

The Dawn of Right to Information on the African Continent?



Jeet Mistry, the Commonwealth Human Rights Initiative, Delhi

This 25 May marked the annual celebration of Africa Day. With this year's focus on 'Working Together for Integration and Development', 25 May 2006 was a day to reflect back on a year that was intended to mark a watershed for development in Africa. Six years since the proclamation of the Millennium Development Goals (MDGs), it was hoped that the African nations would have made some advances towards meeting the MDGs. However, progress towards the MDGs has been inconsistent, and, in some cases, has regressed.

Yet, despite this, a quiet revolution is taking place in countries across the continent that may at last lay the foundations for political and economic stability, good governance and prosperity. During the last year, officials and human rights activists in Kenya, Mozambique, Malawi, Ghana and even in recently war-torn Sierra Leone have been busy drafting national Freedom of Information Bills. Meanwhile, Uganda became the fourth African country to entrench a FOI law, when its Access to Information Act 2005 came into force on 20 April 2006.

Freedom of information has long been recognised as a foundational human right, ever since the UN General Assembly declared in 1946 that "freedom of information is a fundamental human right and a touchstone of all freedoms to which the United Nations is consecrated." However, around the world, only around 60 countries have enacted freedom of information (FOI) laws.

An FOI law can help sow the seeds of good governance by promoting government transparency and accountability and also facilitating greater public participation in government decision-making. Empowering citizens with the legal right to access information on government's activities can strengthen democracy by making government directly accountable to its citizens on a day-to-day basis rather than just at election time. Even at election time, an FOI law would ensure that voters have better access to information concerning the government's record in office, allowing them to make a more informed decision at the ballot box. Voters would then be less reliant on political propaganda and rumours and would be less inclined to fall back on their ethnic affiliations when casting their vote.

Freedom of information can also open up channels of communication between civil society and the state. Openness and information sharing can entrench national stability by establishing dialogues between different ethnic groups, as well as between citizens and the state, helping to promote popular trust in the political system. These channels of communication can combat feelings of alienation and reduce the risk of disillusioned sections of the public resorting to violence to promote their political ends. In this way, entrenching an effective FOI law can enable people to be part of the decision-making process and reduce public perceptions of exclusion of opportunity or unfair advantage of one group over another.

By promoting dialogue between citizens and their governments, freedom of information can help to ensure the effectiveness of development and poverty alleviation strategies and thereby bolster efforts to meet the MDGs. Much of the failure of development strategies to meet the MDG targets has been because governments and donors have designed and implemented policies without the active input of the very people targeted by such policies. With a FOI law in place, governments would be obliged to share information on their poverty alleviation strategies with the public, who can then have a voice in determining how these strategies can more effectively improve their lives.

In recent years, throughout the African continent, governments have been liberalising their economies in order to accelerate growth and development. By implementing an FOI law and thereby demonstrating their commitment to transparency, African governments would be more successful in assuring investor confidence in the economy, encouraging long-term private and foreign investment and bolstering growth. Furthermore, freedom of information can ensure that domestic, small-scale stakeholders also have a voice over economic policies, which can help economic growth and development to take place in a more equitable, balanced and therefore stable manner.

Thus far, freedom of information has had a mixed history in Africa. South Africa has had a functional freedom of information law – known as the Promotion of Access to Information Act – since 2000. The law entrenches in practice people's fundamental right to information as set out in the South African Constitution. The public have been able to use this law to hold

the government to be accountable for all actions done in their name. It has also helped to nurture the country's still nascent democratic credentials by giving the public an opportunity to scrutinise and participate more actively in the everyday decision-making processes of government.

Meanwhile, over the last decade neighbouring Zimbabwe, which passed its *Access of Information and Protection of Privacy Act* in 2002, has been in a downward spiral economically and also in terms of the promotion and protection of the rights and freedoms of its citizens. Zimbabwe's law has very limited provisions on access to information and its main purpose has been to strengthen the government's power to control and crack down on the independent media. As a result, unlike South Africa's law, the public's ability to bring the government to account for its actions has been constrained, while the government has been able to tighten its monopoly on information and conceal its motivations and decision-making processes behind a wall of secrecy.

It is crucial for the new wave of countries in Africa that are pursuing access laws to ensure their laws incorporate certain key principles that will help to foster openness, transparency, and public participation. In the first instance, an effective FOI law requires the government to provide the public with information proactively and on request. It should also include an overriding principle that all government information should be disclosed, unless the harm caused by releasing the information would be greater than the public interest in disclosing the information. Best practice requires that an effective law will:

- Promote the principle of maximum disclosure, subject only to limited, tightly drafted exemptions;

Ensure that access procedures are user-friendly, cheap, quick and simple;

- Require decisions regarding disclosure to be reviewable by an independent, impartial body, such as an Information Commissioner or Ombudsman;
- Permit penalties to be imposed on officials for non-compliance with the law; and
- Impose ongoing monitoring, training and public education duties on the government.

If implemented effectively, a FOI law can act as a powerful deterrent of corruption. Corruption has long been the scourge of development in Africa, and has been responsible for not only eating into state revenues but also civil society's trust in the state, thus not only hindering economic development but also contributing to the collapse of the state in countries across the continent. Effective implementation of a FOI law can make it much more difficult for officials to cover up their corrupt practices and can also help to expose poor policymaking. Even at the local level, freedom of information can be used to expose agencies that fail to deliver basic services such as health and education and can thus empower people who had previously suffered in silence as a result of corrupt officialdom.

Even as we observe UN Africa Day 2006, the continent's development is at a cross-road. Recent efforts across Africa to enact FOI laws represent a crucial opportunity for the continent to turn its back on decades of poor governance, brutal civil and regional conflicts, and abject poverty. However, African nations must ensure that their laws incorporate principles that premise people's right to information above all to ensure their effectiveness and prevent abusive governments from snatching away the opportunity to build a future that promises stability, inclusive democracy and participatory development for all their citizens.

Jeet Mistry
CHRI, New Delhi ■