THE RIGHT TO KNOW[1] AND THE PROMOTION OF DEMOCRACY AND DEVELOPMENT

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I. INTRODUCTION

Human Rights and Freedom of Information

1. The concept of freedom of information is founded in international human rights law and has been incorporated in the constitutions of countries. It developed out of the basic right to freedom of opinion and expression enshrined in the Universal Declaration of Human Rights (Article 19) which states: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" In order to understand the significance of the freedom of information in the modern world we need to look at the current place of human rights in both international and national legal regimes.

2. Since the signing of the Charter of the United Nations which in its preamble "reaffirmed faith in fundamental human rights", human rights have become part of customary international law. It can be said that human rights constitute the very foundation of the international community which has evolved especially since the Second World War. Certain human rights principles and norms have indeed become "supra-positive" rights from which no derogation is possible under any circumstances including states of emergency, such as the right to life (although the death penalty does exist in many countries); the right against torture or cruel, inhuman or degrading treatment or punishment; prohibition of slavery and slavery like practices and slave trade. Similarly human rights law totally proscribes genocide and crimes against humanity.

3. While freedom of information cannot be said to fall within this category of non-derogable rights, it certainly assumes pre-eminence in the contemporary world with the spread of democratic culture and the increasing credence given to people's participation in the process of sustainable development.

The Legal Basis of Freedom of Information

4. Freedom of information and communication, or dissemination of information originated in relation to the rights and responsibilities of the mass media.

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[1] In this paper the term right to know is used interchangeably with freedom of information or the right to information. The purview of this paper is limited to the right of access to government-held information while recognising that the concept of freedom of information has a much wider meaning and application.

However as with other areas of human rights law the right to freedom of information now extends to many other sectors of civil society, and has been most widely codified in the context of the people's right to access government-held information. The subject has also rapidly become much more complex and controversial in the wake of the virtual revolution in information technology which has made access to a whole range of issues easy, quick and relatively cheap.

5. Given its potential impact and far-reaching implications this right has been made subject to certain conditions. Article 19 of the International Covenant on Civil and Political Rights on freedom of opinion and expression states that the exercise of these rights carries with it special duties and responsibilities. *It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.* The restrictions imposed in the existing freedom of information legislation of countries are in the main limited to those enumerated here. The challenge is to guarantee this right to all persons with the necessary protections. Increasingly the trend is towards disclosure rather than secrecy.

Freedom of Information, Open Government and Sustainable Development

6. In the political realm the importance of freedom of information may be judged by the extent to which dictatorships have always sought to restrict this right. It can be argued therefore that democracy and freedom of information go hand in hand, and indeed its realisation is a basic pre-condition for the effective functioning of a democratic polity. The role of governments has expanded into almost every field of human activity and consequently the need for access to the decisions made and why has increased enormously. It is almost stating the obvious to say that a democratic government which is based on the principle of choice and consent of the governed presupposes free and wide dissemination of information. In recent years large-scale corruption and abuse of power by governments have placed a renewed emphasis on transparency and accountability which can only be established where there is a presumption in favour of disclosure and easy access to information, not only those held by government but by a range of actors in the private sector. Similarly, people's active involvement in the development process requires above all the provision of full and accurate information regarding development plans, resource allocations and expenditures. It may be argued that such information does not have any bearing on for example national security or the reputation of others, but it is surprising to see the extent of the use of the claim of privilege to deny disclosure in matters which do not seem to be in the least sensitive or requiring confidentiality. It is outside the scope of this paper to elaborate on the fundamental linkages between democracy, development and the freedom of information which merits a separate study.

The Commonwealth, Human Rights and Freedom of Information

7. The Commonwealth has included fundamental human rights as part of its fundamental political values enumerated in the Harare Commonwealth Declaration of 1991. The Millbrook Commonwealth Action Programme was adopted by Commonwealth Heads of Government in 1995 to fulfil more effectively their commitment to the Harare principles. Heads also established a mechanism called the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG) to address serious and persistent violations of these principles. Thus, as with the United Nations, the ground-rules of the Commonwealth community are also founded on human rights principles.

8. The Meeting of Law Ministers of the Commonwealth in Barbados in 1980 had invited the Commonwealth Secretary-General to consider arranging studies analysing the issues and administrative and other aspects of "Freedom of Information" schemes, bearing in mind the different circumstances of member

countries. In further recognition of the importance of freedom of information in promoting good governance, Senior Officials of Commonwealth Law Ministries at their meeting in May 1998 endorsed a proposal for a Commonwealth-wide process of consultation to share model legislation and experiences, and to develop common standards of law and practice relating to the citizens' right to know.

9. The Expert Group Meeting on the Right to Know (30-31 March 1999) marks the beginning of an effort to assist Commonwealth member countries who are committed to ensuring freedom of information with *good practice guidelines and recommendations* regarding relevant legislation and methods of implementation based on experience both within and outside the Commonwealth. The principal aim of the Expert Group is to examine and endorse the Draft Good Practice Guidelines and Recommendations on the Right to Know for the consideration of Law Ministers at their Meeting in Trinidad, 3-7 May 1999. The Expert Group is also expected to recommend a programme of action for the Commonwealth to contribute and strengthen the movement for the realisation of the Right to Know in particular and freedom of information generally.

10. In summary the specific objectives of the current programme are:

- to develop Commonwealth Good Practice Guidelines and Recommendations on the Right to Know;
- to assist member governments in their current efforts to promote citizens' right to know and their access to information on matters of public policy;
- to identify the role of civil society actors in the promotion of the right to know;
- to facilitate Commonwealth-wide consultations to share legislation and experiences relating to the citizens' right to know (Freedom of Information legislation);
- to promote the right to know which will in turn help to strengthen both democracy and human rights central to the fundamental political values of the Commonwealth.

II. A REVIEW OF COMPARATIVE LAW AND EXPERIENCES ON THE RIGHT TO KNOW

11. The objective of this section is to examine existing legal regimes relating to the right to know[2] in Commonwealth members states as well as in non-member states with a view to culling and analysing their principal features. It is expected that such an analysis will assist in the formulation of good practice guidelines for the Commonwealth.

12. Comprehensive legislation on the right to know (hereinafter referred to as FOIAs or Freedom of Information Acts) exist only in a limited number of countries belonging to the Commonwealth. However, the FOIAs in Australia, Canada and New Zealand, for example, have been operating for a considerable period of time and those countries are in a position to evaluate the strengths and weaknesses of their respective regimes. Also, as a result of the intensification of the debate on the right to know, a number of member states such as India, South Africa, Fiji and Trinidad and Tobago are in the process of drafting or adopting FOIAs.

13. A large number of Commonwealth states do not have comprehensive right to information regimes. Such states may, however, have laws that provide for access to information in a piecemeal manner. For instance, most states do permit access to land registers, company registers, certain court and parliamentary records and the like. But in the absence of a **comprehensive** right to know

[2] In this paper the term "right to know" is used interchangeably with the "right to information". Both terms denote the right of access to government-held information.

regime, most states are governed on the basis of government secrecy, where disclosure is the exception to the rule. It is for this reason that this paper focuses on comprehensive regimes to shed light on good practices.

14. While it is customary for studies on the right to know to focus entirely on FOIAs, the constitutional framework relating to the right, if any, also has to be necessarily examined. It is, after all, the supreme law of the land that sets out the structure and nature of the system of governance in each state. Moreover FOIAs operate only within a given constitutional framework. It is crucial, therefore, to determine the extent to which the constitutional framework of a state ensures open government by guaranteeing the right to know.

Constitutional Protection of the Right to Know

15. In Sweden the constitutional guarantee of the right to know has been a principal feature of governance since 1766. Perhaps no other country in the world can trace open government that far back. Currently, only a few constitutions in the Commonwealth expressly guarantee a right of access to government-held information. Seychelles, New Zealand[3] and South Africa are some of the countries whose constitutions explicitly guarantee the right to know. The 1997 Constitution of Fiji requires Parliament to enact a law to give effect to the right of access to official documents of the government and its agencies.

16. The 1996 Constitution of South Africa has broken new ground by guaranteeing a right of access to information held not only by the government but also by private parties. Article 32 declares:

> Everyone has the right of access to--
>
> (a) any information held by the state: and
>
> (b) any information that is held by another person and that is required for the exercise or protection of any rights.

17. The debate as to the parameters of Article 32 (1) (b) appears to be ongoing. The draft Open Democracy Bill of South Africa limits access to information held by a "private body" only to such information that amounts to personal information concerning the requester.

18. It is important to note that the guarantee in Article 32 is in addition to the guarantee of free expression {Article 16 (1)} that defines the right to free expression as including also "the right to receive or impart information or ideas". The incorporation of two distinct formulations relating to the right of the public to receive information is significant. One specifically guarantees **access** to government-held information while the other guarantees the right to receiving information from any source, including third parties, without arbitrary governmental interference. The formulation adopted by the South African Constitution is very sound as it imposes both positive (to guarantee access) and negative (not to arbitrarily interfere) obligations on the state not to hinder the right of the public to be informed. Such a comprehensive constitutional regime, it could be argued, is essential to ensure the establishment of a culture of open government.

19. Many constitutions, on the other hand, enshrine only guarantees of free expression. National courts are increasingly interpreting these provisions to include also the right to receive information. Such interpretations are in keeping with international law norms on the right to free expression contained in Articles 19 of the UDHR and the ICCPR.[4]

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[3] The Official Information Act of 1982 of New Zealand is considered to be a constitutional document, as is the New Zealand Bill of Rights Act of 1990.

[4] Article 19 of the UDHR declares--
[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Similarly, Article 19(2) of the ICCPR recognises that ..... [e]veryone shall have the right to freedom of

However, it is not clear whether such interpretations of constitutional provisions also recognise a right of access to government-held information.[5]

20. The Indian Supreme Court, on the other hand, has held that the freedom of expression clause of the Constitution of India[6] does oblige the Government to disclose particulars of government transactions.[7] Also, because of the recognition of public interest litigation by an extremely activist Supreme Court, the ability to force the Government to disclose information on its activities are far greater in India. Yet, in the absence of a law that provides access to government-held information in a systematic manner, the Government of India has put forward proposals to adopt a FOIA.[8]

21. The interpretation of free expression clauses that do not expressly guarantee a right of access to government-held information depends on judicial philosophy. Therefore, it is becoming increasingly clear that having a specific constitutional right to know framework is imperative to effectively ensure a system of open government.

Freedom of Information Legislation

22. Some countries, even though without constitutional guarantees of the right to know, have adopted FOIAs (Australia, Canada and the United States). Others have combined (or are proposing to combine) express or implied constitutional guarantees of the right to know with FOIAs (New Zealand, South Africa (proposed) and India (proposed)). Sweden's freedom of information law is an integral part of its Constitution. Seychelles, on the other hand, has a constitutional guarantee of the right to know without an accompanying FOIA.

23. Some of the salient features of the existing as well as proposed FOIA legislation are discussed below.

Who has a right to know?

24. A majority of the FOIAs guarantee a right of access to "any person", that term including both natural as well as legal persons. Some countries require that the person applying for access ought to be resident in the country whether a citizen or not (New Zealand), or at least have an address in that country for purposes of correspondence if that person is not resident in the country (Australia). The Australian FOIA has been interpreted to extend the right to those serving prison sentences and also minors.

25. The Canadian FOIA limits access to citizens or permanent residents. But the Governor in Council has been given the discretion to extend that right to others as well. The proposed Indian law also guarantees the right only to citizens.

26. None of the laws available for purposes of this study require the applicant to state reasons why the information is requested. In other words, there is no qualifying test for a person to be entitled to access. Also, none of the laws grant a special right of access to any category of persons.

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expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, eithter orally, in writing or in print, in the form of art, or through any other media of his choice.

[5] Although the US Supreme Court has held that the First Amendment of the US Constitution does encompass the right to receive information, it has nevertheless been categorical in rejecting the arguments that it guarantees a right of access to government-held information. See, e.g., Houchins v. KQED, Inc., 438 US 1 (1978).

[6] Article 19(1)(a) of the Constitution of India recognises that "all citizens shall have the right to freedom of speech and expression".

[7] See Gupta v. Union of India, [1982] AIR 149 (SC) and Uttar Pradesh v. Raj Narain, [1975] AIR 865 at 884 (SC).

[8] See Report of the Working Group on Right to Information and Promotion of Open and Transparent Government (Ministry of Personnel, Public Grievances and Pensions, Government of India, May 1997).

Access procedure

Information to facilitate access

27. Most FOIAs require institutions subject to disclosure to publish information during specified time intervals on the structure, functions, procedures, rules and regulations of, and the types of records maintained by each institution. They are also obliged to outline the procedures to be followed in order to access records, especially to identify the official to whom the application must be sent. The proposed South African law has a novel feature that makes provision for making available to the public the information guides and manuals required to be published by government bodies under that law through: (i) each government body; (ii) post offices; (iii) libraries; (iv) institutions of education; and (v) on-line. Furthermore, the telephone directory has to carry the name, contact number and e-mail address of the information officer of each government body as part of the entry for each body. It is also worth noting that both the proposed South African and Indian laws, taking due regard of social realities in those countries, have made provision for receiving requests not only in writing but even orally.

Timeframe

28. All FOIAs under consideration provide for a timeframe within which a government body has to process a request for information and inform the applicant as to whether or not the request can be granted. Generally, the stipulation is that the decision will have to be made as soon as practicable. The maximum time limit allowed varies from 10 working days to 30 days. Extensions of the time limit can be allowed if the government body specifies the reasons for the delay. Providing access in an efficient manner is the key to the success of any FOIA regime. The timeframe is, therefore, of the essence. In order to ensure efficiency, it appears to be the case that the maintenance of records has to be streamlined (e.g. by having an indexing system), that staff are provided necessary training and a specialised officer be appointed (e.g. an Information Officer as provided for by the proposed South African and Indian laws) to deal with requests for information. It appears to be the case that training of staff has to necessarily undertake the challenge of changing the bureaucratic mindset from one of maintaining secrecy to one of disclosure.

Fees

29. One of the major reasons usually advanced against the adoption of a FOIA regime is the cost that is involved in servicing requests. Most FOIAs provide for the charging of a reasonable fee for searching (by the hour) for and making of copies of documents. Exemption from or reductions in fees are provided where the release of the document is in the public interest, where the applicant is indigent, or where the information sought pertains to the personal affairs of the applicant. If the applicant wishes to have the request processed urgently an extra fee could be prescribed. Here too, fees may be reduced or waived if the release of the information urgently is in the public interest. The fee structure should reflect the need to cover costs, but not impose undue hardship on the public.

Access to "records" or "information?

30. A clear distinction can be made between a record and information. A record denotes the original document that contains the information stored in writing, electronic or other form. Information on the other hand, can be construed to mean facts culled from the document, and could be a summary of a document.

31. Almost all FOIAs reviewed permit access to official records. Applicants often are given a right to examine the records, obtain copies, view or listen to records that store information in visual or audio form, obtain print-outs from or files in computers, obtain summaries of the information or even oral information about the contents of a record. Under the New Zealand FOIA, for instance, an applicant can request information in any such manner, and if the information cannot be provided in the specified manner reasons have to be given by the relevant authority for not

doing so and the information has to be disclosed in another form. The Australian FOIA has been interpreted to similar effect, also similar provisions are to be found in the proposed laws of South Africa, Fiji, Trinidad and Tobago and India.

32. A novel feature under the proposed South African law is that those applicants who are disabled have a right of receiving information in a form that can be used by them. The authorities are under an obligation to take reasonable steps to provide the information in that manner at no extra cost to the applicant {draft section 23(5)}. Also applicants are permitted to make their own copies of records using their own equipment if that does not cause any inconvenience to the agency, or does not infringe copyright laws {draft section 23 (7)}.

33. Another common feature is the adoption of the principle of severability of a document. That is to say if a document cannot be disclosed for the reason that it contains exempt information, the FOIAs make provision to permit access to the document after severing the exempt information from the document, if that is practically possible. The Australian FOIA has couched this requirement in language which imposes a mandatory obligation on the government. So does the proposed South African legislation. Under proposed legislation in India and Fiji, severance is a discretionary matter.

Access and language policy

34. Many FOIAs do not specifically provide for a language policy to be followed in facilitating access. Sometimes in practice authorities may exercise discretion in determining whether translations are feasible under the circumstances (Australia) even in the absence of a language policy.

35. It is significant to note that countries that have multi-language official languages policies such as Canada and South Africa (proposed) have specific provisions dealing with language policy that has to be complied with in providing access. In both instances, applicants can request copies of a record in a recognised official language. If the record does not exist in that particular language, the authorities have to provide a translation if it is in the public interest to do so (Canada) or if it does not unreasonably interfere with the effective administration of the authority (South Africa).

Are all branches of government subject to disclosure?

36. A majority of FOIAs traditionally subject only the Executive branch of government to disclosure. Ministries, government departments and public corporations are the entities that are usually subject to FOIAs. More often than not, the Cabinet and the Head of State are exempt. Very rarely are the legislative and the judicial branches subject to disclosure. One has to view this question in the context of the development of a culture of open government. Should open government relate to only some institutions belonging to the Executive and to the exclusion of all others?

37. One can discern a current trend that seeks to subject all branches of the government (at federal, state and local government levels) and to the maximum extent possible, taking into consideration also the need to ensure the effective functioning of government (draft laws of India, Trinidad and Tobago and South Africa).

Is the state obliged to preserve records?

38. There is nothing in most FOIAs, to suggest the imposition of a positive obligation on the state institutions covered by such laws to preserve documents. Most FOIAs only oblige the covered institutions to periodically publish an index of the available documents. It appears from some of the responses received that laws pertaining to archives prohibit the destruction of public records (Australia, New Zealand). But this is not the same as obliging the state to maintain records, e.g., minutes of meetings. The Archives laws seem to oblige governments to protect those documents that already exist. What if a statutory board fails to

maintain minutes of certain meetings? In its 1995 report the Australian Law Reform Commission has recommended that the archives be amended so as oblige public authorities to maintain records. Such an obligation could be created through the FOIA itself, or through the strengthening of archives laws.

Should there be a presumption in favour of disclosure?

39. Several FOIAs require that their provisions be interpreted in favour of disclosure unless the law specifically exempts the record/s in question (Australia, New Zealand and the proposed laws of Fiji, South Africa and Trinidad and Tobago).

40. Some of the laws contain a provision setting out the purposes of the law; others have a clause setting out the objects of the law. Then there is provision that requires that the laws be interpreted in accordance with those purposes/objects. The Australian Law Reform Commission in a report reviewing the operation of the Australian FOIA (released in May 1995) recommends the inclusion of a preamble to the law that sets out the value rationale on which the FOIA is based, rather than merely have a clause setting out the objects (e.g. make records accessible to the public). The law ought to be interpreted in light of the context set out in the Preamble. That will give a clearer indication to courts regarding the spirit in which the law ought to be interpreted.

On what grounds can records be withheld from the public?

41. Perhaps the most contentious feature of any FOIA is the grounds for exempting information from disclosure. Following are frequently stipulated grounds of exemption:

(i) defence, national security and international relations;

(ii) inter and intra agency memoranda (internal discussions and advice);

(iii) law enforcement and legal proceedings;

(iv) effective management of the economy and commercial interests;

(v) effective operation of the public service;

(vi) privacy of an individual;

(vii) information given in confidence;

(viii) third party commercial secrets and confidences.

42. A request may also be denied if it is unreasonable, vexatious or too voluminous; if the information has already been made public; or the request is premature in relation to publication; if the record cannot be found or does not exist. Increasingly, it appears that a two tiered test is used in making a decision about disclosure of exempt information (Australia, Canada, proposed South African, New Zealand and Trinidad and Tobago legislation). The test takes the following into consideration:

(i) that the information is exempt as its disclosure will harm one or more of the stipulated interests on which the exemption is based; and

(ii) that an otherwise exempt information shall, nonetheless, be disclosed if it is in the public interest to do so taking into consideration the value rationale for which freedom of information is recognised. Factors such as the following will be taken into account in applying the public interest test:

if the disclosure reveals:

- abuse of authority or negligence on the part of a public body
- a danger to the health or safety of an individual or to the environment
- injustice to an individual
- unauthorised use of funds.

43. This two tiered test permits the balancing of the general rule in favour of disclosure with the need to protect larger state and individual interests.

44. Also, as discussed above, disclosure has to be the rule where it is possible to sever exempt information from a document.

Should reasons be given when a request is refused?

45. It is a general requirement of FOIA regimes that reasons for refusing a request for information be given in writing either as a matter of course or when requested by an applicant. Additionally, information on how to lodge an appeal against that decision also must be communicated to the applicant.

Review of unfair decisions

46. In order to ensure that arbitrary decisions relating to requests for information are not made by public bodies, it is imperative that an independent mechanism for review be available to an aggrieved party. All FOIAs under consideration provide for such review mechanisms. The mechanism, however, varies widely. Most FOIAs first allow an internal administrative review before going to a higher administrative body or finally to the courts.

47. The Canadian FOIA creates the office of the Information Commissioner who first reviews a complaint of an aggrieved party before the matter can go to court. In New Zealand, the office of the Ombudsman investigates complaints made under the FOIA. The proposed South African law seeks to establish specialised "Information Courts" as courts of last resort. In India, the proposed FOIA suggests that after an internal review, an aggrieved party could appeal to the bodies set up to enforce the Consumer Protection Act.

48. While countries have adopted varying models of review, it appears to be the case that the establishment of specialised "information" bodies that can function as general FOIA enforcement mechanisms, such as the office of the Information Commissioner established in Canada, could serve the needs of the public best. It is important that the independence of such bodies is ensured and persons of integrity and competence are appointed to discharge the functions.

Access to personal information

49. A very important component of most FOIA regimes under consideration is the access provided to personal information on individuals held by the state. Modern practices by states indicate that the types of personal information compiled and retained by various public bodies is ever-increasing. Most data banks are also increasingly computerised, thus making access easy by even third parties. First, such personal data has to be protected for purposes of guarding individual privacy rights. Secondly, persons must have access to that data in order to examine the accuracy and the relevance of such information for the purpose/s for which they are maintained, and consequently be able to make corrections where the information is incorrect.

50. Some countries have privacy and data protection regimes in addition to an FOIA regime (Australia, United States). Others have striven to have an all inclusive FOIA regime. In its 1995 report, referred to earlier, the Australian Law Reform Commission takes the position that it is more advisable to have a single regime dealing with personal data. The proposed South African law proposes to include a personal data regime within the FOIA. The proposed FOIAs of Fiji and Trinidad and Tobago also include provisions that permit access to personal data and the right of correction, although not in detail.

51. A modern development in this regard is the extension of obligations to private entities that maintain personal data bases. The proposed South African law encompasses such an extension. The Australian Law Reform Commission too advocated the extension of the Australian Privacy Act to cover the private sector in its 1995 report.

Access to meetings (Sunshine Laws)

52. Some FOIAs permit public access to meetings of certain public bodies. This is in furtherance of the principle of promoting open government. The United States has a separate law (The Government in the Sunshine Act, 1976) that permits access to meetings of federal agencies. It also lists limits to the right. The proposed South African FOIA includes an entire part to provide for access to meetings of governmental bodies; however, access is restricted to meetings only of governing bodies.

Community Based Activities for Promoting the Right to Know

53. Human rights norms and standards are often used as a frame of reference for community based movements. They represent goals to be achieved even if the actual situation is a far cry from those standards, and there are real constraints in the way of reaching them. The rights to freedom of expression and information are perhaps the most commonly used human rights which have been invoked by civil society actors in repressive regimes to expose the anti-people actions of government. The movement for a free press or generally for a free media has been based on these basic rights of peoples.

54. In India in August 1996 a national campaign for people's right to information was launched by a group of activists, lawyers, jurists, media persons, administrators, politicians and academicians. This campaign has a two-fold agenda:

(i) to take the issue to the people through organising meetings and "public hearings" all over the country where local communities meet with local government officials to enquire about inter alia local development priorities and expenditures. This process has enabled communities to determine their development needs and priorities and influence local government decision-making; and

(ii) to lobby the Union and State Governments for the enactment of the right to information. This movement which has at its centre a community-based organisation called the Mazdoor Kisan Shakti Sangathan (MKSS) has become a genuine people's campaign for greater transparency and accountability on the part of government using the right to information as the focus of their strategy. This is a remarkable community-based movement in India which has led to the empowerment of the people, and lessons can be drawn from this experience for other countries.

55. It is hoped that the current Commonwealth programme on promoting the right to information will help to gather and disseminate other successful and effective community strategies for translating constitutional and statutory provisions into practical action.

III. THE RIGHT TO KNOW: SUGGESTED GOOD PRACTICE GUIDELINES

1. To ensure that the principle of open government is entrenched in the system of governance, the right of access to government-held information should be expressly incorporated into the constitutions of member states.

2. Member states should adopt Freedom of Information legislation (FOIAs) in order to give effect to the constitutional guarantee of access to government-held information. Such laws should have an overriding effect over other legislation with regard to the right of access.

3. The right of access to government-held information should be guaranteed to every person.

4. The right of access should not be denied to any person on the basis of the reasons for which the information is sought. In fact, no qualifying test should be

employed to screen persons who apply for access to government-held information.

5. All three branches of the government should be subject to disclosure; instead of exempting entire institutions from disclosure, FOIAs should stipulate only the categories of exempt information so as to protect larger state and individual interests.

6. The right of access must be in regard to government-held records as opposed to only information. The term "records" must be given a broad definition to include new developments in information technology. Applicants should be given the right to examine and obtain copies of records; listen to or view records; get computer print-outs or copies of computer files; and even obtain summaries of records and oral information on the contents of records. Access must be provided in the manner requested; if not, reasons must be furnished for not doing so, and access must be provided in another form. Reasonable steps should be taken to make records accessible to the disabled in a form that can be used by them.

7. All government bodies must publish, (at least once a year or in any event regularly), information relating to each body's structure, functions, procedures, rules and regulations and the types of records maintained. They should also publish the procedures to be followed in order to access records, and the name/s and contact information of officials who are entrusted with the task of dealing with right to information requests. Manuals and guidelines containing such information should be made freely and widely available to the public through each government body, post offices, public libraries, educational institutions, and where possible, on-line.

8. Procedures for requesting information should be uncomplicated.

9. Each government body must have an officer/s exclusively assigned to deal with right to information requests.

10. An FOIA must specify a reasonable time period within which a government body should inform an applicant who has requested information as to whether access will be permitted or not. Where access is permitted, the records should be made available promptly

11. An applicant should be charged only such fees as are reasonable to cover the costs involved. Fees should be reduced or waived where disclosure is in the public interest; where the applicant is indigent; or where the information sought pertains to personal data.

12. Official language policies in a state should be taken into consideration in facilitating access to records.

13. FOIAs should impose a positive obligation on the government to maintain and preserve records that are necessary for government accountability. Merely imposing negative obligations on the government not to destroy records is not sufficient.

14. FOIAs should create a strong rule or presumption in favour of disclosure. Withholding of information should be the exception. An FOIA should be interpreted in the light of the value rational underlying the right to know.

15. Grounds on which information is exempted from disclosure should be narrowly drawn up and should be based only on public good, effective governance and individual privacy rights.

16. Information should not be withheld unless the disclosure of such information will (substantially) harm one or more of the stipulated interests on which the exemption is based. However, information, which is otherwise exempt,

should be disclosed if the public interest served by disclosure outweighs the harm caused.

17. Where a document contains exempt information, it should nonetheless be made accessible if it is possible to sever the exempt information from the rest of the document.

18. Where a government body refuses a request for information, it must always give reasons for the refusal in writing.

19. A refusal to disclose information should always be subject to independent review. Bodies that are entrusted with the task of reviewing such refusals must be able to function independently of the authority that refused the request.

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