

Jamaicans for Justice experience with Access to Information

The Jamaican Government has committed to the passage of a Freedom of Information Act since the mid 1990s. The Act had been presented to the Jamaican Parliament in three draft versions in the intervening seven years. The legal drafters on the instruction of the Minister of Information wrote all three drafts of the Freedom/Access to Information Acts in Jamaica.

Jamaicans For Justice became involved in the issue in November 2001 when the third draft Act was tabled in Parliament and at that time three non-governmental organizations, Jamaicans For Justice, Transparency International (Ja. Chap) and the Farquharson Institute of Public Affairs began working together on freedom of information. Also at that time a committee of members from both houses of Parliament was established to take submissions and produce a report on the Act which was now titled 'The Access to Information Act, 2002'. Many Jamaican civil society groups made submissions to the Parliamentary Committee. The Carter Center were also very involved at that stage, co-sponsoring with the Media Association of Jamaica a seminar on Access to Information and providing a publication on the issue entitled 'Combating Corruption in Jamaica'. In March 2001 the committee report was tabled in Parliament recommending changes to the Act.

The campaign for the Access to Information Act had risen mainly around concerns about lack of access to information in Jamaica, except through the courts (a lengthy and expensive process) or through unofficial and illegal acts of disclosure by Public Servants who are forbidden to release all but the blandest information under the 'Official Secrets Act'. The campaign had involved one-on-one lobbying with Parliamentarians, written submissions to Parliamentarians and key leaders in the society, a media campaign to raise public awareness and build momentum for change, and the forming of working links with interested bodies.

When the new draft Act came back to Parliament from the Joint Select Committee there remained a number of areas of grave concern, though the Committee, guided by the Civil Society did recommend significant changes. The draft Act in clause 5 summarily excluded categories of documents without any possibility of review or appeal. It also allowed the Minister to add to these categories subject only to affirmative resolution of Parliament. Clause 15 exempted broad categories of documents prepared for submission to Parliament rather than drawing a narrow exemption for the deliberations of Cabinet. Clause 19 spoke to an even wider deliberative process of Government and exempted all documents with 'opinions, advice or recommendations', leaving the burden of proving a Public Interest reason for release on the person requesting the document.

Further changes were made to the areas of concern before the Act was passed into law in June 2002. Of significance was the alteration of Clause 19 to relate only to documents prepared for Cabinet submission or deliberation and Clause 15 being limited also to Cabinet submissions and decision.

After the passage of the Act, scheduled to come into operation in August 2003, an Access to Information Unit within the Office of the Prime Minister was established to spearhead, monitor and guide the implementation process, laying the framework for Jamaicans to effectively use the Act. The unit met with the various departments of the civil service, helping them with the planning and preparation for the Act's coming into force, and training the staff who would actually be making decisions and retrieving information.

The Unit invited civil society to input into the implementation phase. This was a crucial development, for civil society players were the people most likely to use the act.

In 2003 the Government of Jamaica took a decision that, in view of the poor state of readiness of most Government Ministries and Agencies for the implementation of the Act, that the Act would be implemented on a phased basis over 18 months, beginning a year and a half after the Act was brought into law. In the interim regulations governing the Act were developed by the Government with extensive cooperation from Civil Society including Jamaicans For Justice.

In 2003 JFJ, realizing that the Act was only going to be useful if it is used, took the decision to build a project using the Act and Monitoring the implementation process. Throughout we were assisted with project design and roll out by the Carter Center.

The project was designed to include the following components:

- The development of an 'Access to Information help-point' to which citizen's can come to learn how to access the information they want and getting help from trained persons
 1. This 'help point' to track requests and monitor the operations of the act (using a specially designed database)
 2. Help persons to appeal decisions should they be dissatisfied with the response to their requests
- A public education campaign, in order for persons to know more about the Access to Information Act 2002 their rights under the Act and how to make requests and where to be assisted in realizing them
- Developing a network/consortium of interested persons and groups to use the Access to Information Act and to work with JFJ on monitoring and information gathering.

The monitoring of the operation of the Act was seen as vital to informing the automatic review of the Act which is due two years after it came into force. It was felt that all players in the NGO Sector, from Environmentalists, consumer advocates and community activists, through human rights advocates must work to help the government to design people friendly access mechanisms to ensure that the law has its fullest expression. The project was seen as vital to this process.

The project was also designed to be complementary not competing with, Carter Center's activities in Jamaica and the Carter Center and JFJ developed a Memorandum of Understanding around shared activities. Project funding was received as a grant from the Canadian International Development Agency and the Project rolled out in 2004.

Activities Since Implementation began January 2004

January 2004

Jamaicans For Justice began making requests, encouraging other groups and individuals to make requests and monitoring requests made under the first phase of the implementation of the Act. This first phase involved seven Ministries and Agencies of Government.

February 2004

The first meeting of the Access to Information Advisory Stakeholders Committee was held. This is a local, largely non-government and monitoring group comprising representatives from stakeholder groups with its main purpose being the monitoring and guidance of Government Officers concerned with the implementation and administration of the Act.

March 2004

A meeting was held with a number of Civil Society organization representatives including the Farquhson Institute (David Buckley), Jamaicans for Justice (Caroline Gomes), the Mennonite Association (Ron Goodman), UWI Guild of Undergraduates (Patricia Sutherland) and ADA (Tasha Nemhard) and Laura Neuman/Carole Excell about expectations of civil society.

April 2004

Civil Society Workshop held with JFJ and TCC participants from civil society attended to introduce groups to Act and importance and raise interest for civil society to work together on ATI

Terms of reference for the ATI Advisory Stakeholders Committee finalized and submitted to the Minister of Information for his approval.

May 2004

Civil Society Workshop with JFJ and TCC in Montego Bay to introduce groups to Act and its importance.

September 2004

Database created on ATI

Press Conference hosted by ATI Advisory Stakeholders Committee to mark International Freedom of information Day and to bring public up to date on status of Implementation of the Act. Presenters included the Minister of Information, a representative from the Access Officers Association, Laura Neuman of the Carter Center and members of the Committee.

October 2004

Civil Society community workshop on Access to Information with Jamaica Environmental Trust, Harbour View Citizens Association, The Carter Center and Dr. Carolyn Gomes from Jamaicans For Justice.

November 2004

First Civil society Networking, advocacy and access to information workshop held with JFJ and the Carter Center presents on use of Access to Information internationally.

Public Forum held on “ATI and Corruption” with JFJ and TCC

February 2005

Meeting held with Minister of Information, members of the ATI Tribunal, legal officers of the Ministry and Parliament and representatives of the ATI Stakeholders Committee to air concerns about the provisions of the draft regulations governing the operation of the Tribunal.

April 2005

A meeting was held with the Gleaner Company , TCC & JFJ on the issue of the ATI Tribunal Rules and status of the Rules.

Strategic Planning workshop held with JFJ, TCC and Stakeholders.

Meeting held with Jamaicans for Justice and ATI Stakeholders Committee on ATI and Enforcement with David Goodis and Laura Neuman from TCC

May 2005

Training was held for the JFJ Staff members on database and ATI.

June 2005

TCC assists JFJ in preparations of launch of Jamaicans for Justice Help Desk.

Media campaign mounted by JFJ prior to all the Ministries and Agencies coming under the Act. Campaign included ads on Radio, Television and in the Print Media, the development and distribution of relevant brochures and leaflets.

TCC holds a media workshop with RJR. Presentations were made by Susan Goffe, Jamaicans for Justice and Thalia Maragh of the VAP

July 2005

A workshop was held for the Vulnerable Communities Network and Jamaica Aids Society. Representatives from the Women’s Media Watch, Richmond Fellowship of Jamaica, Jamaica Aids Support and Life Works (a group of HIV + persons). Susan Goffe

made a presentation for Jamaicans for Justice on Access to Information and her experience in making requests and how the JFJ Help Desk works.

TCC holds a media workshop with Sunday Herald. Presentations were made by Tasha Rodney of Jamaicans for Justice for the VAP

September 2005

TCC holds a meeting with JFJ, MCC and the Jamaica Coalition on the Rights of the Child on ATI and Children's issues

ATI Appeals Tribunal holds its first sitting in controversial circumstances. Hearing postponed to October.

A civil society Workshop was held by JFJ on International Right to Know Day. The workshop discussed the network and how it will work. TCC facilitated at workshop.

Radio presentation by TCC on JFJ Radio program on Access to Information and the Environment.

JFJ Webpage on ATI uploaded site

October 2005

ATI Tribunal holds two hearings. Results in release of some documentation in one case prior to a ruling. Outcome of second case awaits a ruling from the Tribunal.

This list of the main activities of the past two years does not include the monthly meetings of the ATI Advisory Stakeholders Committee (TCC sits as an observer and provide international experience and advise), the numerous presentations to interested groups and individuals, the letters written, the press releases issued and the number of persons assisted to make and monitor requests, ask for internal review or request an Appeal under the Act. It also doesn't reflect any of the follow-up phone calls and letters necessary for the building of reliable data on the implementation of the Act.

Experiences with Access to Information

Phased implementation.

We accepted phased implementation as useful given the Government's challenges as it relates to record keeping and breaking the hundred-year culture of governmental secrecy. It however led to some major problems including the frustration engendered in requestors when transfers were made to agencies not under act who had no obligation to comply. This may have led to some disillusionment among early users of the Act as to its utility and potential for holding Governments accountable.

Work on Using and Monitoring

We learnt that holding Workshops, doing Outreach and Public Education was not sufficient, though necessary, for getting persons and civil society groups to actively use the Act. Interest in using the Act is to some extent dependent on seeing its utility in an individual's life and work and needs to be constantly encouraged and championed until that utility becomes self-evident.

A lot of work has been done in this regard by JFJ, members of the Network, TCC and members of the Access to Information Advisory Stakeholders Committee. Work will need to be ongoing for some time to come.

Using the Act

Using and monitoring the Act over the last 2 years has been an interesting experience. An experience in which both civil society and government have been learners, trodding paths that have not been gone down before, breaking new ground and learning new skills, including unaccustomed collaboration.

The Implementation to this point has been fairly effective with our database reflecting approximately 40% of requests either completely or partially satisfied. We hope this percentage will increase with all agencies and ministries now being under the Act.

Large variations of performance have been noticed between agencies and these are presumed to reflect the leadership and direction of the relevant Permanent Secretary or Chief Operating Officer and the diligence and conviction (and seniority) of the relevant Information Officers.

Monitoring

Special difficulties have surfaced in the performance of the network/consortium for monitoring and these include: difficulties in getting information shared in terms of responses received and outcomes of requests; and difficulties in maintaining timely and effective contact with numerous individuals and groups.

ATI Unit

This unit suffered significantly from being under resourced and under staffed. Initially working to prepare for implementation they were tremendously effective and efficient. As more and more tasks were added to their mandate including: monitoring of implementation while continuing to prepare all agencies for implementation: assisting with and overseeing the development and drafting of the ATI Tribunal Regulations: serving as the Secretariat for the Tribunal by receiving processing and coordinating appeals; planning and implementing public education activities; fundraising; detecting, advising and correcting problems of implementation, the efficiency of the unit inevitably went downhill.

The resignation in July 2005 of two of the unit's three staff members, its director, Ms. Aylair Livingstone, and its public education officer, Ms. Diane Young has left a huge void which must quickly be filled if implementation activities are not to be irreparably harmed.

ATI Tribunal

Access to Information provides unparalleled opportunities for improving governance and accountability. It however, inevitably conflicts with the culture of secrecy and the paradigms of power and privilege expressed in unequal access to information. This culture of secrecy and these paradigms of power and privilege lives still in many members of the society, particularly those who have worked in or belong to Governmental structures. The role of the Tribunal in that process will be pivotal. Problems that have already surfaced in the operations of the Tribunal include:

- All part time members with other lives and responsibilities which results in difficulties scheduling sittings and meetings.
- No proper secretariat to coordinate activities
- Formalistic and legalistic regulations which have the potential to stifle appeals – not surprising given that three members are lawyers
- Unaccustomed to wide ranging consultation with civil society
- Some members appear themselves to be struggling with the new paradigms of openness and public right to information.

No passage of an Act can remove these paradigms or erase that culture of secrecy. That these paradigms should exist within the Tribunal is not surprising given its composition of eminent persons, some of whom have been part of government for years. It is hoped that constant dialogue will help to ensure that the Tribunal plays the role it should play in the societal sea change implicit in the Act.

Going forward with ATI

In the context of the challenges identified and the difficulties perceived ahead the role of Civil Society, and its partners locally and internationally, going forward will continue to be crucial if Jamaica is to enjoy the full fruits of the passage of the Access to Information Act. We will need to be keeping the public's interests in forefront of the operations of the ATI Unit, the Appeals Tribunal, the Government and the Parliament who are charged with doing a review of the Act beginning in January 2006. We will need to be providing co-operation and support for Unit and helping the Unit in its public education and sensitisation work. An active civil society will have to keep pressuring Government to provide the requisite resources for unit to be successful in carrying out its many mandates.

Civil society will need to remain active in providing public education on the act and the public's right to information. The Act will only be effective if people know that they can ask for and should get information and more and more people see the benefits to be derived by them personally from requesting and receiving information. Civil Society should also be prepared to maintain dialogue with the ATI Unit and the Government towards steady improvements in the functioning of the Act. Information obtained at the 'Help Point' will be useful for lobbying for any needed changes to Act when it comes up for automatic review.

Jamaica has passed an Access to Information Act and the Government has worked towards its successful implementation but the work is not yet done. Society will need to remain committed and active if the public is to have the full benefit of improved access to information in order to improve governance and accountability.

Carolyn Gomes
Executive Director
Jamaicans For Justice
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