to give information, to create, store, organise and make it easily available, and to withhold it only when it is in the public interest to do so. The duty to enable access to information rests with government. Traditionally, the right was limited to getting information from government. However, the duty to release information is increasingly expanding to include multilateral organisations, international financial institutions, commercial and corporate bodies and civil society organisations, where their activities affect the rights of citizens.

Information is a Precious Resource

Contrary to the belief of many public officials, governments do not own information. Rather, information is a public good in much the same way as clean air, electricity and water. Government is a vast storehouse of information. The information kept by government holds the memory of the nation and supplies a full portrait of its activities

and performance. Records held by government include: international accords; negotiating briefs; policy statements; minutes of discussions with investors, donors and debtors; cabinet deliberations and decisions; judicial proceedings; executive orders; intra-governmental memos; budget estimates and accounts; evaluations of public expenditure; charts on government structure; expert advice; transcripts of departmental meetings; statistical data; social surveys of health, education and food availability; assessments of demographic and employment trends; analysis of defence preparedness and purchases; maps; studies on the location and availability of natural resources; reports on the outcome of public inquiries; proofs of the quality of the environment, water and air pollution; detailed personal records; and much, much more.

This vast and valuable stockpile of information is created as part of the legitimate and routine discharge of governments' duties. It is gathered and stored for the benefit of the public. It is generated with public money by public servants paid for with public funds. Governments hold all this information solely as trustees on behalf of the people and cannot hoard it or unnecessarily keep it from the public.

Information is not a gift of the government to be bestowed on a whim.

Rather, the right to access information simply returns to citizens what has always been rightfully theirs.

Access to Information is the Key to Democracy and Development

Guaranteeing the right to access information offers the Commonwealth the desperately sought after key that it is searching for to deepen democracy, speed development and eradicate poverty. In 1991 the Commonwealth recognised in the seminal Harare Declaration "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". More recently, at Coolom in 2002 the Commonwealth committed itself 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 elimination of poverty and human deprivation". 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.

Poverty is the hallmark of the Commonwealth. At the turn of the millennium, all the members of the Commonwealth came together in their broader membership of the United Nations and pledged their commitment to the Millennium Development Goals – the most comprehensive poverty reduction and development agenda the international community has ever forged. Sadly, in 2003 few nations of the Commonwealth are on track. The Commonwealth continues to be beset by poverty. Many of the populations that are the worst-off live in India, Nigeria, Pakistan and Bangladesh – countries whose populations taken together amount to more than ninety percent of the Commonwealth.

Much of the failure of development strategies in the Commonwealth is attributable to the fact that, for years, they were designed and implemented in a closed environment – between governments and donors and without the involvement of people. Yet the Commonwealth insists that it is committed to development in partnership with people and civil society! Poor people know what they want but are out of the habit of questioning aloof governments. In any case, governments – and donors – have not been willing to

open up. In one extreme case, even parliamentarians in Ghana complained that their interim Poverty Reduction Strategy Paper and crucial decisions to take advantage of the Highly Indebted Poor Countries initiative were not referred to parliament at large.² If governments are obligated to provide information, people can better manage their own development destinies. They would be able to assess for themselves why development strategies have gone askew and press for changes to put development back on track.

Access to information not only supports people-centred development, it is a core feature of participatory democracy. The underlying foundation of a democratic state is the existence of an informed population able to thoughtfully choose its representatives and hold government accountable. In today's Commonwealth however, many citizens are unable to meaningfully engage in the democratic process because of a lack of information. In India, for example, citizens struggle to effectively exercise their voting rights during elections because information about the criminal background of candidates is withheld from them. This is despite an order by the Election Commissioner that such information should be made available to citizens.³ Likewise, in numerous Commonwealth countries citizens are unable to ensure that special interest groups do not co-opt their representatives because they are not permitted to examine the sources of donations to political parties – many of which are little less than bribes. With better information, citizens can decide when, how and to what end they wish to participate in the decisions and activities that affect their lives. Their participation in the democratic process also becomes more informed and therefore more effective.

The Commonwealth is relying on free markets and equitable economic growth to quicken development. The right to information provides crucial support to the market-friendly good governance principles of transparency and accountability. 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'. In turn, this results in stronger growth. Strong economies require informed citizens who are able to access strategic information that will ensure their success in business. Economic equity, so important for poverty eradication, is also conditional upon freely accessible information. Guaranteeing the right to access information ensures that information itself does not become just another commodity that, though generated by public money, is corralled and cornered by the few for their sole benefit. The free flow of information ensures that markets work for people rather than corporations. It helps level a playing field that is currently heavily skewed in favour of big business.

A guaranteed right to access information is an essential, practical anti-corruption measure. Corruption undermines democracy. It creates a culture of impunity destroying the rule of law and creating a class of overlords who need secrecy to keep their dark deeds hidden in dark places. Crooked politicians care little for their representative duties and serve those who can pay rather than those who elected them. In the worst instances, this leads to the 'criminalisation of politics' and 'the politicisation of criminals'. Lack of government accountability and transparency and habits of secrecy have also made certain that corruption is leaching away the economic lifeblood of many societies. The World Bank estimates that corruption can reduce a country's growth rate

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.

by 0.5 to 1.0 percentage points per year. It is not coincidental that countries with the most corrupt governments also have the lowest levels of development. The harmful effects of corruption are 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.

Research shows however, that countries with access to information laws are also perceived to be the least corrupt. In 2002, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. Of the ten countries perceived to be the worst when it comes to corruption, not even one had a functioning access to information regime.⁴ Open government is the antidote to corruption. The right to access information acts as a source of light which can be shone on the murky deals and shady transactions that litter corrupt bureaucracies. Knowing that citizens can scrutinise their actions should make governments more inclined to serve their citizens and less inclined to swindle them.

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The right to information enables citizens and non-government organisations to peel back the layers of bureaucratic red tape and political sleight of hand and get to the 'hard facts'. This knowledge, based on tangible evidence, gives people the confidence to take on powerful interests on the basis of sound information rather than simply theoretical suppositions and vague assumptions. Armed with information, even the most marginalised of citizens can take action 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 mother 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 lost tender was corruptly awarded to another bidder. A citizen's group can lobby to stop a development project because they can access documents that indicate that it will have a detrimental impact on the environment.

With assured sources of true information available, the media can also play its watchdog role with accuracy and balance. In all, the guarantee of a right to information recognises that the power wielded by governments and officials is disproportionately strengthened by its control over all information, and attempts to redress this imbalance of power by moving the locus of authority back from the state to the citizen.

Openness and information sharing also contribute to national stability by establishing a two-way dialogue between citizens and the state. Over the years, instability and conflict have resulted in huge setbacks to development in the Commonwealth. Systems that encourage communication and give people the ability to personally scrutinise government decision-making processes contribute to stability by reducing citizens' feelings of powerlessness, and weakening perceptions of exclusion from opportunity or unfair advantage of one group over another. It effectively reduces the distance between government and people and combats feelings of alienation.

The Commonwealth Has Recognised the Value of the Right to Information

To its credit, the Commonwealth has 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 that “public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.”⁵ Collective policy statements since then have encouraged member countries to “regard freedom of information as a legal and enforceable right.”⁶ The Commonwealth Secretariat has even prepared guidelines⁷ and a model law⁸ on the subject.

But the Commonwealth Remains Closed

There should be no need to recall the importance of the right to information to the governments of the Commonwealth. Yet there is. Despite strong commitments to openness and transparency, the Official Commonwealth itself has failed to lead member states by example in the area of information sharing. Unlike other multilateral bodies such as the UNDP and the European Union, the Commonwealth Secretariat does not have a comprehensive disclosure policy in place – other than a rule requiring release of certain documents after thirty years. Despite some welcome good practice at recent meetings of its officials, the Official Commonwealth continues to hesitate to engage civil society in its working or functions.

Open government is notoriously absent in the majority of Commonwealth member states, and citizens suffer as a result. Only 11 out of 54 Commonwealth countries have access to information laws. Many Commonwealth countries actually have guarantees of the right to information enshrined in their constitutions (usually as part of the right to freedom of speech and expression, rather than as a separate right). However, only a handful have actually practically implemented the constitutional guarantee of freedom of information through enabling legislation.

Member States Continue To Resist Opening Up

Across the Commonwealth, governments and bureaucracies remain reluctant to release their people from the shackles of secrecy. The assumption that information is secret has always been a major premise of the relationship between ruler and ruled in the Commonwealth. Traditional governance structures often positioned chieftains and tribal leaders as the unaccountable arbiters of their people’s governance. Colonial authorities, which owed no duty to subject populations, purposefully used secrecy to signal their power and distance. A culture of secrecy permeated government, and systems to keep information from the public became embedded. Today, except in a handful of countries, governments enthusiastically retain and indeed embrace these symbols of supremacy as if there has been no intervening change from colonial to constitutional governance. Official secrets acts, preventive detention and 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. In truth, so many laws that protect and enshrine secrecy have been accumulated that bureaucrats now often just play it safe and simply keep every piece of paper confidential. In Kenya, for example, a file full of nothing more than newspaper cuttings was observed as marked “very confidential” and access to it denied without the permission of the permanent secretary!

Status of the Right to Information in the Commonwealth

Access Regime	Explicit Constitutional Guarantee only		
	Specific guarantee	Part of speech & expression	No Access Regime
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

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

+ Not yet in operation.

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

Resistance to change is strong when vested interests have so much to lose. Consequently, Commonwealth governments unused to opening themselves up to scrutiny have been quick to offer justifications for not providing a guaranteed right to access information. None are compelling. In these turbulent times, an increasingly common argument trotted out by governments is that openness will cause great harm to national security or other important interests of state. This can be a legitimate concern. Clearly, sensitive information such as intelligence data or international trade secrets may need to be kept confidential. Issues are also sometimes raised about breaching privacy and damaging commercial interests. The reality is however, that the bulk of government-held information does not fall into sensitive categories. Much of the information requested by the public is uncontroversial. People want to know simple things: what the priorities

in health spending are; how government insurance schemes calculate the cost of their premiums; what colouring is permissible in food. In any case, well-drafted access laws include exemptions for certain types of sensitive information, provided these are narrowly defined and non-disclosure itself serves the public interest. Good legislation will also allow for the balancing of competing interests in difficult cases and permit external adjudication where there is a dispute. The extent of disclosure – full or partial – can be determined according to the context. Thus, while it may not be in the national interest to disclose where a group of new aircraft is to be deployed, there is no reason why, merely because the Defence Department is involved, citizens should not be given information on how much an air force jet cost or the details of the purchase agreement.

Public officials have also claimed that openness is detrimental because it constrains free and frank discussions within governments, delays decision-making and inhibits the candour of advice. Officials are concerned because every request for information has the potential to expose a scam, open up bureaucratic decisions to question, put up roadblocks on policy directions and carries the threat of public scandal if used by political opponents. But the risk of government embarrassment is certainly not a sufficient justification for keeping government information from the public. The formulation of policies in secret makes them almost certain prey to bias and unfettered discretion. In contrast, the possibility of scrutiny supports the honest bureaucrat, inhibits favour-seekers and improves the overall quality of decision-making by ensuring that decisions are grounded in careful analysis and not made arbitrarily.

Finally, officials, particularly in developing countries, argue that guaranteed access to information is a luxury that must await better times. Countries also raise the cost of managing and disseminating information as an insurmountable barrier to open government. This argument may initially appear to have some merit in countries that are struggling just to feed their populations, but it is seriously flawed when one considers that good record-keeping is a basic and indispensable precondition for effective governance. It also overlooks the amount that governments already spend on creating systems of secrecy and waste on distributing their own propaganda. For example, in the mid-1990s it was estimated that the Freedom of Information Act in Victoria, Australia cost about \$3 million to administer, compared to the \$75 million spent each year by government departments providing brochures and booklets to the public.⁹ The costs to private business and individuals of paying bribes to access important 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 transparency. Access to information is, in fact, a fundamental precondition for development and democracy.

Public servants who genuinely believe they are serving their masters by denying the public information forget that their masters are the public themselves.

People-Friendly Access Regimes Must be Put in Place

The reality is that the development of a 'culture of openness' is beneficial to the public and the government. The best way of achieving open government is by putting in place people-friendly access to information regimes. The first step is to design a legally enforceable access law which makes open government the norm and removes all obstructions that hamper the realisation of the right.

Access laws must be based on the principle of maximum disclosure. International standards, guidelines and experience provide useful input on designing progressive laws. The Commonwealth itself contains an excellent example of effective access legislation, by way of South Africa's law. Developed with strong inputs from civil society, it was relatively quickly enacted and has been followed by other laws, such as whistleblower protection legislation, and administrative reforms which focus on comprehensively entrenching open governance.

A law on access is essential but is not enough; by itself it will do little to change a closed, secret, elitist environment into an open democracy. Lack of political will is perhaps the most serious obstacle to transforming government from closed to open. This most often manifests in delays in operationalising access legislation once it is enacted. Delays send mixed signals of government intention and pander to the penchant for secrecy. Often justified on grounds that time is needed to put in place systems to enable efficient information-giving, delays often mask a battle against openness being waged within the bureaucracy. Delays can range between the reasonable, such as in Australia and Canada where laws were operationalised within a year of enactment, and the unreasonable, such as the United Kingdom, which has been heavily criticised for insisting on a five year gap to get its house in order when it has already had in place a working code of access applicable to all central government-held information since

Minimum Standards For Maximum Disclosure

Access to information legislation must:

- Begin with a clear statement that establishes the rule of maximum disclosure and a strong presumption in favour of access;
- Contain definitions of information and bodies covered that are wide and inclusive, and cover private corporations and non-government organisations where their activities affect people's rights;
- Strictly limit and narrowly define any restrictions on access to information. Any body denying access must provide reasons and prove that disclosure would cause serious harm and that denial is in the overall public interest;
- Override inconsistent and restrictive provisions in existing laws;
- Require governments to create and maintain records management systems that meet public needs;
- Include clear and uncomplicated procedures that ensure quick responses at affordable fees;
- Create powerful independent bodies that are mandated to review any refusal to disclose information, compel disclosure, and monitor and promote implementation;
- Impose penalties and sanctions on those who wilfully obstruct access to information;
- Provide protection for individuals who, in good faith, disclose information that reveals wrongdoing or mismanagement;
- Contain an obligation on government to routinely and proactively disseminate updates about structure, norms and functioning of public bodies including the documents they hold, their finances, activities and any opportunities for consultation;
- Contain provisions obligating the government to actively undertake training for government officials and public education about the right to access information.

1994. In India too, the national law has been passed by parliament but has not been brought into force. In a country notoriously slow to implement bureaucratic change, this does not auger well.

Cultures of bureaucratic secrecy stand as major roadblocks to openness. They are difficult to change as they are deeply embedded in the official psyche. This is as much true of countries that have had legislation in place for decades as it is for those that have enacted laws more recently. Experience shows that opening up is hard to do. A review in 1995 of the Australian federal access law found that, even after thirteen years in operation, the bureaucracy still had not universally accepted the Act as an integral part of democracy.¹⁰ The Information Commissioner of Canada has also pointed out that while Canada's access law has risen to the challenge posed by "a deeply-embedded governmental culture of secrecy...[and] shown its strength to overcome barriers of unreasonable delay, fees and application of exemptions...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."¹¹

Change happens only when there is unequivocal political commitment to tearing down all barriers to access and consciously espousing well-crafted and deliberate strategies that can support each element of a new regime that will uphold transparency, accountability and participation. Political leaders must set the tone and send a strong message of openness to officials and the public alike by unequivocally throwing their support behind open governance reforms.

In practice, this means the commitment of resources – financial and human – to entrenching comprehensive access to information regimes. For example, in Jamaica, the government quickly set up a dedicated Freedom of Information Unit in the Prime Minister's office to oversee implementation. Public officials responsible for collecting and disseminating information must be (re)trained and educated and the public assisted to exercise their rights. The government must also remove obstructions, such as old constraining legislation and cumbersome bureaucratic procedures. Concurrently, it must enact supporting legislation which enables openness, such as whistleblower and sunshine/open meeting laws. Governments must ensure that record-keeping and information management systems are effective to collect and store information. Records management is often a neglected area. Poorly manned and under-resourced, it has been known to have cabinet papers, so valued for their secrecy, piled up on dusty floors next to dog licences, and key reports being used for scrap paper. Technological developments have totally transformed the area of information management, such that this task can now be undertaken effectively for a relatively small investment of time and personnel.

Citizens and civil society groups have a vital role to play in creating genuinely responsive access to information regimes. Civil society organisations are effective at raising public awareness, embedding the value of the right in the public psyche and breaking down resistance within government. In many Commonwealth countries, civil society has actually been responsible for putting access to information on the agenda of governments.

Change happens only when there is unequivocal political commitment to tearing down all barriers to access. Leaders must set the tone by throwing their support behind open governance reforms.

Unfortunately, though the Commonwealth has time and time again acknowledged the role of civil society, in many countries public involvement in policy development is still not valued. Advocates for the right to information should not need to battle for space. Rather, their presence should be welcomed by governments as an affirmation of democracy. Involving people in the law-making process not only generates legislation and systems that are in tune with people's needs, it also enhances the general level of awareness among the citizenry and helps create an environment of openness which gives real meaning to participatory democracy.

Governments Have a Duty to Act Right Now!

Four common problems impede development and democracy in the Commonwealth: inequality of power between government and citizen; the consequent lack of accountability and near impunity of politicians and officials; corruption; and exclusion of the public from participating in decisions that affect their lives. Open governance and assured access to information offers the key to address these complex issues.

In this interconnected, speeding 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. Information must be harnessed to create short cuts to development and democracy. It must be shared equitably and managed to the best advantage of all members of society. The means are available, but sadly the will is often not. It is an indictment on the performance of the Commonwealth that so many member states continue to fail to live up to the democratic ideals that are reflected in the commitment to the right to information. This must change.

Endnotes

¹ Res. 59(1), 14 December 1946, UNGA, 65th Plenary Meeting.

² (2000) "Who governs low income countries?: An interview with Charles Abugre on the Ghana Poverty Reduction Strategy Initiative", IMF and World Bank News and Notices, Fall 2000, www.challenge.globalization.org/html/news_notices/fall2000/fall2000-01.shtml.

³ Daruwala, M., Mohapatra, B., Nayak, V. (2003) *The Right to Know: A Voter's Guide*, CHRI and VANI, New Delhi.

⁴ Transparency International (1998) "Press Release: Eight out of ten 'clean' countries have effective freedom of information", http://www.transparency.org/pressreleases_archive/1998/1998.12.03.ford.html.

⁵ Communiqué issued by Commonwealth Law Ministers, Barbados 1980.

⁶ Meeting of Commonwealth Law Ministers, Port of Spain, Trinidad and Tobago, May 1999.

⁷ Annex 1, Communiqué issued by the Meeting of Commonwealth Law Ministers, Port of Spain, May 1999.

⁸ Freedom of Information Act [], Annex to Commonwealth Secretariat Document LMM(02)6, September 2002.

⁹ Ricketson, M. (2002) "Keeping the lid on information", *The Age*, 28 November 2002.

¹⁰ *Open Government: A review of the federal Freedom of Information Act 1982*, (1995) ALRC 77, Report of the Australian Law Reform Commission and Administrative Review Council, <http://www.austlii.edu.au/au/other/alrc/publications/reports/77/ALRC77.html>.

¹¹ Reid, J. (2003) *Annual Report: Information Commissioner 2002-2003*, Ministry of Public Works & Government Services, Canada, p. 13.

Recommendations

In the new millennium, good governance and democracy are the cornerstones of national and international politics. Governments that operate like a closed shop will no longer remain unchallenged. Zimbabwe and Pakistan's suspension are examples of the Commonwealth's unwillingness to tolerate governments that are not open to their people. Commitments to open government must be taken seriously by members of the Commonwealth if they want to be taken seriously themselves. Putting in place people-friendly access regimes is a way of sending a strong message of commitment to democracy and development to the global community. It is long overdue for all Commonwealth countries to dispense with secrecy and information-hoarding and reap the benefits of openness. Doing so might dismay autocrats, but it will be welcomed by democrats committed to building a more dynamic and prosperous society.

CHRI recommends that:

The Commonwealth must:

- **Call on member countries to introduce liberal access to information legislation.** CHOGM 2003 should declare that the right to access information is *central* to democracy and development and should obligate themselves to adopting laws that are in conformity with international best practice by the next CHOGM at the latest.
- **Assist member countries to put in place effective access to information regimes.** Containing vibrant civil society organisations and some states with exemplary laws, the Commonwealth is well placed to assist members to design and implement effective regimes. For example, the Commonwealth Secretariat can facilitate cooperation with other member states and provide financial and intellectual resources to support the development of access regimes; its Human Rights Unit can provide training to government officials; and the Commonwealth Foundation can encourage public participation in the law-making process and build civil society capacity.
- **Be a role model of open governance.** Each of the agencies of the Official Commonwealth must put in place a clear policy on disclosure, have mechanisms that facilitate openness and must proactively disseminate information about their governance structure, norms and functioning. To implement previous commitments to partnerships between the official and unofficial Commonwealth, the Commonwealth must open up its ministerial meetings and CHOGMs, which currently remain so stubbornly inaccessible.
- **Introduce a reporting mechanism to monitor Commonwealth commitments.** Declarations of support and intent are not enough and a clear procedure for systematically monitoring the implementation of pledges is essential for accountability. The Commonwealth should require its member countries to report to each CHOGM on their implementation of Commonwealth commitments, including those on access to information regimes.

Member countries must:

- **Introduce liberal access to information laws by no later than CHOGM 2005.** These must include the minimum requirements listed on page 12. As with all legislation, the law-making process must be open and individuals and civil society groups must be encouraged to participate to the fullest.
- **Ensure that access to information is effectively implemented.** This requires recognition that structural and attitudinal obstacles exist, and the will to overcome them.
- **Report to each CHOGM on implementation of past Commonwealth commitments.** This includes reporting on progress towards realising the right to access information, as well as other key commitments.
- **Cooperate with the Commonwealth's efforts to assist members to operationalise open governance.**
- **Demonstrate their commitment to open governance by disseminating information about the structure, norms and functioning of public bodies.** This requires proactive publication of information about, for example, the basic activities of government departments, their rules of operation and procedure, their decision-making criteria, performance indicators, points of public access and financial information including expenditure.

Civil society must:

- **Create public awareness of the value of a guaranteed right to information; act as a bridge between marginalised people and governments to ensure people's information needs are known; and engage with government towards creating the legal regime that best serves the people's interests.**
- **Monitor the use and implementation of access to information laws.** This includes testing and extending the limits of accessibility; reporting upon the extent of secrecy, the availability of information and the need for further reform; and reminding governments of their obligation to ensure access to information.

CHRI Programmes

CHRI's work is based on the assumption that for democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

ACCESS TO INFORMATION

Right to Information: In promoting and protecting the right to information, CHRI acts as a legal resource, catalysing agent and repository of good practices. It informs community level groups about the value of access to information and advocates with policy makers to ensure that laws reflect the real information needs of the community. In South Asia CHRI has pushed for state level and national legislation. In India a federal law was passed in January 2003.

In Ghana, CHRI coordinates a right to information coalition comprised of members of the National Media Commission, journalists, human rights activists, religious leaders and members of CHRI's supporting Commonwealth organizations. It promotes participatory processes for law making and conducts awareness-raising seminars for civil servants and civil society groups and, on the request of the Ministry of Justice, has made submissions on the draft law.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines to inform the making and review of constitutions through a consultative process. CHRI is engaged in gauging and promoting popular knowledge and understanding of constitutions.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies including the Commonwealth Ministerial Action Group, and the Expert Group on Democracy and Development. To assist civil society groups with their own advocacy efforts, CHRI is developing a manual on human rights advocacy: this links to a new NGO initiative – the Commonwealth Human Rights Network – that will bring together diverse groups to build their capacity and collective power to advocate human rights issues in the Commonwealth.

ACCESS TO JUSTICE

Police Reforms: In too many Commonwealth countries the police are seen as oppressive instruments of state rather than as protectors of citizen's rights, leading to widespread human rights violations and denial of justice. CHRI promotes systemic reforms of police forces so that they may act as upholders of the rule of law rather than as instrumentalities of any current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa, CHRI is studying police accountability issues.

Prison Reforms: The closed nature of prisons makes them prime centres of human rights violations. CHRI aims to open up prison working to public scrutiny. Its programme is sharply focused on ensuring that the near defunct prison visiting system is revived. CHRI researches prison visiting and undertakes capacity building programmes for visitors, including developing a handbook.

Judicial Colloquia: In collaboration with Interights, CHRI holds colloquia for judges in South Asia on issues related to access to justice, particularly as this pertains to the most vulnerable. The first of the series was held in 2002 and will continue over the next 3 years.

Fact Finding Missions: Such missions are conducted as needed and investigate human rights concerns in member countries. Since 1995, CHRI has sent missions to Nigeria, Zambia, Fiji and Sierra Leone.

The Commonwealth has a deficit of both democracy and development. In Abuja in 2003, the Commonwealth Heads of Government will – not for the first time – be searching for ways to deal with these problems. Open government is the answer; and entrenching people's right to access information is the most practical way of achieving this. CHRI's report, *"Open Sesame: Looking for the Right to Information in the Commonwealth"*, advocates the immediate adoption and fulsome implementation, by every member state, of liberal access to information laws developed by people and governments working in close cooperation. The Report also urges the institutions of the Official Commonwealth to set an example and put in place progressive disclosure and information sharing policies. Without this, the quest for robust democracy and rapid development will never be realised.



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