Making the Access to Information Law Work

The Challenges of Implementation

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Prologue: Unearthing the Goblet

Carlton Davis is Jamaica's Cabinet Secretary, the country's most senior public servant. In July 1993, on one of his first days on the job, he took a walk around his new domain and discovered a room full of papers. There were piles and piles of documents. Rooting around, coughing with the dust, he moved one particularly large tower only to discover beneath it a silver goblet. Polishing it with the sleeve of his jacket, he read to his amazement that it was a special commemorative Olympic trophy that had been awarded to the successful Jamaican athletics relay team decades before. It was a national treasure, yet it had been literally buried in papers. What other nuggets of history or critical information were lost in the chaos of unorganized and discarded documents? A scientist by training, he understood the value of learning from the past and the importance of good documentation to make this possible, and was greatly concerned by what he had found. Looking back now, Davis traces his commitment to access to information to that moment. He recognizes the value of access as a human right and the role information can play in engaging citizens. But equally so, as a leader in Jamaica's quest for modernization in public service and more efficient governance, he believes that a well-implemented access to information law is an instrument that governments can use to learn from past successes and mistakes.

Introduction

Davis is one of a new breed of public servants determined to challenge a culture of secrecy, whose commitment will determine whether the host of legal and institutional changes described throughout this book lead to significant and lasting transformation in the relationship between those in power and the citizens they serve. Although there is now widespread international recognition of the importance of establishing effective information regimes, there has not been equivalent emphasis laid on the obstacles facing governments and citizens in responding to the challenge of implementing transparency law and policy. This demands leadership, resources, and the personal conviction of "transparency champions."

The actions of governments in the implementation phase are often related to the original motive or purpose for supporting a transparency law, and the manner in which the law was passed. When the law was passed as part of an integrated policy or to meet an inherent need or civil society demand, there has tended to be greater commitment to implementation. So for some governments like Jamaica's, it is the desire for efficiency and modernization that drives them to pass access to information (ATI) laws. For others, it is the need to rebuild trust with citizens through the sharing of information and creation of new political space, such as in Bolivia, which has initiated transparency mechanisms while waiting for the passage of enabling legislation, or in South Africa during its democratic transition. A commitment to the establishment of a new order based on human rights spurs the creation of a new access to information regime. In Sinaloa, Mexico, the governor passed a comprehensive access to information law because he wanted his citizens to have faith in the state government and therefore begin paying their taxes. In all of these cases, generally there has been a greater emphasis on implementation so that the benefits of the law are realized.

But where a government has passed the law to satisfy an international financial institution as a "condition" for loan or debt relief or to join an intergovernmental organization, regional trade group, or common market, its true commitment to full implementation may be in question. For example, in both Nicaragua and Honduras, the executive branch included the passage of an access to information law as one of the conditions to receive debt relief under the Highly Indebted Poor Countries Program of the World Bank and IMF. Until recently, both countries had suffered from a lack of enthusiasm from other sectors, most prominently the legislative branch, and passage of the law remains elusive.

Whatever the underlying reason for establishing a transparency regime, after a decade of proliferation of access to information laws, with around seventy countries now enjoying a legislated right to information, it is clear that the stimulus of both a supply of information and a demand is the key to meeting the policy objectives. This supply-demand intersection is a fundamental part of our hypothesis for effective implementation and use of the law. This chapter will focus on the government side of

the equation — the "supply side" — where there is a new body of knowledge arising from the legislative explosion of the past decade. Examples from Latin America, the Caribbean, and South Africa will highlight the recent lessons learned.

Notwithstanding the emphasis on the "supply side," ensuring the success of an ATI law is a matter of co-responsibility. Not all the burden lies with government: citizens, civil society and community organizations, media, and the private sector must take responsibility for monitoring government efforts and using the law. Without an adequately developed "demand side," the law is likely to wither on the vine. In other words, the demand and supply sides must match, and where they intersect will determine the quality of the transparency regime.

Great focus continues to be placed on passing access to information laws; model laws have been widely distributed, with specific versions for Africa and most recently Latin America and the Caribbean,¹ and many countries around the world have heeded the call to enact them. Nevertheless, experience has proven that passing the law is the easier task. Successful implementation of an open information regime is often the most challenging and energy-consuming part for government. And yet, without effective implementation, an access to information law—however well drafted — will fail to meet the public policy objectives of transparency.

Diagnosing the Implementation Challenge

Although the sheer number of civil servants engaged in the application of an access to information law may be immense — from all ministries and more than 200 agencies in Jamaica to approximately 100,000 public authorities in the United Kingdom that are mandated to apply the law—until recently little attention has been paid to the theory and practice of implementation.

In 2003, the Open Society Institute (OSI)'s Justice Initiative recognized the need to assess the success of implementation efforts and advance good implementation practices.² In five countries a pilot monitoring study was conducted. In each country, four different types of people — non-governmental organization representative, journalists, ordinary individual citizens, and "excluded person" (defined as someone who because of their social or economic circumstances faces serious obstacles to engagement, for example illiteracy, disability, or poverty) — submitted a total of approximately 100 requests to 18 different government agencies. The same request was made to each agency twice, by a different requester, in order to test whether the agency responded differently according to the type of person. In addition, there were three distinct classes of requests submitted, as determined by the pilot study organizers: routine, difficult, and sensitive.

The results illuminate the challenges of implementing transparency legislation, and coincide with the firsthand experiences of many implementers and users. Of the 496 requests for information filed in the five countries during the monitoring period,

a total of 35.7 percent, or just over one in three requests, received the information sought. Approximately half of the requests (49.6 percent) received the information or written refusals within the time periods established in the respective laws.³ This is clearly progress toward transparency. As the report noted, "the five monitored countries are all introducing new standards of government transparency, while undergoing democratic transitions. In this context, both outcomes — compliance with international FOI [Freedom of Information] standards in almost 50 percent of the cases, and the provision of information in response to 35 percent of requests — can be seen as a solid basis for building greater openness."⁴

Unfortunately, the OSI report also records that over one third of requests met with complete silence from the authorities. In terms of these "mute refusals," as the survey refers to them, South Africa fared the worst, with 63 percent of the properly submitted requests completely ignored. As the country report on South Africa comments, "These results are of particular concern given that South Africa's FOI law, the 2000 Promotion of Access to Information Act (PAIA), the first of its kind in Africa, has been hailed as a model for other African countries." Though the South African law may be the best drafted and most comprehensive among the five test countries, in terms of compliance with international standards and best practice, only 23 percent of requests were successful, compared with 34 percent for Macedonia, which had no legal right to access information, Armenia with 41 percent, and the best performing, Peru, with 42 percent. The OSI report on South Africa noted that "a common feature of the bodies which performed well in the monitoring was that they had made a serious commitment to implementing the law and believed in its potential."

Implementation of an access to information law is complex, and common challenges may include difficulty in adjusting the mindset of the bureaucracy and people who hold the information; a lack of capacity in relation to record keeping and record making; insufficient resources and infrastructure; inadequate staffing in terms of training, specialization, and seniority; and a lack of capacity building or incentive systems. The OSI monitoring exercise helps illustrate that even the best laws can be rendered meaningless when the myriad of implementation challenges are not addressed.

Enabling legislation for the right to information should be seen as a three-phase process: passage, implementation, and enforcement of the access to information law, the "transparency triangle." All three elements are crucial and interrelated, but experience indicates that the implementation phase is paramount and serves as the base of the triangle. Without full and effective implementation, the right to information becomes just another example of the "hyperinflation" of new laws that serve no one. While many of the chapters in this book describe struggles to pass laws, the focus in this chapter is on what happens after the bill is signed.

Setting the Stage

The successful implementation of an access to information regime depends on a variety of factors, both technical and political. The more technical aspects are discussed in detail below, but in realizing implementation of the right to information, three additional points are crucial: the degree of societal involvement in the demand for and drafting of the legislation, alternative approaches taken by the government, and embedding provisions for implementation into the law.

Instituting a New Information Regime: The Process

In terms of legitimacy, sustained monitoring, and usage, the process through which the new access to information law is conceived and promulgated is critical. As discussed above, governments may choose to provide this right to information for a variety of reasons: a new constitution is drafted; a new administration or a faltering ruler is seeking methods to raise their image in response to a government scandal, corruption, or public health crisis; to meet provisions for acceptance to multilateral organizations; or to comply with international treaties and agreements. But when civil society has played a significant role in advocating for the law and lobbying around the key provisions, the information regime has tended to truly flourish, thus overcoming the "check the box" syndrome. In countries such as South Africa, Bulgaria, India, Mexico, Peru, and Jamaica, widespread civil society campaigns or well-publicized efforts from highly influential civil society groupings augmented and encouraged the government efforts to pass enabling legislation. While implementation still has proved to be a challenge, in each case, civil society organizations that emerged from the campaigns for the law are monitoring and testing the system and urging greater government compliance. Through the campaign for a legislated right to information, organizations became vested in the law's success, there was more significant buy-in from society, and in turn the laws have enjoyed greater credibility and use.

In Jamaica, for example, a diverse group from civil society worked together to seek amendments to the proposed law and to fight for more robust legislation. This coalition included such strange bedfellows as human rights and democracy nongovernmental organizations (NGOs), journalists' associations, prominent media owners, private sector representatives, and the Civil Service Association. Many of these same actors have remained engaged in monitoring the government's implementation efforts and in using the law, and as a special Parliamentary Committee considered additional changes to the legislation in 2006, the civil society monitoring efforts were the only statistics on implementation available for consideration.

In South Africa, the Open Democracy Campaign Group, which from 1995 to 2000 pushed for a strong law to give effect to the right to access information enshrined in the country's new 1996 constitution, included human rights NGOs,

church organizations, environmental pressure groups, and the powerful trade union umbrella body COSATU.⁸ These advocacy efforts translated into a constituency willing and eager to use the new instrument and prepared to monitor government's implementation and enforcement performance.

In countries where civil society was not engaged in the debate, the right to information has atrophied and the law has never been fully implemented. Belize passed its Freedom of Information law in 1994, one of the first countries in Latin America and the Caribbean to do so. It was accomplished with little public or parliamentary debate and no civil society involvement. For the past decade the law has been used only a handful of times, and rarely with success. When asked, NGO leaders indicated minimal knowledge of the law and little faith in its ability to promote greater transparency.⁹

In the worst cases, when there is no participatory process, laws are passed that are contrary to the principles of openness and limit freedom of information and expression, as in both Zimbabwe and Paraguay. In contrast, Peru presently enjoys a comprehensive access to information law that was drafted with a wide sector of civil society involvement, support from the ombudsman's office, and extensive consultations with the armed forces. However, the right to information was not new to Peru. In response to the collapse of the Fujimori dictatorship and the pervasive allegations of government corruption, in 2000, the interim president, Valentine Paniagua, issued a presidential decree supporting a right to public information held by the executive. Laudable in its purpose, this unilateral decree was not fully applied or utilized. Although the newly passed legislation does not greatly expand on the decree, the manner in which it was promulgated, with civil society advocacy and debate, has led to increased legitimacy, implementation, and use.

Civil society alone may not be sufficient to ensure full implementation of an access to information law. However, where there are strong advocates, government and information holders' failure to comply is more often noticed and challenged. Thus, committed civil society organizations serve as a counterbalance to faltering implementation efforts. Through continued use of the law and monitoring, implementation problems may be highlighted and the government obligated to assign greater emphasis and resources to resolve obstacles. Without civil society engagement, administrators could simply allow the right to fade away from neglect and disregard.

Vanguard Steps

Like Peru's former president Paniagua, other government leaders are increasingly seeking means to demonstrate their commitment to transparency without waiting for completion of the law-making and implementation phases. If the process of passing the law includes consensus building and sufficient time for effective implementation is afforded, it potentially could be years before anyone could exercise his or her right to information. Moreover, in some contexts the fragmentation, weakness, or

skepticism of the legislature has blocked the passage of a comprehensive law. Thus, in an attempt to satisfy citizen desire for more immediate results and to learn critical implementation lessons earlier, executives are experimenting with tools other than legislation, such as Supreme Decrees and voluntary openness strategies.

For example, in Peru, Argentina, and Bolivia, supreme decrees that carry the weight of law were issued to promote transparency. Such decrees can be accomplished quickly, demonstrate government commitment and political will, begin the process of shifting the culture of secrecy, provide implementation experience, and serve as a platform for the more extensive legislation. But there are also striking disadvantages. First, supreme decrees apply exclusively to the executive, leaving aside the other branches of government and the private sector. Moreover, they often serve as a pseudo-panacea minimally satisfying the call for openness, but potentially slowing down the passage of a comprehensive right to information law. As they do not engage the legislature, they are rarely, if ever, accompanied by a budget for implementation. Compared with any other legislation that addresses information availability or disclosure, supreme decrees always will be the lowest on the totem pole, and their objectives will often be frustrated by older secrecy provisions that override the decree. Moreover, supreme decrees are rarely produced in an inclusive process of drafting and consultation, and thus provide less opportunity for building legitimacy and buy-in. Finally, if not effectively implemented, a supreme decree, like a law, can raise unrequited expectations and delegitimize positive government efforts.

In Bolivia, the passage of a Supreme Decree for Transparency and Access to Information has proved particularly detrimental. Following its issuance in January 2004, which provided a right of access to a limited class of documents, media representatives and some civil society groups strongly rejected the effort. Failure to consult with these relevant stakeholders and poorly drafted exemptions provided sufficient fuel for key groups to publicly denounce the decree. Since its initial announcement, there have been few efforts to systematically implement its provisions, and even fewer examples of its use. This damaging experience has caused some sectors, most strikingly members of the media workers' union, to distrust further access to information initiatives, including proposed comprehensive legislation. The decree in Bolivia became so distracting that the only issue under discussion was its reform or rescission, as the media refused to support the consideration of a comprehensive law until the other point was resolved. Four years (and three presidents) later, the media workers' union remains skeptical of any effort regarding access to information.

In Argentina, the Supreme Decree for Transparency, issued by President Kirchner in February 2004, initially enjoyed greater public support. In contrast to the Bolivia case, it was issued in response to more than five years of civil society demand for the right to information. In the wake of the 2002 economic collapse and presidential resignations, fearful and disorganized members of the Lower House passed the draft access to information law. As the political parties regrouped and regained some legitimacy, they no longer saw the need for such a threatening piece of legislation and blocked its final passage in the Senate. The only recourse was a supreme decree.

However, as with the Peru example, the decree has not satisfied the need for a law, and civil society groups continue their campaign.¹¹

Short of a legally binding tool, governments are increasingly considering pilot projects as a vanguard to an access to information law. Voluntary Openness Strategies (VOS) and Codes for Transparency, such as the United Kingdom's Publication Schema, can begin the transformation from a culture of secrecy to one of openness and be a platform for the more comprehensive right to information legislation. Focusing the VOS on a few key pilot ministries and agencies that agree to provide an extensive range of information to citizens can help prepare for effective implementation of a transparency law, when ultimately passed. These pilot bodies have the opportunity to develop best practices and to become "islands of transparency."

Other pilot projects could include release of certain classes of documents across the government, or release of all information related to a particular theme. In India, the Ford Foundation agreed to fund a "model district" where intensive focus is placed on one district to "address all micro-issues and nuances involved in implementation" and demonstrate what is possible. ¹² The World Bank, in response to activist demands, appears prepared to begin such a pilot project with a one-year experimental public release of key documents simultaneously with their submission to the board. ¹³ These pilot projects may satisfy some user demand while concurrently preparing governmental bodies for the more extensive rollout of transparency measures.

Drafting the Law: Taking Account of the Implementation Challenge

Finally, when writing an access to information law, it is important to consider the processes and procedures necessary for its effective implementation and full enforcement. It is easy to become overly preoccupied with the exemptions section, to the exclusion of other key provisions. While national security exceptions may be more interesting and controversial than the implementation procedures, they are often much less important in determining the bill's overall effectiveness in promoting real transparency. In Peru, there were months of productive meetings between the Press Council and the armed forces to negotiate and agree on the national security exemptions. However, this same energy was not invested in designing the archival system or appeals process.

Focusing exclusively on the exemptions is misguided. In reality, if governments are determined to withhold information for whatever reason, they will do so regardless of the exactness with which the exceptions to access are written in the law. Thus, more emphasis must be given to the procedures for legal challenge when and if the exemptions are used to shield information. Issues such as mandatory publication of certain information, time limits for completion of information requests, administrative duty to assist the requester, costs for requests and copying, sanctions for failure to

comply, reporting requirements, and appeals procedures must receive much greater attention. These practicalities ultimately will determine the value and usability of such a law for ordinary citizens.

For example, there needs to be greater detail in the law or regulations on the procedures for implementing and applying the legislation. In countries such as South Africa, where civil servants are accustomed to following laws with great deference, it proved critical to provide for all the implementation mechanisms within the law and limit discretion. Moreover, with greater exactitude in the law, it is easier to hold government departments to account for failure to properly implement it. In other words, it is easier to demand and get adequate implementation of systems and procedures where the law is clear and specific, with sufficient level of detail, than where it is vague or too general.

Two additional legislation-drafting issues deserve brief mention. First, principles for good record making and records management may be included within the access to information law, particularly when countries lack specific archiving legislation to guide the public administrators. The specifics can be detailed through regulations, but it is helpful to have clear statements of purpose related to information systems as part of the access to information mandate.

Second, the primacy of the ATI law must be clearly stated within the law's text. There is often other extant legislation that deals with information — whether it is on archiving, official secrets, the armed forces, banking, or public administration. Canvassing the multitude of laws that speak to the issue of information would be difficult and time-consuming for both the requester and the civil servant who must respond. Arguably, if a public servant were expected to review each potential law and article related to the subject matter of each request, the response time would be enormous and the result likely to be a denial. To eliminate conflict of laws, promote full implementation, and reduce confusion among stakeholders, it is critical that the access to information law is the overriding legislation. The ATI law should clearly state that it governs all requests and capture all exceptions to release.

The state of Sinaloa, Mexico has one of the most advanced and modern access to information laws in the region. Passed before the federal law, it has been in effect since April 2002. During the initial period of application, the government has identified the failure to explicitly state the primacy of the law as one of its major flaws. Because of the problems and delays encountered, such as confusion and opportunity to subvert the objectives of openness, the implementers are already requesting an amendment or modification to clearly state that in questions of information, the access to information law will govern. The same has proven true in Jamaica, where the Information Officers have joined civil society efforts to amend the Access to Information Act to unquestionably apply as supreme over all requests.

Implementation of the Law

Robust implementation is very difficult to achieve, and thus far insufficient attention has been paid to the multitude of obstacles and potential solutions. As the British minister responsible for its Freedom of Information law argued the year before it came into effect, "Implementation has been beset by three problems ... A lack of leadership. Inadequate support for those who are administering access requests. And a failure to realize that Freedom of Information implementation is not an event: it is a process which demands long-term commitment." ¹⁴

The Politics of Implementation

POLITICAL WILL AND MIND SHIFT

Effective implementation demands political commitment from the top, both to ensure that the necessary resources are allocated and to overcome entrenched mindsets of opacity. The resource demands are significant, particularly in societies where a culture of secrecy has dominated the past and where there are no processes already in place to facilitate the archiving and retrieval of documents.

Most governments are accustomed to working in a secretive fashion. The notion of transparency is invariably far beyond the range of experience and mind-set of most public bureaucrats. Therefore, a fundamental mind shift is necessary, prefaced with political will for a change in approach. The mind-set of opacity is common; it seems that in general, bureaucrats have developed an ingrained sense of ownership about the records for which they are responsible. Releasing them to the public is akin to ceding control and, therefore, power.

Moreover, comprehensive information regimes can take an enormous amount of energy and resources. Daily, governments are faced with a myriad of priorities and the reality that there are not enough resources in the national reserves to meet all demands. In a recent study of efforts to implement the new law in Great Britain, the Constitutional Affairs Committee received a submission from the local government association stating "that resources are the single most important issue in FOI compliance." It went on to explain, "By far the largest issue for local authorities is the lack of resources. They do not have the time, money, or personnel to easily organize information on a corporate basis in order to allow ready retrieval for FOI purposes." In the United States, recent efforts to improve the functioning of the Freedom of Information Act have not been accompanied with additional resources, leading many advocates to question the intention and increasing the potential for their failure.

Thus, once the access to information law is passed, some governments claim credit for the passage but fail to follow through to ensure that the law will succeed in practice. Others, realizing the enormity of the tasks necessary to implement the

law, fail to commit the appropriate resources or simply lose interest. Still others that have demonstrated the requisite political will may find it difficult to sustain. The indicators of political will vary from country to country, but some might include the government's preparedness to underpin the right to information in the constitution (as in South Africa and perhaps Bolivia), the government's willingness to accept and encourage citizen participation in the process of writing the law, or the provision of sufficient and continued resource allocations. Whatever the specific method, political will must be signaled clearly and from the very top, if the task of entrenching a new culture of openness is to survive beyond the implementation challenges and for the long term.

In Jamaica, Bolivia, Mali, and Nicaragua, we have had the privilege to lead implementation workshops for senior public servants. In these retreats of department directors, permanent secretaries, and information officers, we asked what would be necessary to ensure adequate implementation. The resounding answer in each country was resource allocation and political will. Interestingly, when asked what would be a demonstration of political will, the civil servants responded, "resource allocation." Unfortunately, in these and many other countries with new information regimes, national and ministerial budgets are not prepared with clear line items for access to information, thus mandating implementers to find monies from other pots, or take on additional responsibilities and costs without an increase in resources. As leading scholar Alasdair Roberts noted in his recent research, "The budget for central guidance of the British FOI implementation effort exceeded the budget of the Jamaican Access to Information Unit (with its staff of four); the government's Archives and Records Department; the other parts of the Prime Minister's Office; and the Jamaican Houses of Parliament — combined."

A major part of the fight for financial resources entails determining the specific needs. This is not a simple task. However, in general, costs for a new information regime include three categories: startup, ongoing, and exceptional. Start-up costs may include a study of the extant archiving and record-keeping system, development of a new archiving system, preliminary training of civil servants, equipment purchases for processing requests, like photocopiers and printers; and expenses related to hiring and setting up a new coordinating unit for information. Ongoing costs would include annual salaries and benefits for information officers, ongoing training related to record keeping and the law, promotional and awareness-raising activities, overhead and rental for related offices, equipment maintenance fees, paper, and other costs related to provision of documents. The exceptional category may cover items such as extraordinary litigation costs or large seminars.

In practice, many of the resources applied toward the needs of an access to information regime are drawn from existing budgeted items. For instance, rather than hire a new staff person, the administration gives already employed civil servants additional responsibilities; computers are used for more than one purpose; or overhead costs are not broken down. Specific cost information is available in only a few

countries in the Western Hemisphere, and generally only in those like Mexico, where there is a separate line item in the overall federal budget. However, there are some cost figures that can guide the discussion. For example, in Mexico the first annual budget for the Federal Institute for Access to Information was US\$25 million. This provides the "Rolls Royce" version of access to information, such as a brand new building, staff of over 150, and an advanced Internet-based system that would make major corporations jealous. In Mexico, the government expends approximately 0.033 percent of GDP on their access to information regime. Other countries have much more limited expenditures, such as the estimated U.S. 0.0007 percent of GDP or Canada's 0.004 percent.

The political fight for resources is easier to wage when the benefits are quantified, for example, in terms of money saved from reduced corruption. In Buenos Aires a transparency pilot project was initiated in the public hospitals whereby procurements for medical items, such as needles, bandages, surgical gloves, and plastic items were made public. The result was a savings of 50 percent, merely through the publication of contract bids. A similar exercise was conducted for Mexico's largest public university, with a like outcome due to greater transparency. This does not even take into account the benefit of increased foreign investment or increased confidence in government—not to mention greater efficiency in administration. In Mali, a recent internal organization of records of government employees and people receiving government salary demonstrated more than 1,000 "ghost employees" benefiting from government payroll without doing any work. In Uganda, when the amount of monies destined for local schools was made public, the percentage that reached the schools went from an estimated less than 20 percent to more than 80 percent.

Nevertheless, in light of increasing social demands and worsening economies, governments continue to face the political dilemma of servicing the needs of the access to information regime over other programming, and articulating the overall benefit (versus cost) of good governance.

WHO LEADS THE EFFORTS

The choice of agency or individual to implement the new access to information regime is a political decision that may determine whether the law succeeds. Nominating a lead implementer with sufficient seniority, respect, and power will provide the foundational message to other parts of the administration, public service, and civil society that the government is serious in its efforts. As the Canadian Information Officer stated in his annual report to Parliament, the person charged with implementing the access to information must be sufficiently senior that he or she is confident in making the difficult decisions and must carry the weight to encourage others in promoting the objectives of transparency through the release of information. "Good policies . . . need champions if they are to be effectively implemented." In identifying leaders, it is important to cultivate these "champions" at key nodal points in government. The political leadership of people such as Jamaican Carlton Davis or Mignone Vega,

Director for Communications for the Presidency of Nicaragua, has assured that implementation efforts of a law or voluntary strategy continue, even in the face of political and logistical obstacles. Placing the key implementer in the ministry of the president or prime minister, as in Jamaica and Nicaragua, increases the likelihood of political support and acquiescence by the other ministries. On the other hand, when implementation is spread across line function ministries, as is the case in South Africa, there is a possibility that peer ministries will ignore directives and that implementation efforts will wane.

In South Africa, the initial impetus for an access to information regime came from the Deputy President's office just one year after the transition to democracy in early 1995, when then Deputy President Thabo Mbeki appointed a task force to produce a white paper on access to information. The task force was high level, including one of Mbeki's most trusted lieutenants and one of the country's most highly regarded human rights scholars. Though its report attracted much attention, as the process of finalizing the law became protracted, the energy of the group dissipated. Ultimately, responsibility for the final passage of the law was transferred to the Ministry of Justice, one of the busiest departments of government and one that has proved singularly ill-equipped to master the challenge of implementation. Political leadership has been conspicuous by its absence. At a meeting between the then Minister of Justice Penual Maduna and a group of visiting deputies from Armenia in January 2003, the minister appeared ill-briefed on the implementation of the law and informed his visitors that his department was fully complying and had not been the subject of any appeals. This was inaccurate. Not only have there been several appeals against refusal, but his department was at the time the subject of two pieces of litigation under the act. This absence of leadership in implementation, seen also in Belize and Trinidad and Tobago, has led to inconsistent implementation and compliance with the law.

PUBLIC SERVANTS: ON THE FRONT LINE

Public servants are on the front line of implementation. These critical stakeholders must be engaged early and strategically in the process of establishing and implementing the law. Ultimately, this constituency will be responsible for making the law meaningful for users — and have the power to either facilitate the process or create unnecessary roadblocks.

Civil servants, as the face of government, have grown accustomed to being blamed for all range of problems and citizens' grievances; although they have no control over policy decisions, they are tasked with implementation. Moreover, public functionaries often must contend with contradictory roles and responsibilities and competing interests. An access to information law can add to the dissonance, as coordinators "on occasion, experience an uncomfortable conflict between their responsibilities under the access to information act and their career prospects within their institution." ¹⁸

However, as developing democracies seek to professionalize public service, tools such as access to information can support this objective. In Bolivia during a recent workshop on access to information implementation, the civil servants identified an access to information law as a means of protecting themselves from arbitrary decision making by politicians and a way to diminish untoward political pressures. These more senior public functionaries also listed such benefits as increasing efficiency, reducing bureaucracy, and identifying and eliminating bottlenecks.

In Jamaica, the civil service association recognized the opportunity the access to information law provided to enhance customer service and more clearly demonstrate who was responsible for poor policy choices, i.e., the political masters. Thus, Mr. Wayne Jones, the President of the Civil Service Association, accepted a lead role in promoting the passage and implementation of a comprehensive access to information law. The union's stance also has led to greater buy-in from the relevant front line workers.

Government System Building: Developing the Supply Side

Governments must establish the internal systems and processes to generate and provide information and training of civil servants to ensure understanding and compliance — the mechanics of the supply side.

RECORD KEEPING AND ARCHIVING

If there are no records to be found, or they are so unorganized that locating them becomes an insurmountable obstacle, the best access to information law is meaningless. In order to respond to requests, an adequate information management system must be designed and established. This is not an easy task.¹⁹

Many countries that have recently passed ATI laws, such as Mexico and Peru, have rather precarious record-keeping traditions. In countries with previously authoritarian governments, such as South Africa, many records have been lost or deliberately destroyed. Government officials in Argentina tell of their difficulty in receiving documents necessary to complete their work, often due to inadequate record keeping and organization systems. In 2002, an analysis was undertaken by the Anticorruption Office (AO) of Argentina to determine the prevalence of civil servants receiving multiple paychecks. The AO found that the greatest obstacle to assessing and stopping this illegal practice that was costing the country millions of dollars was the lack of a functioning database and systematized records.²⁰ It proved nearly impossible to get the most basic information on the number of positions and the names of those employed in them.

Governments generate millions of tons of paper each year. In some countries, a lack of record-keeping processes and space constraints have translated into huge bonfires of critical documents. Until a few years ago, Bolivia burned most of the more than 192 tons of paper that the executive branch generated each year. In other coun-

tries, such as Jamaica, where there has been a long history of secrecy but emphasis on document retention (both passed down from the British colonial rule that ended 40 years ago), "the practice of retaining all records created contributed to the congestion in the system, as dormant and obsolete records were shelved with current files, further compounding the problem of timely retrieval."²¹

In many places, until the advent of access to information regimes, national archivists and record keepers had been considered more akin to untrained secretaries than to degreed professionals, and were not provided the resources or respect necessary to fulfill their mandate. As one records manager stated, "Traditionally, record-keeping in the Jamaican public service has been an arcane and often overlooked field. Records management continues to be perceived as a low-level administrative/clerical function, largely focused on the management of public records at the end of their life cycle (i.e. the disposition phase)."²²

In fact, in many government agencies, the secretary was responsible for filing and maintaining all critical documents. However, as computers have become more commonplace, secretarial staff have been reduced, further depleting record-keeping resources. A recent report of the United States Interagency Committee on Government Information addressed the need to improve accountability for records management. The report highlighted the "low priority assigned to information and records management" and recommended that "agencies must have an expectation that their actions have important positive or negative consequences, and there needs to be an effective mechanism for evaluating agency actions." The committee suggested that appropriate incentives be established for proper management and protection of records as "valuable Government assets."

Perhaps more damaging to the establishment and maintenance of files is the widespread misconception by civil servants and elected officials that the documents they generate belong to them. We have heard this view from Argentina to Bolivia to Jamaica and Belize, all the way to the U.S. state of Georgia. Thus, when leaving their post or retiring, they take the files home with them — and they are forever lost to the archiving system.

Even when past documents are available, the task of ordering them is monumental, and potentially unrealizable. In terms of human and financial resources, the start-up costs can become astronomical for the organization of hundreds of years of documents. Rather than allow this to become an insurmountable obstacle to the government's willingness to pass the law, some advocates pragmatically suggest that in the initial stages of an information regime, governments ignore past documents and establish an archiving system for future information. In terms of citizen needs, often the contemporary documents such as budgets, policy decisions related to education and health, and information on crime and justice are of greatest value. Governments concerned with scarce resource allocation, such as Nicaragua, have considered focusing their record-keeping reforms on current and future generated documents, and then, over time, ordering the vast quantity of historical information.

Electronic documents have created a new set of problems and needs for record keeping and archiving. A comparative study of the implementation of access to information laws in the Commonwealth of Australia, New South Wales, Queensland, and New Zealand found that "across all four jurisdictions, we encountered concern bordering on alarm at the implications of the growth of email. We encountered few examples of systematic filing and destruction of email, nor of any central protocols for how emails should be stored." As the modern trend of electronic communication and documentation continues, record-keeping systems will need to respond.

Part of this process of organizing and identifying records involves the creation of "road maps" of the documents that exist. This is as important for the holders of information as it is for the potential requesters. Without knowing what records there are and where they are located, an implementation regime seems unlikely to be anything other than frustrating for both holders and requesters. Six months after the Jamaican law came into effect, senior civil servants stated that one of the greatest advantages of the law, thus far, was their own increased knowledge of government and the records that various agencies hold. For this reason, many modern ATI laws such as the South African, Mexican, Trinidadian, and Jamaican include provisions mandating the creation of such "road maps."

Record keeping — the management of documents on a daily basis — is inextricably linked to the archiving of historical or critical information. Unfortunately, in some countries the archival laws are inconsistent with modern record-keeping systems (particularly in relation to electronic records) or conflict with access to information laws. In Jamaica, for example, the archivist has discretion whether to release documents, and the decision is not based on public interest or principles of transparency. Thus, there also exists a need to ensure consistency within the record management policies. As the U.S. electronic records policy working group has pointed out, "To be accountable for information and records management requirements, agencies must have a clear understanding of what needs to be done and how to do it ... If agencies are provided with a clear set of standards that are made understandable through the educational opportunities and there are effective mechanisms for evaluating agency actions, the odds for a successful outcome are significantly improved." ²⁶

RECORD MAKING

There is no value in a right to access to information if no reliable document exists. Record-making standards also must develop and mature. One Bolivian public administration expert commented that most of the documents presently generated by his government are trash, created simply to satisfy some administrative requirement with no clear understanding by the public servant of its use or importance: "That which is certain is that the public entities generate and accumulate incalculable volumes of information that for the most part have no utility from the perspective of efficacy, efficiency, and economy of its operations."

On the other end of the spectrum, as governments become aware of the depth and breadth of information that is open to the public, there is sometimes a backlash to information generation. Fear of embarrassment or mistakes may portend the rise of "cell phone governance." Important policy decisions are made at lunches, made via telephone, or simply not recorded. An Arkansas appeals court recently ruled that the Fort Smith board of directors and city administrator violated the state's freedom of information act and open meetings provisions when a decision to purchase property was made via telephone. The court found that telephone conversations are a "meeting" under the terms of the act, holding that "It is obvious that [the board's] actions resulted in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade ... By no reasonable construction can the FOIA be read to permit governmental decision-makers to engage in secret deal-making." 28

As this practice becomes more common, access to information laws will need to respond with more detailed provisions for record making. Similar to the rule-making procedures in the United States and the Financial Management and Accountability Act of 1997 in Australia, to curtail the deleterious effects of cell phone governance, policy makers must be mandated to keep records that, at a minimum, detail who made a decision, when, and why, and list the relevant sources used.²⁹

AUTOMATIC PUBLICATION

The best approach for dealing with vast amounts of information is simply to make as many records as possible automatically and unconditionally available. This limits the need for government decision making and is therefore less of a drain on resources. Moreover, it is clearly better for the "demand side," as proactive disclosure reduces the number of requests and delay in information receipt. Indeed, the best implementation model is not only to categorize as much information as possible as automatically disclosable but also to publish the information at the point the record is created. This is what in the freedom of information lexicon is known as the "right to know" (RTK) approach. Information and communication technologies makes this easier and cheaper. In Peru, for example, during the transitional authority in 2001 when greater transparency was a watchword of the interim government, the Department of Finance led the way with a Web site-based approach to transparency, publishing huge volumes of information. A focus on automatic publication through the Internet has continued, with the National Office of Anticorruption tasked with monitoring the development of public body Web sites and periodically issuing reports. The most recent report, the sixth of the series, found that all government ministries were in compliance with the automatic publication provisions of the access to information law, and 37.3 percent of the decentralized public agencies were in full compliance. In comparison, in the municipalities there was only 2.1 percent complete compliance.³⁰

Clearly, using government Web sites is an important way of adopting an RTK approach, but there are dangers too. It should not be seen as a panacea, especially in the developing world, where few people have access to the Internet. Moreover, with the changing technologies, even the most current advances may quickly become outdated. Thus, any electronic record-keeping or publication scheme should be seen as a companion to hard copies and traditional publication, rather than as a substitute. Finally, one must be vigilant that governments not interpret automatic publication requirements as license to make whole databases or reams of documents available without organization and consideration — making it impossible for interested people to understand and use.

INTERNAL SYSTEMS

Internal Procedures (the "Internal Law"). It is crucial that governments develop — and users understand — clear guidelines for the civil servants charged with implementing the law. To ensure consistency and efficiency in implementation, the guidelines should cover records management, assessment of requests for information, provision of documents, and interpretation of the law.

For users, applying to access the record of the internal system is one way of discovering the extent to which a government agency is taking the implementation issue seriously.³² Things to look for would be training and the development of a manual for line managers and information officers and/or their units, and internal rules relating to good practice and important procedural matters such as compliance with time limits. Also, there should be a thorough internal system for recording requests, such as an electronic database that can itself by subjected to public and parliamentary scrutiny.

Given its history and role in the oppression perpetrated by the apartheid state, it is somewhat surprising and ironic that of the twenty-six national government departments in South Africa, the Department of Defence has shown the greatest commitment to implementing the law properly. A Johannesburg-based NGO, the South African History Archive (SAHA), already had discovered that Defence was performing surprisingly well when, in contrast to other departments, it dealt with many of the requests SAHA submitted efficiently and courteously. SAHA's diagnosis accorded with that of the OSI study and ODAC (Open Democracy Advice Centre)'s own assessment. The Department of Defence had put in place a number of specific steps to implement the act that could be emulated in other agencies, including:

- a manual and implementation plan;
- a register of all requests;
- human resource allocation to the Promotion of Access to Information Act (PAIA) even though there is no special budget;

- designation of the CEO as the Information Officer and all division chiefs as Deputy Information Officers, with assistants handling PAIA requests;
- establishment of a PAIA subcommittee that deals with major issues e.g., disclosing information on arms procurement contracts, sensitive information, and large-volume requests;
- provincial departments sending the requests to the head office to process.

In contrast, bodies performing badly either had not instituted systems or had systems that were not functioning.³³

Information Officers and Training. In addition to internal systems, there is a need for line managers responsible for implementation and responding to requests. Most modern ATI laws create information officers or similar positions. In Canada, access to information coordinators has been the backbone of implementation and administration efforts. Similarly, the Mexican, Peruvian, and draft Bolivian and Nicaraguan access to information acts call for the establishment of designated information units or officers in each public body to serve as the front line respondents assisting applicants.

One obvious indicator of the strength of implementation is whether such officials have in fact been appointed and whether they have received specialist training.³⁴ A comparative study of four commonwealth jurisdictions found that "there was universal agreement that a significant investment had to be made in training," which should "encompass both general staff (at all levels) and FOI coordinators/specialists (where such existed)."³⁵ Moreover, training should not end when the law goes into effect. Staff changes, lessons learned, and amendments to internal policies and procedures dictate the need for continual training of information officers and other relevant civil servants.

The public needs to know whom to contact and how to reach them. Most modern ATI laws include such requirements. The South African law, for example, requires government to have the name and contact details of the information and deputy information officers listed in all telephone directories.

These information officers can work together, through the establishment of networks or working groups, to share best practices and lessons learned. In Jamaica, the information officers meet periodically and serve as a mutual support system. Such networks also serve to demonstrate the value and professionalism of the position.

Implementation Plan: The Value of Strategic Planning and Consensus Building. If governments are wise, they will consult with the potential user community when they draw up their implementation plan. One of the causes for optimism in the Jamaican case is that despite its government's historical culture of secrecy, the access to information implementation unit carried out a consultancy exercise with civil society in August 2002, soon after the law was passed, and again in March 2003.³⁶

This process enabled government officials to share, in a positive and confidential setting, their own concerns with colleagues across government and individuals from civil society, and afforded the latter group an opportunity to develop a better understanding of the obstacles facing civil servants and to hold them to account.

The first workshop asked the simple question: What needs to happen to effectively implement the new access to information law? The workshop identified a lack of political will and resources — human and financial — as the chief obstacles to effective implementation. The second workshop focused on prioritizing key activities. It found that some aspects, such as the appointment and training of access to information officers and passage of the necessary regulations to operationalize the act, had been neglected. These sessions of shared experiences and problem solving allowed government to take the necessary decision to postpone implementation with less fear of civil society reprisal.

As the Jamaica example demonstrates, it is often managerial weaknesses rather than flagging political will that slows implementation or creates the greatest obstacles. The delay in putting the Jamaica law into effect had much more to do with lack of preparedness than government fear. In Great Britain, Parliament heard evidence from government departments that a failure to share best practice across sectors led to delays and inconsistent messages.³⁷ Identifying key managerial or logistical weaknesses, sharing lessons learned, and providing consistent guidance will allow administrators to apply resources more wisely, in a focused and efficient manner.

Specialized ATI Implementation Oversight and Coordination Units. Specialized units and oversight bodies have proven critical to ensuring full implementation and compliance with the law. "Without a continuous oversight body, government efforts are dispersed and diluted with no clarity in responsibilities or guidelines and reduced ability to conduct long-term planning and to promote best practices, thus costing governments more in terms of human and financial resources." Moreover, when there is no implementation monitoring and coordinating body, users are forced to navigate the systems on their own and public servants are burdened with additional responsibilities, but often must handle them with less training and resources.³⁹

For that reason, countries such as Mexico, Jamaica, and Canada have established access to information units or oversight commissions responsible for assisting and monitoring implementation, raising awareness about the new right to information, and providing a clear focal point for all efforts. A designated specialist unit, such as the Mexican Federal Institute for Access to Information (IFAI) or the Jamaican Access to Information Unit, allows the government to provide a uniform and focused response to problems and demonstrates clear commitment. In contrast, in Peru, each ministry or agency is to have a designated access to information person, but there is no federal coordinating body. In the United States, agencies set their own policy, creating a patchwork system and uneven implementation of the law that provides users vastly different experiences across government. In South Africa, no special unit

has been established to oversee implementation; the responsibility for the ATI law has been simply added to the long list of responsibilities ordinarily carried by the director-general (permanent secretary) of each line function ministry or agency.

The IFAI has a mandate emanating from the access to information law, whereas the Jamaica unit was created spontaneously as a means for addressing all implementation issues. As the IFAI is authorized by statute, it is a "legal" body and has enjoyed a budget sufficient to meet its objectives and tasks. This has not been the case for Jamaica, where the ATI Unit has been dependent on monies from the Information Minister in the Office of the Prime Minister, and its existence depends on the good will of the minister.

Experience has demonstrated that specialized coordination units are necessary beyond the implementation phase, particularly for education, training, and monitoring. In Trinidad and Tobago, the Freedom of Information Act went into force on February 20, 2001. Shortly thereafter, a Freedom of Information (FOI) Unit was established to provide technical and legal guidance to government bodies, raise citizen awareness of the new law, and monitor and report on implementation efforts. The Cabinet initially authorized the FOI Unit for one year and then extended it until September 30, 2003, when the unit was disbanded. Even before its termination, the size of the staff was being reduced. Although there have been no quantitative studies to determine the effect of the unit's discontinuance, some statistics serve to indicate its importance and continued need. In the period of August-November 2001, when the FOI Unit was active in training civil servants and educating citizens, there were 37 requests for information and 88 quarterly reports received from government, representing 55 percent of all agencies mandated to submit reports. For the same period in 2002, when the unit was still engaged, there were 63 requests for information and 32 reports received, representing 20 percent of all agencies. By November 2003, when the contract of the last member of the unit expired, there had been only 6 information requests, and a mere 8 percent of all agencies were still complying with the reporting requirements.

Civil Servant Sanctions and Incentives. Political will within a democratic framework and managerial effectiveness within a bureaucracy both require clear incentives for action and disincentives for inaction. In all access to information laws in Latin America and the Caribbean, as well as in South Africa, sanctions exist for any public servant who destroys, alters, or damages documents or provides exempt documents contrary to the provisions of the law. What is less common are explicit disincentives (sanctions) for those who fail to meet implementation deadlines, delay provision of documents to requesters, or create unwarranted difficulties for users. The draft Bolivian law has added sanctions for these "process" and implementation-related failures, as well as for documented related illegal actions. The Canadian government, as it considers amendments to its twenty-year law, has recommended adding penalties for failure to respect deadlines. In Great Britain, senior managers were named to lead the implementation effort and oversee the efforts of the FOI officers. Months

before the law was to go into full effect, the British Parliament heard that "many FOI officers were having difficulty getting senior managers to take the requirements of FOI implementation seriously ... One explanation has been that the penalties for non-compliance are not clear."

But rewards for good behavior are just as important. In Canada, the Treasury Board, which is responsible for ensuring continued implementation of the federal access to information law, has begun a system of public awards and certificates for exemplary civil servants. Additional incentives would include pay raises based on performance evaluations that contain specific implementation criteria, promotions, and bonuses.

Phased-in Effectiveness of Law. The establishment of processes and the necessary mind shift from the culture of secrecy to openness takes an enormous amount of time and energy. The pressure on governments to implement access to information laws quickly is unfortunate. In Jamaica,

Mexico, Peru, and South Africa, the governments gave themselves one year or less to put the law into effect. In each case, they soon discovered the many obstacles. Although most of these countries pushed through the implementation in the prescribed time, many of the necessary procedural details had not been resolved. In Jamaica, the government was forced to postpone the date the law would come into effect three times and amended the enabling legislation to allow for phased commencement.

Given that a stumbling start may undermine a law's legitimacy, longer lead times for implementation are preferable. The time period must be long enough to build public-sector capacity and inform citizens of their rights, but not so long as to reduce momentum or make the government appear to be faltering in the commitment to transparency, as occurred during the UK's five-year implementation period. During this phase, government will generally focus on establishing procedures, passing regulations, and preparing or updating record management.

But government leaders and civil society groups need to ensure that a longer lead time is not used for mass record destruction. In Japan, a "surge in the destruction of documents eligible for disclosure under the Freedom of Information Law by 10 central government offices" was reported in the lead up to the law coming into effect. The report claims that, for example, "the agriculture ministry scrapped 233 tons of documents in fiscal 2000, a 20-fold increase on the 11 tons destroyed in fiscal 1999."⁴¹

A potentially successful model for implementation is a phased-in system whereby the law becomes effective first in a few key ministries and agencies and then is phased in over a specified period of time until all of government is online. This approach creates models that can be more easily amended or altered to address emerging problems, before they overwhelm the entire information system. As Maurice Frankel of the Campaign for the Freedom of Information in Great Britain told a Constitutional Affairs Committee reporting on Britain's progress toward

implementation, "I think [the big bang approach] is bad verging on potentially catastrophic ... central government could have done this much earlier, had a lot of experience ... and could have dealt with a lot of the problems which are going to come up relatively easily. Instead of that, every single authority in every sector is confronting the same problem simultaneously with no opportunity to learn from anybody."⁴²

During the initial phase, responsible civil servants should meet regularly to discuss systems capability and lessons learned, and ensure that these are widely shared and applied by the next set of agencies in which the law goes into effect. The government should capitalize on this time to complete and approve any necessary regulations and internal policies. And interested NGOs and citizens should become more familiar with the law's value and defects, make requests, learn how to effectively monitor government implementation efforts, and engage positively with the first-round implementers.

A potential disadvantage to the phased-in approach is that governments may choose to put nonessential ministries or unimportant agencies in the first round of implementation, thus sending a signal that they are not serious about transparency. Alternatively, they may find that citizens are making more requests than expected or soliciting the most sensitive and embarrassing information. This reality check could cause the government to delay further implementation. Moreover, citizens may become frustrated as requests are transferred to government entities not yet in effect. Therefore, in a phased-in approach, we encourage timelines for each phase to be established as part of the enacting legislation or regulations, clear rules relating to transfer of requests to "non-phased in" bodies, and intense public education explaining the approach.

Sustaining the Demand Side

Although the focus of this chapter is the "supply side," without an equivalent demand for information, government will inevitably stop directing human and financial resources toward the implementation and administration of an access to information regime. Thus, the response from civil society needs to be energetic, committed, and long term. Through recent experience, we have seen that strong campaigns have formed around the issue of passage of the law, only to disintegrate during the implementation and usage phase. Without a demand for information and vigorous monitoring of government implementation and enforcement efforts, the hard-won right to information can quickly atrophy.

Thus, notwithstanding the distinct obstacles to effective usage in South Africa exposed by the OSI study (see above), demand for access to information through the law remains and is led by the ODAC, alongside other NGOs such as SAHA and the Treatment Action Campaign (TAC). For example, painstaking effort by the field-workers of the ODAC has shown how ATI can make a material difference in the lives of poor people. In Kouga, in rural Western Cape, despite a ministerial decision to allocate resources, the municipality had "borrowed" for another area the

forty houses that had been earmarked for one community. Pressing for access to the minutes from the meeting at which the decision was made by the municipality led to a reversal of the decision. In Emkhandwini in remote Kwa-Zulu Natal, the villages wanted clean water; they were tired of the five-mile trek to collect it from the nearest town. The municipality was arrogant: the villages had no right to any information about water access. ODAC pressed the District Council, and it was revealed that there was a plan: to phase in piped water over five years, with a weekly delivery by truck of a large barrel of clean water in the interim. It was a good plan; the villagers were content. ATI, properly implemented, can be good for government as well as citizens. By corollary, secrecy, as the Emkhandwini case shows, is harmful to both.⁴³

Conclusion

The challenges that face countries wanting to implement access to information policies include a lack of education and awareness, a lack of capacity, a lack of political will, and a culture of bureaucratic secrecy. As this list demonstrates and this chapter asserts, although there are technical aspects to good implementation, it is not simply a question of getting the mechanics right. Adjusting the mind-set — changing, as they say in Spanish, the mentalidad (the mentality) — is a far more important and challenging priority for policy makers and activists alike. The obstacles are immense and the pitfalls many, but the rewards equally monumental. But as our own understanding of the theory and practice of good implementation grows, so the capacity to diagnose implementation problems increases immeasurably. Properly implemented, an access to information law can change the rules of the game not just for civil society but also for government, and serve to enhance democratic politics.

NOTES

- 1. See Article 19 Model Law and Socius Peru 2003, British Council.
- 2. One of the authors, Richard Calland, participated in the development, testing, and refinement of the methodology. The Open Democracy Advice Centre, Cape Town, coordinated the South African part of the survey in 2003, and in 2004 coordinated the African regional portion that includes six countries: South Africa, Mozambique, Kenya, Senegal, Nigeria, and Ghana. The five countries included in the pilot study were South Africa, Macedonia, Bulgaria, Peru, and Armenia. The pilot study was refined and in 2004 the first full study was conducted in sixteen countries. At the time of writing, the findings were not yet available.
- Macedonia, which did not have an ATI law, applied a twenty-day time limit for the purpose of the exercise, above the international average of fifteen days.
- Open Society Institute, Justice Initiative, "Access to Information Tool: Overview 2003," unpublished paper.
- Open Society Institute, Justice Initiative, "Access to Information in the Republic of South Africa, Access
 to Information Tool: South Africa 2003," www.opendemocracy.org.za.
- 6. In the authors' work in Bolivia, we often heard of the failure to implement well-drafted laws. Moreover, one scholar suggested that his country, Ecuador, counts more than 800,000 laws, as none are removed from the books. According to him, only a small percentage of these laws are implemented and enforced.
- 7. For a more detailed account on the passage of the law in Jamaica, see Laura Neuman, "The Carter Center Access to Information Project: Jamaica Case Study," in Laura Neuman, ed., Access to Information: A Key to Democracy (Atlanta, GA: The Carter Center, 2002).
- 8. For a more detailed account of the campaign, see Mukelani Dimba, "A Landmark Law Opens Up Post-Apartheid South Africa" (2002), http://www.freedominfo.org/reports/safrica1.htm.
- The authors of this paper visited Belize in 2003 and had the opportunity to meet with civil society leaders, media representatives, and members of government and opposition parties to discuss the Freedom of Information Act of Belize.
- For a more detailed account of the Zimbabwe situation, see Article 19/MISA-Zimbabwe, "The Access to Information and Protection of Privacy Act: Two Years On," 2004.
- 11. See America for the Sanction of Access to Information Law in Argentina, a campaign led by Poder Ciudadano and other leading Argentine NGOs such as el Centro de Estudios Legales y Sociales and el Centro de Implementacion de Politicas Publicas para la Equidad y el Crecimiento, as well as media and environmental NGOs, which called on interested actors throughout the region to send letters to the Argentine Senate requesting the passage of the access to information law. More information regarding the campaign is available from http://www.poderciudadano.org, or in English from http://www.redinter.org/InfoRID/22538.
- Yashwantrao Chavan Academy of Development Administration (YASHADA), Action Research Project; see "Prune Newsline," The Indian Express, December 15, 2004.
- IFTI Watch Update, "World Bank Poised for Breakthrough on Disclosing Draft Documents" (2004), http://www.freedominfo.org/ifti/worldbank/20040528.htm.
- 14. House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000 Progress Towards Implementation," vol. 1, November 30, 2004, quoting Lord Falconer of Thornton, speech to Campaign for Freedom of Information, March 1, 2004. Available from The Department of Constitutional Affairs, http://www.dca.gov.uk/foi/bkgrndact.htm#top.

- 15. House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000 Progress Towards Implementation," vol. 1, November 30, 2004. Available from The Department of Constitutional Affairs, http://www.dca.gov.uk/foi/bkgrndact.htm#top.
- Alasdair Roberts, Blacked Out: Government Secrecy in the Information Age (New York: Cambridge University Press, 2006).
- 17. Office of the Information Commissioner of Canada, *Annual Report Information Commissioner* 2001–2002 (2002). See Chapter I: Performance Overview.
- Office of the Information Commissioner of Canada, Annual Report Information Commissioner 2000–2001 (2001). See Chapter III: v) Recognizing, Fostering, and Protecting the Coordinators.
- 19. "Good recordkeeping is a pre-requisite for the successful administration of the Access to Information Act as well as a central component of good governance." See Office of the Information Commissioner of Canada, Annual Report Information Commissioner 2002–2003 (2003). See Chapter II: Addressing the Crises in Information Management.
- 20. Nestor Baragli, "Acceso a la Información y la Lucha Contra Corrupción" (Access to Information and the Fight Against Corruption), in La Promoci — n de Democracia a Trav\(\bar{Z}\)s del Acceso a la Informaci n: Bolivia (The Promotion of Democracy Through Access to Information: Bolivia) (Atlanta, GA: The Carter Center, 2004).
- 21. H. Rumbolt, "Challenges and Successes in Implementing the Access to Information Act in Jamaica," in Laura Neuman, ed., Access to Information: Building a Culture of Transparency (Atlanta, GA: The Carter Center, 2006).
- 22. Emerson St. G. Bryan, "The Records and Information Management Profession: The View from Within the Jamaican Public Service," *ACARM Newsletter* 33 (2002).
- 23. Interview with Robert Bohanan, United States Archivist, May 2004.
- 24. Electronic Records Policy Working Group (Michael Kurtz, Chair), Recommendations for the Effective Management of Government Information on the Internet and Other Electronic Records (2004).
- Edward Adams and Andrew Ecclestone, Implementation of the Freedom of Information Act 2000, Study Visit to Australia and New Zealand. Report submitted to Department of Constitutional Affairs, United Kingdom, 2003.
- 26. Electronic Records Policy Working Group, Recommendations.
- 27. Antonio Birbuet Díaz, "Public Administration and Access to Information in Bolivia," in Laura Neuman ed., *The Promotion of Democracy Through Access to Information: Bolivia* (Atlanta, GA: The Carter Center, 2004).
- 28. Harris vs. City of Fort Smith, Arkansas Court of Appeals, 2004.
- 29. Financial Management and Accountability Act of 1997.
- 30. Comisión Nacional Anticorrucpción, Informe No.6: Monitoreo a Portales de Transparencia de la Administraci n Pæblica (Lima: Comisión Nacional Anticorrupción, 2004).
- 31. Although the Peruvian report documents government compliance, it does not provide any data on the number of users or "hits."
- 32. At the time of writing, the Open Democracy Advice Centre, South Africa, is awaiting the response to Right to Information requests made to all government departments and other important public sector entities (around 100 in total) for access to their internal policy documents relating to the implementation of the South African law (PAIA).

- Open Society Institute, Justice Initiative, "Access to Information in the Republic of South Africa, Access
 to Information Tool: South Africa 2003," www.opendemocracy.org.za.
- 34. ARTICLE 19, "Principles on Freedom of Information Legislation, Principle 3, Promotion of Open Government Sresses the Importance of Training Inside Government Bodies" (London: ARTICLE 19, 1999). See also ARTICLE 19, Chapter 4, "Raising Awareness and Educating the Public and Duty-holders about the FOIA Rights and Obligations in Promoting Practical Access to Democracy—A Survey of Freedom of Information in Central and Eastern Europe" (London: ARTICLE 19, October 2002).
- 35. Adams and Ecclestone, Implementation.
- 36. The authors facilitated this process as a part of the Carter Center's Access to Information Project.
- 37. House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000— Progress Towards Implementation," vol. 1, November 30, 2004. Available from The Department of Constitutional Affairs, http://www.dca.gov.uk.foi/bkgrndact.htm#top.
- 38. Laura Neuman, "Mechanisms for Monitoring and Enforcing the Right to Information Around the World," in Laura Neuman ed., Access to Information: Building a Culture of Secrecy (Atlanta, GA: The Carter Center, 2006).
- 39. Ibid.
- 40. House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000— Progress Towards Implementation," vol. 1, November 30, 2004. Available from The Department of Constitutional Affairs, http://www.dca.gov.uk.foi/bkgrndact.htm#top.
- 41. "Leap in Records Scrapped Prior to FOI," Yomiuri Shimbun, 2004. Available in English from http://foia.blogspot.com/2004/12/japan-leapin-records-scrapped-prior.html and in Japanese from http://www.yomiuri.co.jp/newse/20041209wo01.htm.
- 42. House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000 Progress Towards Implementation," vol. 1, November 30, 2004. Available from The Department of Constitutional Affairs, http://www.dca.gov.uk.foi/bkgrndact.htm#top.
- Open Democracy Advice Centre, "Five Years On: The Right to Know in South Africa" (Cape Town, April 2006).

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