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CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
1.	ISSUES AND SUGGESTIONS FOR THE IMPLEMENTATION OF THE INDIA'S RIGHT TO INFORMATION ACT 2005 IN LIGHT OF THE LATIN AMERICAN COUNTRIES' EXPERIENCE <i>DR. PRATIBHA J. MISHRA</i>	1
2.	AN EMPIRICAL STUDY ON JOB STRESS IN PRIVATE SECTOR BANKS OF UTTARAKHAND REGION <i>MEERA SHARMA & LT. COL. DR. R. L. RAINA</i>	7
3.	FOREIGN DIRECT INVESTMENT IN INDIA: AN OVERVIEW <i>DR. MOHAMMAD SAIF AHMAD</i>	14
4.	REFLECTIONS ON VILLAGE PEOPLE'S SOCIO - ECONOMIC CONDITIONS BEFORE AND AFTER NREGS: A DETAILED STUDY OF ARIYALUR DISTRICT, TAMIL NADU <i>DR. P. ILANGO & G. SUNDHARAMOORTHY</i>	19
5.	THE CAUSAL EFFECTS OF EDUCATION ON TECHNOLOGY IMPLEMENTATION – EVIDENCE FROM INDIAN IT INDUSTRY <i>S.M. LALITHA & DR. A. SATYA NANDINI</i>	25
6.	A STUDY ON ONLINE SHOPPING BEHAVIOUR OF TEACHERS WORKING IN SELF-FINANCING COLLEGES IN NAMAKKAL DISTRICT WITH SPECIAL REFERENCE TO K.S.R COLLEGE OF ARTS AND SCIENCE, TIRUCHENGODE, NAMAKKAL DISTRICT <i>SARAVANAN. R., YOGANANDAN. G. & RUBY. N</i>	31
7.	AN OVERVIEW OF RESEARCH IN COMMERCE AND MANAGEMENT IN SHIVAJI UNIVERSITY <i>DR. GURUNATH J. FAGARE & DR. PRAVEEN CHOUGALE</i>	38
8.	VARIABLE SELECTION IN REGRESSION MODELS <i>M.SUDARSANA RAO, M.SUNITHA & M.VENKATARAMANAIH</i>	46
9.	CUSTOMER ATTITUDE TOWARDS SERVICES AND AMENITIES PROVIDED BY STAR HOTELS: A STUDY WITH REFERENCE TO MADURAI CITY <i>DR. JACQUELINE GIGI VIJAYAKUMAR</i>	50
10.	QUALITY AND SUSTAINABILITY OF JOINT LIABILITY GROUPS AND MICROFINANCE INSTITUTIONS: A CASE STUDY OF CASHPOR MICROCREDIT SERVICES <i>DR. MANESH CHOUBEY</i>	56
11.	INDIAN MUTUAL FUND MARKET: AN OVERVIEW <i>JITENDRA KUMAR & DR. ANINDITA ADHIKARY</i>	63
12.	SMART APPROACHES FOR PROVIDING THE SPD'S (SECURITY, PRIVACY & DATA INTEGRITY) SERVICE IN CLOUD COMPUTING <i>M.SRINIVASAN & J.SUJATHA</i>	67
13.	A COMPARATIVE STUDY ON ETHICAL DECISION-MAKING OF PURCHASING PROFESSIONALS IN TAIWAN AND CHINA <i>YI-HUI HO</i>	70
14.	THE INTERNAL AUDIT FUNCTION EFFECTIVENESS IN THE JORDANIAN INDUSTRIAL SECTOR <i>DR. YUSUF ALI KHALAF AL-HROOT</i>	75
15.	STUDY ON ROLE OF EFFECTIVE LEADERSHIP ON SELLING VARIOUS INSURANCE POLICIES OF ICICI PRUDENTIAL: A CASE STUDY OF SUBHASH MARG BRANCH, DARYAGANJ <i>SUBHRANSU SEKHAR JENA</i>	80
16.	AN EMPIRICAL STUDY ON WEAK-FORM OF MARKET EFFICIENCY OF NATIONAL STOCK EXCHANGE <i>DR. VIJAY GONDALIYA</i>	89
17.	THE GOLDEN ROUTE TO LIQUIDITY: A PERFORMANCE ANALYSIS OF GOLD LOAN COMPANIES <i>DR. NIBEDITA ROY</i>	94
18.	STUDY ON THE MANAGEMENT OF CURRENT LIABILITIES OF NEPA LIMITED <i>DR. ADARSH ARORA</i>	99
19.	QUALITY OF MEDICAL SERVICES: A COMPARATIVE STUDY OF PRIVATE AND GOVERNMENT HOSPITALS IN SANGLI DISTRICT <i>SACHIN H. LAD</i>	105
20.	DIVIDEND POLICY AND BANK PERFORMANCE: THE CASE OF ETHIOPIAN PRIVATE COMMERCIAL BANKS <i>NEBYU ADAMU ABEBE & TILAHUN AEMIRO TEHULU</i>	109
21.	CUSTOMER KNOWLEDGE: A TOOL FOR THE GROWTH OF E-LEARNING INDUSTRY <i>DR. MERAJ NAEM, MOHD TARIQUE KHAN & ZEEBA KAMIL</i>	115
22.	THE EFFECTS OF ORGANIZED RETAIL SECTOR ON CONSUMER SATISFACTION: A CASE STUDY IN MYSORE CITY <i>ASHWINI.K.J & DR. NAVITHA THIMMAIAH</i>	122
23.	PERCEIVED BENEFITS AND RISKS OF ELECTRONIC DIVIDEND AS A PAYMENT MEDIUM IN THE NIGERIA COMMERCIAL BANKS <i>OLADEJO, MORUF. O & FASINA, H T</i>	127
24.	INDO - CANADIAN TRADE RELATION IN THE MATH OF POST REFORM PERIOD <i>ANITHA C.V & DR. NAVITHA THIMMAIAH</i>	133
25.	IMPACT OF BOARD STRUCTURE ON CORPORATE FINANCIAL PERFORMANCE <i>AKINYOMI OLADELE JOHN</i>	140
26.	WORK LIFE BALANCE: A SOURCE OF JOB SATISFACTION: A STUDY ON THE VIEW OF WOMEN EMPLOYEES IN INFORMATION TECHNOLOGY (IT) SECTOR <i>NIRMALA.N</i>	145
27.	SCHOOL LEADERSHIP DEVELOPMENT PRACTICES: FOCUS ON SECONDARY SCHOOL PRINCIPALS IN EAST SHOWA, ETHIOPIA <i>FEKADU CHERINET ABIE</i>	148
28.	EMOTIONAL INTELLIGENCE OF THE MANAGERS IN THE BANKING SECTOR IN SRI LANKA <i>U.W.M.R. SAMPATH KAPPAGODA</i>	153
29.	IMPACT OF CORPORATE SOCIAL RESPONSIBILITY PRACTICES ON MEDIUM SCALE ENTERPRISES <i>RAJESH MEENA</i>	157
30.	IMPACT OF CASHLITE POLICY ON ECONOMIC ACTIVITIES IN NIGERIAN ECONOMY: AN EMPIRICAL ANALYSIS <i>DR. A. P. OLANNYE & A.O ODITA</i>	162
	REQUEST FOR FEEDBACK	168

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ISSUES AND SUGGESTIONS FOR THE IMPLEMENTATION OF THE INDIA'S RIGHT TO INFORMATION ACT 2005 IN LIGHT OF THE LATIN AMERICAN COUNTRIES' EXPERIENCE

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ABSTRACT

This paper examines the Positive and innovative Role of Various Agencies involved in Comprehensive Implementation of Freedom of Information Act in various Latin American countries and suggests various measures to be adopted in light of Latin American countries' experiences to make Implementation of the India's Right to Information Act, 2005 more viable, widespread and People friendly.

KEYWORDS

RTI, India.

INTRODUCTION

The poet Milton, who wrote in 1644: "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties." The above quote of the great poet Milton clearly reflects that Freedom Of Information, or the right to know is the most superior Liberty when comes to Freedom Of Expression. This is a manifestation of the importance of freedom of expression and the public's right to know.

The Commonwealth Expert Group on the Right to Know and the Promotion of Democracy and Development reported in 1999, "Freedom of information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness."¹

Much has been written before and since on the importance of Access to Information (ATI)/Freedom Of Information laws/Right to Information but tellingly there is consensus that "[e]mpowering citizens with the legal right to access information on their Government's activities can strengthen democracy by making the Government directly accountable to its citizens on a day-to-day basis rather than just at election time."² It does this by opening channels of communication between citizen's (whether in organized groups or not) and the state. These open channels of communication and information sharing can enhance "national stability by establishing dialogues between different... groups as well as between citizens and the state, helping to promote popular trust in the political system."³ This in turn can "combat feelings of alienation and reduce the risk of disillusioned sections of the public resorting to violence to promote their political ends."

It is also generally agreed that dialogue between citizens and their governments helps to ensure the effectiveness of development and poverty alleviation strategies and helps to avoid the inevitable failure of development strategies that are designed and implemented without the input of the people they are meant to benefit.

It follows therefore, that implementing an effective access to information law can enable people to be part of the decision-making process and reduce public perceptions of exclusion or unfair advantage of one group over another. This in turn would seem to be in 'the public interest,' an ill-defined term generally taken to mean the 'common well-being' or 'general welfare.' While there is little consensus on what exactly constitutes the public interest there is general agreement that aiding it is a positive force. It is also generally agreed that since a society is composed of individuals the public interest must be calculated with reference to the interests of these individual members.

INDIA'S RIGHT TO INFORMATION ACT

The Indian Right to Information Act, 2005 ("RTI Act") repealed and replaced a 2002 statute, the Freedom of Information Act, which was highly criticized and never came into force⁴. The two main criticisms were that it contained no provision for penalty for willful nondisclosure of information or for willfully incorrect disclosure of information by a government authority, and that there was no provision for an appeal to an independent authority⁵. The Indian Government passed the RTI Act with amendments by the Lok Sabha on May 11, 2005 and the Rajya Sabha on May 12, 2005. The RTI Act has been in force since November 2005 but India adopted a very limited number of rules and some existing States' legislations were repealed.

For more than two decades, the Supreme Court of India has recognised the right to information as a constitutionally protected fundamental right, established under Article 19 (right to freedom of speech and expression) and Article 21 (right to life) of the Constitution. (Constitution of India, 1950): The Court has recognised the right to access information from government departments is fundamental to democracy. Activists at the grassroots have famously relied upon the right to demonstrate that access to information is also essential to ensuring effective participatory development⁶.

Proponents of the right to information in India have long made it clear that the legal right to information simply recognises the moral fact that information held by the government on behalf of the public, collected with public money and accumulated by public servants rightfully belongs to the people. Information is not a gift, graciously bestowed by India's leaders – it is no less than every person's human right⁷.

¹ Promoting Open Government Commonwealth Principles And Guidelines On The Right To Know (1999), Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, Retrieved Sept 21, 2007 from the Commonwealth Human Rights Initiative Website: http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards.htm

² Mistry, Jeet (2006), "Will the tide of freedom of information in the Caribbean reach St Vincent's shores?" Commonwealth Human Rights Initiative, Retrieved Sept 21, 2007 from Commonwealth Human Rights Initiative Website: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm#42

³ Ibid

⁴ Bhushan, P. (2002), "India Approves Freedom of Information Law: The Freedom of Information Bill 2002", Retrieved Sept 21, 2007

Available online at: www.freedominfo.org/news/india/

⁵ Central Information Commission (Appeal Procedure) Rules, 2005 (2005): to be published in the Gazette of India, Part II, section 3, subsection(i) Available online at: www.righttoinformation.gov.in

⁶ Mishra, N. (2005), "People's right to Information Movement: Lessons from Rajasthan", Discussion Paper Series - 4, Human Development Resource Center, UNDP, India. Available at: <http://hdr.undp.org.in/resources/dis-srs/Rajasthan/Right%20to%20Info.pdf>

⁷ Slough, P and C. Rodrigues (2005), "India's Right to Information Movement Makes A Breakthrough", Open Government: a journal on Freedom of Information, Volume 1, Issue 1, p. 3. Available at www.opengovjournal.org

FREEDOM OF INFORMATION/ACCESS TO INFORMATION (ATL) IN LATIN AMERICA AND THE CARIBBEAN

*"[F]reedoms of the press, expression and information in Latin America and the Caribbean compare favorably to those in the other developing regions."*⁸

MEXICO

The Constitution was amended in 1977 to include a right of freedom of information. Article 6 says in part, "the right of information shall be guaranteed by the state." The Supreme Court made a number of decisions further enhancing that right.

The Federal Law of Transparency and Access to Public Government Information⁹ was unanimously approved by Parliament in April 2002 and signed by President Fox in June 2002. It went into effect in June 2003

FOI IMPLEMENTATION

Since shortly before Mexico's nationwide FOI law went into effect in 2003, Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C.¹⁰ has a very instrumental role in preparing for and promoting the law's implementation. It assisted in training Mexican government officials in complying with the new legislation, by bringing international experts (from countries such as the United Kingdom, Hungary, Sweden and Slovakia) with experience in applying FOI legislation in other contexts. LIMAC has engaged for almost a decade in public education about FOI in the NGO sector, and has provided legal assistance to human rights NGOs and advised on litigation to challenge refusals to provide information.

LITIGATION IN RELATION TO THE RIGHT TO ACCESS PUBLIC INFORMATION

The LIMAC department for litigation of the right to access information was created within the association in February 2004 which pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies. The key objectives of this department are to offer free of charge legal consultancy services to citizens in the exercise their right to access public information, as well as to contribute to the expansion of this right through litigation involving cases of general interest in relation to this question. LIMAC has initiated as many as 3800 cases related to FOI Law and got 3245 hearings in its favour¹¹.

Apart from that it has to its credit creating a media awareness through regular publications in newspapers nationwide articles related to FOI cases. It got as many as 4280 articles published in time of implementation of FOI Law in Mexico¹².

LEGAL CAPACITY DEVELOPMENT FOR FOI LAW**MEXICO LEGAL RIGHTS FELLOWSHIP PROGRAM**

In 2006, Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C Initiative extended to Latin America its Legal Rights Fellowship Program, which brings young lawyers for one year to study Legal rights at the Central European University in Budapest, followed by a year working in a sponsoring NGO in their home country on a FOI Initiative project. In addition, as part of our Practicing Fellows Program, a young Mexican lawyer who has previous experience both on justice reform and at the Inter-American Commission for FOI, has been recruited to work on project promoting Legal Rights awareness for FOI in Mexico.

MEXICO: CLINICAL LEGAL AWARENESS CELL

While legal clinics are well-established in parts of Latin America, Mexico is unusual in that, despite its long border with the U.S., there has until recently been only one live-client university-based Clinical legal awareness cell —at the law faculty of the Instituto Tecnológico Autónomo de México (ITAM) in Mexico City. To encourage further development of Clinical legal awareness cell in Mexico, Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C Initiative has convened two meetings in the past year for representatives of 20 law schools in Mexico, together with experts from Argentina, Chile and the United States. As Mexican universities develop Clinical legal awareness cell, Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C will include Mexican teachers and students in annual worldwide Clinical legal awareness cell training and development workshops to spread wings of FOI Law nationwide.

MEXICO: PROMOTING PRO BONO LEGAL SERVICES

Experience in the U.S. and in several Latin American countries suggests that pro bono (volunteer) legal activities gain traction where an organizational infrastructure exists to match, and facilitate communication among, providers and consumers of legal services. In the U.S., the NGO Pro Bono Net uses a web portal and software for this purpose. In Argentina Instituto Pro Bono trains pro bono coordinators at local NGOs throughout the country. Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C. has involved Mexican lawyers in regional activities devoted to promoting pro bono work, and is devoting modest time and resources exploring with Mexican partners the possibility of drawing upon these experiences to foster enhanced pro bono legal culture in Mexico.

OTHER ASPECTS OF THE NEW FREEDOM OF INFORMATION LAW INCLUDE¹³:

---MEXICO set up the Mexican Federal Institute for Access to Public Information (IFAI)¹⁴ and after 4 years in existence, finding IFAI to be a model institution for other countries.....it functions much like the Election Commission or TRAI of India.

It is a nodal agency to facilitate implementation of FOI Law in its full spirit.

-- Secrecy end-date: According to Article 15, the government must open its files 12 years after they were created (representing a compromise between the Fox draft's 20 and the Grupo Oaxaca's 10¹⁵ - and compared to 25 years in the United States).

-- Deadlines: An agency must respond to a request within twenty working days and deliver documents ten working days later.

-- Documents: A citizen's request and the government's response must themselves be public, and agencies must make the resulting documents available to all in an accessible manner (another advantage over U.S. law).

-- Fees for access: Chapter V of the new law resolves the problem of fees by removing the cost of search. Only the cost of reproduction and delivery of documents is now charged.

⁸ As it stands now all the Latin America and the Caribbean countries either guarantee freedom of information as part of their constitutional provisions on freedom of speech and freedom of expression, or have a specific law providing a regime for accessing information, or both.

⁹ See: <http://www.freedominfo.org/documents/laweng.pdf>

¹⁰ Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C. is a Justice Initiative partner institution in the area of Freedom of Information is a non-partisan, secular and non-profit civil society organization that promotes the individual's right to information and especially to public information in the framework of a democratic state based on the rule of law.

¹¹ See: <http://www.limac.org.mx/ext.php?name=section/casos.php>

¹² See: <http://www.limac.org.mx/extras/download/v/MANUALFEDERAL.pdf>

¹³ Doyle, Kate (2002), "In Mexico, a New Law Guarantees the Right to Know". Available online at: <http://freedominfo.org/features/20020709.htm>

¹⁴ The Federal Institute for Access to Public Information in Mexico and a Culture of Transparency, A Report for the William and Flora Hewlett Foundation, February 2006

¹⁵ FOI legislative proposal presented to the Congress during 2001. The first was the product of the civil society coalition, the Grupo Oaxaca, presented to Congress in October, 2001 and adopted and sponsored on December 6, 2001 by members of every party represented in the House of Deputies except those of President Vicente Fox's National Action Party.

-- "Positiva ficta": Article 53 resolves in the Grupo Oaxaca's favor the question of what an agency's failure to respond to a request means. According to the law, the lack of a response will be considered acceptance of the request, setting in motion the process and deadlines normally associated with an accepted request, with the added advantage of an expedited procedure.

-- Repeated request opportunities: Article 60 gives citizens renewed opportunities to challenge an agency's decision to withhold information, after one year has passed since the original decision.

SINALOA'S STATE LAW¹⁶

Sinaloa's freedom of information law contains several clauses that are significantly more progressive than the federal law. One of them is particularly interesting: the requirement to educate the state's citizens about their new right to information. The obligation is described in Chapter III, "Promoting Openness."

In Article 13, the law requires that state agencies train their officers on the right to information and Habeas Data through "courses, seminars, workshops and any other teaching and training methods considered appropriate." Article 14 targets the school system: "Plans and study programs for basic, elementary and upper education as well as training of elementary school teachers shall include training on the importance of the right to access public information and the right of Habeas Data in a democratic society." Sinaloa's State Commission for Access to Public Information (equivalent to the institute established in the federal law) is obliged to assist in preparing programs and didactic materials for the schools. Finally, Article 15 requires the state's public and private universities to include in their curricula study segments on the right to information and Habeas Data, with assistance from the Commission.

The Sinaloa law will serve as a fascinating test of the extent to which government can legislate cultural change. For beyond the new openness requirements mandated by the initiative, the law aims to change people's attitudes and expectations toward government by educating them about their rights and about the government's obligations to them.

CONCLUSION

Mexican civil society has broken new ground with the passage of the country's federal and state freedom of information acts. The laws represent the crowning achievement of a long campaign for transparent and accountable government in Mexico, one that truly began in the mid-1970s with efforts to amend the Mexican Constitution in order to enshrine the public's right to information as a constitutional right. The amended language to Article 6 passed in 1977.

The government now has exactly one year to make the institutional changes required by the act and to prepare its civil servants before the law takes effect. By the same token, however, the reporters and editors, scholars, lawyers, openness advocates and public interest organizations behind the freedom of information campaign also have just one year - for the success or failure of the law's implementation will depend as much on the continued participation of Mexican civil society as it will on government action.

CASE STUDY

FOI Law Discloses Tax rebates to 27 Multinational Corporations in Mexico¹⁷

MULTINATIONAL CORPORATIONS	AMOUNTS IN TAX REBATE (\$ MILLION)
Wal-Mart Stores	7.89
Royal Dutch Shell	6.4
Crédit Agricole	5.3
Deutsche Bank	2.33
Gazprom	2.21
Morgan Stanley	2.09
Merrill Lynch	1.067
Goldman Sachs Group	1.03
Procter & Gamble	1.01
Prudential	1.0

TOWARD IFI TRANSPARENCY: THE USE OF DOMESTIC REMEDIES

Mexico established a landmark precedent for the application of national freedom of information laws to the activities of international institutions when its Information Commission on Nov. 16, 2005 ordered the disclosure of documents related to a \$108 million World Bank loan to the state of Guanajuato, México.

The decision by the Federal Institute for Access to Public Information (IFAI) frees up new material about a major project to reform the water systems, the highways and the housing infrastructure in Guanajuato - the home state of Former Mexican President Vicente Fox, and neither the poorest Mexican state, nor one affected by emergencies and conflict. The materials were made available Jan. 16, 2006 and are currently being analyzed by Mexican NGOs.

A Mexican nongovernmental organization, Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C, chose this project to test access to information from the World Bank. LIMAC argued that there was a very clear, overriding public interest to know why Guanajuato was chosen from among the other 31 states. The project is the first loan allocated under the Country Procurement System by the World Bank using what is known as a "country system" modality, which relies on assessment evaluations and environmental impact studies prepared by the government instead of by World Bank staff.

Access to information from the World Bank and other international financial institutions (IFIs) is a major international transparency issue. The Global Transparency Initiative, of which LIMAC is a member, is an international organization committed to expanding the transparency of IFI transparency through various activities. The GTI has used new and creative strategies, such as using domestic Freedom of Information (FOI) laws to obtain information from the IFIs and member governments.

Through a public awareness campaign in Mexico for launched by Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C to know details of missing military men a FOI application was moved forward by El Universal newspaper (Mexico)

MEXICO Military was forced to Break Silence and reply to the application.

The exposure came up with grave information to utter shock of the people that most of the missing military men faced courts-martial or convictions.

The Mexican Defense Department reported that since Former President Vicente Fox took office in 2000, there have been 299 courts-martial, including 210 convictions.

Of those proceedings, 33 were on charges of murder, 31 for insubordination, 26 for fraud, 24 for desertion, 22 for robbery and 21 for drug-related offenses.

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¹⁶ See: <http://www.freedominfo.org/documents/sinaloaeng.pdf>

¹⁷ Tax rebates to 27 Multinational Corporations in Mexico Figures Revealed for First Time After FOI Request from the Multinational Monitor, Excel Spreadsheets Now Searchable on <http://www.multinationalmonitor.org/>

¹⁸ Pla, Issa Luna (2006), "New Steps Toward IFI Transparency: The Use of Domestic Remedies" Available online at: <http://www.freedominfo.org/ifti/20060120.htm>

PERU

The Law of Transparency and Access to Public Information was adopted in August 2002 and went into effect in January 2003²⁰.

The campaign for the law was led by the Peruvian Press Council²¹.

The Permanent Commission of the Peruvian Congress approved revisions to the Law of Transparency and Access to Public Information, which had been originally promulgated by President Alejandro Toledo in August 2002. This revised version of the law incorporates some recommendations made by organizations like the Peruvian Press Council and the Human Rights Ombudsman. Kela León, of the Peruvian Press Council, has characterized the changes as, "an important step in favor of transparency and the principle of public accounting," and notes that the revised law accepts many of the Press Council's suggestions on the criteria for national security exemptions, found in their "Principles of Lima" declaration²².

The Parliament amended the law in January 2003 and made numerous amendments to the Act following criticism of the excessive exemptions, especially relating to national security and a law suit filed by the Ombudsman in the Constitutional Tribunal on the constitutionality of the Act²³.

The Press Council of Peru played an incredible role in the drive towards an access to information law in Peru and their work has influenced developments across Latin America in this area. The Lima Principles of the Press Council of Peru, approved on the 16th of November 2000, set out a comprehensive framework for access to information and the rights and responsibilities of media practitioners. Not satisfied to stop there the Council held meetings with leaders at all levels of society building a momentum for the passage of a law. They worked closely to overcome the objections of interest groups (such as the powerful military) to the principle of greater freedom of information and worked with these groups to agree acceptable language to protect sensitive information and ensure limited exemptions in any draft bills. They sponsored conferences and workshops in Peru and throughout Latin America to build interest and acceptance among different constituents. Their efforts bore fruit in August 2002 when Peruvian President Alejandro Toledo formally promulgated the Law of Transparency and Access to Public Information. While this law represented a major advance for the right to information, the Peruvian Press Council were disappointed with some aspects of the law that they felt had defects that may pose problems in the future. In all advocacy involving governments you win some and you lose some.

Many lessons can be learnt from the efforts of the Peruvian Press Council as to what media can do and these lessons are worthy of study. Pertinent key efforts include:

1. Build a constituency of believers
2. Develop partnerships
3. Draw on the experiences of partners
4. Talk, Talk, Talk, Write, Write, Write to EVERYONE
5. Expect resistance
6. Anticipate roadblocks and avoid them by drawing potential opponents into partnership
7. Build coalitions with all interest groups to pressure for the law
8. Don't be easily discouraged – keep the flame alive
9. Don't believe the work ends with the passage of the law

& remember to devote some resources to the process. Coalition building around the issue reduces the need for individual resource input but doesn't replace it. Media when advocating for Access to Information laws can undertake any and all of these activities.

JAMAICA

The Access to Information Act was adopted in July 2002²⁴. Initially, the Act was to be implemented across the whole of government, but in December 2004 the Act was amended to permit the Act to be phased into effect in four phases, starting in January 2004²⁵. All Ministries had implemented the Act by May 2005, and all departments and agencies were prepared for implementation by July 2005²⁶.

The act had been stalled in the legislature for 11 years. It was passed following extensive consultations with civil society groups and deliberations by Parliament's Joint Select Committee²⁷.

Before the act was passed in Jamaica the Gleaner Company was involved in organizing and promoting seminars on Access to Information. After its passage the Gleaner (to my knowledge) is the only newspaper to assign a team to making access to information requests, tracking these requests and reporting on information it gleaned using the Act. The resources devoted have been considerable but the benefits to the Gleaner have been a number of exclusive stories exposing several important issues and resulting in a significant societal discussion and search for solutions. The Gleaner also sponsored and supported a competition run in conjunction with the ATI Stakeholders Committee for school children exposing them to ATI and judging them on their use of the Act to get information.

Jamaica's remarkable efforts to establish an access to information regime have made the country a leader in the region and the world. The Jamaican government and its people have met the challenges of passing, implementing, enforcing, and exercising the right to information and have succeeded in demonstrating the law's value and its potential. In the past decade, fifty nations have passed access to information laws, bringing the total number of countries whose citizens now count on an enforceable right to information to almost seventy. With the many competing priorities facing governments and civil society organizations, it is truly significant that access to public information remains at the forefront of the global agenda.

MEDIA'S USE OF ACCESS TO INFORMATION (ATI)/FREEDOM OF INFORMATION /RIGHT TO INFORMATION LAWS

The first question to be answered is why the media should be interested in these laws any at all? Believers in Access to Information (ATI)/Freedom Of Information laws/Right to Information have spoken of the critical role of the media in informing the citizenry, in exposing, investigating and protesting against threats to democracy, including corruption and malfeasance, in being the eyes and ears of the citizens, providing accurate information on the happenings in and state of the nation and the world. It would seem perfectly obvious that critical to those roles is information, particularly information held by the State, and that a change from a situation where State information is locked off, to one in which everyone has access to it must be beneficial to carrying out these responsibilities.

Media around the world have used access to information regimes extensively. Examples abound in which credible information has been wrested from the grasp of reluctant governments often to debunk preferred government myths, or sometimes to describe embarrassing and indefensible depredations on the public purse by public officials, and even to expose corrupt linkages between governments and the underworld. Access to information laws supported by strong information commissioners and/or appeal tribunals have contributed significantly to the strengthening of democratic processes and practices both within and outside of government.

¹⁹ _____ (2003), "Mexico: Military Breaks Silence", El Universal newspaper (Mexico) Available online at: <http://www.eluniversal.com.mx/noticias.html>

²⁰ Ley 27.808 de transparencia y acceso a la información pública. Available online at: http://www.justiceinitiative.org/db/resource2/fs/?file_id=15210

²¹ See: <http://www.freedominfo.org/news/peru2/>

²² See: <http://www.freedominfo.org/news/peru>

²³ see: <http://www.freedominfo.org/news/peru1/>

²⁴ Access to Information Act 2002. Available online at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

²⁵ See update from the Cabinet Office of Jamaica at Available online at: <http://www.cabinet.gov.jm/accessInfo.asp>

²⁶ See: <http://www.ziplaw.com/news/archives/000355.html> and <http://www.jamaicansforjustice.org/ATI/about.htm>

²⁷ Numerous organizations participated in the crafting of the Law, including Jamaicans for Justice, Transparency International (Jamaica), the Jamaican Civil Service Association, the Jamaican Bar Association, the Media Association of Jamaica and the Press Association of Jamaica.

There are other strategies that media houses can use to enlarge the accuracy and credibility and depth of their news and stories by the use of access to information regimes.

It is critically important that the media uses access regimes in whichever way it can. The media has a significant advantage (and responsibility) because of the reach it has into the public domain. It must use this reach to highlight successful usage of the laws and expose denials that fall outside the exemptions provided by these laws. This exposure serves a number of purposes: it helps to educate the public; it helps to overcome the public cynicism and distrust that says Media's use of Access to Information (ATI)/Freedom Of Information /Right to Information Laws are just another unworkable face card for governments; it helps to ensure accountability in the operations of the law thus changing the culture of secrecy; it helps to strengthen and entrench Media's use of Access to Information (ATI)/Freedom Of Information /Right to Information Laws champions in the public service and the wider public. By doing all these things well the media will be contributing to the strengthening and protection of democracy and the public interest and fulfilling one of its most important roles of empowering the people, individually and collectively.

SUMMARY AND CONCLUSIONS

It is inarguable that the Freedom of Information Law promoted freedom of information in number of Latin American Countries. The public is presently able to obtain information which was not available to it in the past.

From Latin American Countries' a number of conclusions may be drawn with respect to the legislation and implementation of freedom of information laws:

1. The process of legislating the Freedom of Information Law should include as many mechanisms as possible that encourage assimilation, and should avoid mechanisms that inhibit assimilation.

It would be proper for the Freedom of Information Law to include the following assimilation encouraging mechanisms: broad definitions of those who are entitled to the information and the entities who are duty-bound to provide it; the appointment of an effective Freedom of Information Commission to supervise implementation of the law; the establishment of a user-friendly procedure for submitting applications; the obligation of public authorities to actively assist applicants in the process of submitting applications; the arrangement of a simple and inexpensive method of appealing against refusals to provide information; the obligation of the authorities to initiate the publication of information; emphasis on the duty to consider the public interest in the publication of information, even when it falls under the exemptions specified in the Law; the allocation of budgets to the Commission or other entities to execute advertising campaigns that will encourage the public to make use of the Law; the imposition of sanctions on government officials who do not comply with the provisions of the Law; furthermore, the Freedom of Information Law should not contain the following assimilation inhibiting mechanisms: complex procedures for submitting applications for information; inordinately long periods for providing a response to a request for information; limited timetables for filing appeals; fees imposed on the actual submission of the application (other than fees for the production of information); administrative exemptions enabling the authority to refrain from allocating sufficient resources to implement the aims of the Law; definitions of material exemptions that are too broad; broad protections of the interests of third parties which entered into contracts with the public authority.

2. The initial years of implementing the Freedom of Information Law are critical for the creation of the public's faith in its ability to obtain information from the authorities.

As soon as this faith is undermined, a high level of the public's use of the Law cannot be anticipated. Therefore, it is vital to maintain explanatory activity to educate the public and encourage it to utilize the rights granted to it under the Law. Such explanatory activities require government budgeting, and they must be conducted on a regular basis or, at least, over a period of time that will make it possible to monitor the change in the quantity of applications for information.

3. Public activity for freedom of information must continue after the legislation of the Law.

In many countries, the legislation of the Freedom of Information Law was achieved due to the activity of non-governmental organizations, such as India, where the public campaign for the FOI law legislation was commenced by popular organizations in Rajasthan; (Slough & Rodrigues, 2005) the German Freedom of Information Law, with the Bertelsman Fund playing a central role in the struggle for its promotion; and the English Freedom of Information Act, which was legislated after a public crusade by the Freedom of Information Campaign in Britain. Without activating and challenging the authorities, the right to freedom of information would be at the mercy of the bureaucrats. Therefore, ongoing public activity is mandatory even after legislation of the Law. This activity must encourage the public to make use of the Law, to arouse public debate concerning freedom of information, to spur the media to make use of it and to provide the tools that will enable application to the courts in order to create legal precedents on the interpretation of the Law.

4. No change in the practices of governmental authorities can be expected, unless pressure is brought to bear by supervisory administrative entities or by means of court judgments

Without an authoritative administrative, and yet independent, external entity to supervise those responsible for implementing the law in the ministries, the prevailing culture of secrecy will not change.

The road to a governmental culture that recognizes the fact that the public is the owner of the information and that it is entitled to inspect it at any time it deems appropriate, as well as the way to educate the public to awareness of its status as the owner of the information, is a long and winding one. Single individuals of the public do not usually have the know-how and resources to progress along this road, and the governmental authorities have no desire to do so. Only organized and continuing public action, characteristic of public organizations and media organizations, met by courts willing to compel the authorities to alter their overall perception, with all the inconvenience entailed thereby, can bring this campaign to completion.

5. Freedom Of Information laws are critical to strengthening democracy and ensuring accountability and transparency. The media has a vital role to play in ensuring the transition from cultures of governmental secrecy to nations with open, accountable governments in partnership with citizens for development and poverty alleviation. The media can play a significant role in developing and strengthening advocacy for the passage of FOI laws in countries that do not yet have them. In countries which have laws the media should be continuously informing the public about the new dispensation, encouraging people to use the act and using the act themselves to do their job of empowering citizens with credible, in depth information (the oxygen of democracy). Clearly evident from role played by The Press Council of Peru, the Gleaner Company of Jamaica, El Universal newspaper (Mexico)

"Laws that only threaten, and are not kept, become like the log that was given to the frogs to be their king, which they feared at first, but soon scorned and trampled on."

—Miguel de Cervantes, *Don Quixote*, 1605-15

"The execution of laws is more important than the making of them."

—Thomas Jefferson, letter to Abbé Arnold, May 27, 1789

Many countries around the world have signed onto international treaties and declarations committing themselves to access to information, they have a right to information included in their constitution, or have passed legislation to give the right effect. However, without the full implementation and effective enforcement these rights, and the legislation that embodies them, may quickly become meaningless.²⁸

Monitoring of implementation by the various entities is important to assure consistency and sustainability of the RTI. International experience demonstrates that without a dedicated and specialized oversight body, the compliance rate is lower, the number of requests more limited, and the right to information eroded.²⁹

In Queensland State Australia, a study recently found that an independent enforcement body was not enough and that they also needed a "new monitoring/promotion function."³⁰

²⁸ Neuman, L (2006), "Mechanisms for Monitoring and Enforcing the Right to Information around the World," In *Access to Information: Building a Culture of Transparency*, The Carter Center, Atlanta, pp. 49-56.

²⁹ Excerpts from "Observations of the Access to Information Act 2002 in Jamaica," Laura Neuman and Carole Excell, Carter Center, 2006.

³⁰ Report of the Queensland Legal, Constitutional and Administrative Review Committee, December 2001. See also Hodgson D., and Snell, R. *Freedom of Information in Queensland—A Preliminary analysis of the Report of the Queensland Legal, Constitutional and Review Committee*.

Without appropriately designed and sufficiently funded oversight and enforcement mechanisms, the effectiveness of an access to information regime will be compromised. As more countries and states pass legislation embodying the right to information, experience is dictating the necessity for entities vested with the power to monitor the administration and compliance of the law, and to take action when necessary.

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14. <http://www.jamaicansforjustice.org/> (Jamaicans for Justice is a non-profit, non-partisan non-violent, volunteer citizens' rights action group, founded in 1999. It advocates for fundamental change in all spheres of Jamaican life - judicial, economic, social and political - in order to improve the lives of Jamaican citizens. JFJ believes that justice is the bedrock of any civilized and progressive society, and all Jamaicans must have equal access to fair, correct and impartial treatment.)
15. <http://www.limac.org.mx/> (Libertad de Información - México (Limac) / Freedom of Information - Mexico A.C is a non-partisan, secular and non-profit civil society organization that promotes the individual's right to information and especially to public information in the framework of a democratic state based on the rule of law.)
16. www.bbc.co.uk/foi/news (For the Latest news on Freedom of Information Law worldwide)

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