

## **International Right to Know Day - Jamaica: September 28, 2004**

Speech presented by Laura Neuman, senior program associate, Americas Program, The Carter Center.

Good morning, and congratulations on International Right to Know Day. This is the second year in which countries around the world have celebrated the Right to Know. The Right to Know, or more commonly termed the right access to information, has come of age. And Jamaica is leading the way.

Democracy depends on a free flow of information, and increasingly developed and developing nations around the world are recognizing this fact. Access to information increases transparency in government, helps to fight corruption, allows citizens to participate in public life by determining their own priorities and is now recognized as a fundamental human right. With more than fifty countries passing access to information laws in the past decade, the international trend toward transparency is clear. In fact Webster's Dictionary declared "transparency" as the word of the year in 2003. Even such historically closed societies as China and Eastern European nations are passing access to information laws.

And Jamaica is Number 7 1/2. Well technically number 8, but I don't fully count Belize. You are the seventh and a half country to pass and implement a comprehensive access to information law in our hemisphere. The reason that I do not count Belize as a whole is that they never fully implemented their 1994 act, so do not know what you all are going through. As we have always said, passing a law is the easy bit, the real challenge comes with implementation. And each one of you here has accepted this challenge . . . why?

The reason is that access to information laws serve individuals as well as policymakers. In India, citizens used access to information requests to find out why they were not receiving the promised food distribution during draughts or the free public health care. In Mexico, the access to information law has been applied to show the salaries of their leaders, for the very first time. And in Japan, the freedom of information law was used to uncover police embezzlement.

But we believe that this law is as potent for policy makers and policy implementers as it is for individual citizens. We recently asked group of high-ranking civil servants in Bolivia how an access to information law would benefit them. They presently are undertaking a voluntary openness strategy as they wait for the passage of their access to information law. The voluntary strategy was issued to them from the President, and some felt that its implementation might be to great an imposition. As occurs in many countries, legislatures pass laws or Presidents issue Executive Decrees but it is the public servant as the backbone of government that must put these policies in practice, and often without any additional training, time or resources. And yet when we asked civil servants in Bolivia, they were able to identify scores of benefits for themselves and their Ministries, such as:

Helps them order and organize their documents and information  
Helps increase their personal efficiency  
Allows them to more fully show their work and achievements  
Reduces bureaucracy and minimizes discretionarily  
Diminishes political pressure  
Identifies bottlenecks  
Know what information exists and can use this information to make better decisions  
Better coordination among Ministries and agencies, as know what information you have and what they have  
Utilize information generated by others so that don't duplicate efforts  
Helps improve their institutional image to civil society

Even with this impressive list, there were some in the group that did not feel as though the effort was worth the potential benefits. We took a very informal vote (as you know The Carter Center loves to observe elections) and 86% of the participants felt that this list of benefits was sufficient to motivate them to implement the voluntary strategy. Nevertheless they are realistic of the challenges that confront them as they move toward a more transparent and organized Ministry capable of responding to citizen requests.

When we met with Jamaican public servants in May, we asked a similar question . . . what had you done in implementing the Access to Information Law that has had a positive impact? Some of their answers included:

Streamlining of record management system  
Increasing knowledge base inside and outside of government  
Increased accountability to citizens  
Better customer service and more satisfied customers  
Government agency were learning more about government,  
For example read the contractor general report, audit report, had to read each others reports widened our information base, reading own information  
Developed familiarization with government policies and processes

But they also identified the challenges, and these are not unique to Jamaica. Not only is Jamaica the 71/2th in our hemisphere to have passed an access to information law, you are the approximately 45th of over 50 countries in the world to adopt a comprehensive freedom of information law. And there have been many lessons learned over the past decade regarding the obstacles to effective implementation, such as a lack of resources, difficulty in changing the mindset from one of secrecy to openness, and poor record keeping and record management. As my colleague Richard Calland recently wrote for the South African Mail and Guardian newspaper, "promising transparency is one thing, delivering it is quite another." It is not sufficient to simply pass an access to information law, pat oneself on the back and call it a day. Even laws that on paper are excellent, such as South Africa's Promotion of Access to Information Act of 2000, are meaningless if not well implemented in practice.

The Open Society Institute recently commissioned a study in five countries to evaluate the performance and responsiveness of the state to information requests. The countries that took place in this study were Armenia, Bulgaria, Macedonia, Peru and South Africa. Of these countries, "Macedonia had just started the process of drafting FOI legislation; Armenia was in the process of adopting an FOI law and Peru was in the early stages of implementing legislation adopted in 2002. Both South Africa and Bulgaria had had laws in place since 2000 . . ."[1]

In each country an appointed civil society organization monitored 100 requests for information made to 18 different government agencies by 10 different persons. In each case, the persons requesting information were members of NGO's, journalists, and members of disadvantaged or excluded groups. Requests were of a similar nature in each country, and in none of these cases did the request seek information that would be expected to fall under one of the exceptions for information. The study sought to standardize some of the requests, for example in each country there was a request for data on polluters and level of pollution; number of homeless children in a specific municipality; and information on the trafficking of women and allegations of corruption against judges.

The results from this study showed that 35.7% of the requests were fulfilled, while even more (35.9%) were ignored leading to a mute refusal (also called deemed denial). In 14.5% of the cases, the individual was not allowed to submit the request, in 8.1% the request was denied in writing and in 5.8% of the cases there was an oral denial of the request for information. In total, this indicates that only one-third of all requests resulted in the receipt of information. Most striking, however, may not be the denial rate, which was only 13.9% of the time, but the number of ignored requests.[2]

Following the monitoring of government response to the requests, the groups requested interviews with the civil servants to understand why in some cases information requests were completed while in others they were ignored or denied. In general, the interviewees agreed that training was a critical component. In Bulgaria, where the civil servants received much more training than in South Africa, there was a better response to information requests.

A second issue that arose, which is quite obvious, was the need for greater resources to ensure effective record keeping and management of requests.

Interestingly, the analysis indicated that in assessing the differences among the varying Ministries and agencies, the two key elements that make a body successful are: political will and information management capacity. This is consistent with the Jamaican Information Officers comments in May; where it was indicated that a lack of records and inadequate record-keeping (as well as trying to find the documents on Ministers desks) served as deterrents to fully responding to requests.

But the study asks us "is this a glass half-empty or half-full situation?" As the pilot project indicates, in almost 50% of the cases the information was either provided or

denied in writing or orally. This is a long way from the days of complete secrecy or total discretionality. And the study was based on countries where the oldest law had only been in effect for 3 years, and the recent past saw such reigning regimes as apartheid and communism.

In considering jurisdictions that have effectively implemented a new access to information culture, and those that have failed, I believe that there are a number of necessary components. First, there needs to be sufficient and sustained political will, and a concerted effort directed at changing the mindset of both the civil servants and the public. Second, the law itself and regulations must be drafted with implementation in mind. Finally, effective implementation is a joint partnership between the holders of information (government or the private sector) and the requesters (citizens, civil society organizations, media etc.). Recognizing that there is dual responsibility helps us understand the nature of the challenge and contributes to the design of viable solutions.

So, where does Jamaica stand? I would argue that there has been a demonstration that in Jamaica there exists all of the necessary ingredients. The government has exhibited political will in passing an access to information law through a participatory lawmaking process, and in working through the phases of implementation. There is renewed focus on record making and record-keeping. And civil society has begun to embrace this law through a greater awareness of its right to information, through submitting requests for public information, and via monitoring activities such as the Jamaicans for Justice initiative. But there is a need to remain vigilant, to monitor the processes and ensure there is no addition of unnecessary and unwarranted obstacles or steps; that the government continues on its course of implementation through all the phases until all Ministries and agencies are in effect; that even more citizens are informed of their new rights; and that adequate resources are made available.

Some countries have failed, such as Belize, or are struggling like Trinidad and Tobago, but you are well on your way to reaching the benefits of a fully implemented access to information regime. Once again, congratulations.

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[1] Justice Initiative Access to Information Monitoring Tool: Report from a Five-Country Pilot Study

[2] Id.