

Access to Information WORKING PAPER SERIES

Exploring the Role of  
Civil Society in the  
Formulation and Adoption of  
Access to Information Laws

*The Cases of Bulgaria, India,  
Mexico, South Africa, and the  
United Kingdom*

Andrew Puddephatt



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# Abbreviations

|         |  |
|---------|--|
| AIP     | Access to Information Programme (in Bulgaria)  |
| APIA    | Access to Public Information Act (of Bulgaria)   |
| ATI     | Access to Information  |
| CFOI    | Campaign for Freedom of Information (in the United Kingdom)                              |
| CHRI    | Commonwealth Human Rights Initiative   |
| CIC     | Central Information Commission (of India)  |
| CommGAP | Communication for Governance and Accountability Program                                  |
| CSO     | Civil Society Organization   |
| EPA     | Environmental Protection Act   |
| FOI     | Freedom of Information   |
| FOIA    | Freedom of Information Act   |
| ICO     | Information Commissioner's Office  |
| IFAI    | Instituto Federal de Acceso a la Información Pública (of Mexico)                         |
| LFTAIPG | Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (in Mexico) |
| NCPRI   | National Campaign for People's Right to Information (in India)                           |
| NGO     | Nongovernmental Organization   |
| ODAC    | Open Democracy Advice Centre (in South Africa)   |
| ODCG    | Open Democracy Campaign Group (in South Africa)  |
| PAIA    | Promotion of Access to Information Act (of South Africa)                                 |
| RTI     | Right to Information   |
| RTI Act | Right to Information Act (of India)  |
| WBI     | World Bank Institute   |

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# About the Author

Director of Global Partners and Associates (GPA). Mr. Puddephatt has worked to promote human rights for 20 years and has specific expertise in program development and evaluation, with a focus on transparency, the role of media in society, and implementing human rights. He has led human rights organizations in the not-for-profit sector for more than 15 years. He was Executive Director of ARTICLE 19, a pioneering organization working on freedom of expression and freedom of information, between 1999 and 2004; Director of Charter 88, the United Kingdom's leading constitutional reform organization, between 1995 and 1999; and General Secretary of Liberty, the principal domestic human rights organization in the United Kingdom, between 1989 and 1995.



# Executive Summary

This paper analyzes civil society's contribution to the passing of access to information (ATI) laws in five countries: Bulgaria, India, Mexico, South Africa, and the United Kingdom. Civil society involvement has impacted upon this process in a number of ways: through advocating for ATI legal reform; building popular support for ATI and helping create and focus the demand for information; participating in the process of drafting and shaping legislation and lobbying members of the legislative process; helping citizens understand ATI and how to use legal rights of access; training public officials in the handling of information requests; promoting awareness of best practices, both nationally and internationally; monitoring the implementation of ATI laws; and helping citizens use ATI legal rights to achieve wider social goals.

The countries concerned form contrasting examples. Bulgaria's ATI movement grew out of environmental concerns and a post-Communist rejection of the culture of secrecy. It focused on one campaign led by the Access to Information Programme, which remains an active and significant international promoter of ATI regimes. In India, grassroots anticorruption campaigns, aimed at improving the lot of the rural poor, rapidly evolved into a widespread and effective campaign for ATI. However, to sustain its independence, the Indian movement eschewed focusing on building one organization with a formal status. In Mexico, an elite group ("the Oaxaca Group"), representing a broad cross section of interests, was involved in the planning and drafting of, and lobbying for, an ATI law. Compared with other experiences, this was a high-level group with high-level participation in the political process. In the end, the Oaxaca Group dissolved once the law was passed, and its place was taken by more formally constituted nongovernmental organizations (NGOs). In South Africa, a campaign grew out of a coalition of NGOs as part of a wider movement for constitutional change after apartheid. With the passing of the law, the coalition generated a distinct NGO that took up the range of implementation talks. Finally, in the United Kingdom, a specialist NGO spearheaded the campaign, which itself benefited from a wider movement for constitutional reform. It retained its distinct character and continued to lead the civil society dimension of ATI work subsequent to legislation being passed.

These are contrasting experiences, and each reflects the particular dynamic of the society in question. There are no set rules about which strategy is most effective. Depending upon the context, any model—from a single dedicated NGO, to a broad coalition, to an elite group of lawyers and academics—might be the most effective combination. What is crucial is that civil society groups understand the process of change in their own context, and in particular the incentives for change: Why do traditionally secretive governments and bureaucracies embrace a commitment to openness? On some occasions, this happens at a moment of broader social or political change, when power has shifted and new political leaders are open to persuasion. At other moments, there is growing distrust of politicians, and greater transparency is viewed as a way to rebuild that trust. Civil society groups must be cautious, however, to not oversell what ATI laws can do. There is a danger in creating a perception of ATI laws as a panacea to solve society's ills; they are not ends in themselves. Demonstrating the practical value of ATI may be the most important function that civil society can play.

Finally, the paper concludes by drawing out some of the key lessons from the case studies—reviewing the range of ways that civil society can contribute to promoting the ATI regime, from inception of a campaign through to implementation.

# Introduction

There is a widespread belief that access to information (ATI)<sup>1</sup> laws can ensure greater transparency and accountability, which underpin good governance. It is further believed that this, in turn, is an essential element for reducing poverty and achieving the Millennium Development Goals. Most observers believe that one of the key obstacles to good governance is an asymmetry in information between public officials and the public. ATI laws are a principal means for correcting this asymmetry. In recent years, many countries have adopted such laws, and civil society groups have played a variety of roles in achieving legislative change. The objective of this paper is to examine the role of civil society in both promoting and securing ATI legislation and assisting in its implementation.

The focus of the paper is to understand the background to campaigns for access to information in five countries, Bulgaria, India, Mexico, South Africa, and the United Kingdom. In each, the paper seeks to understand the role that civil society played in conjunction with other social actors. This has a dual aspect: (a) the extent to which civil society shaped the context in which the law was considered: Did it play a role in generating popular demand for change? (b) the extent to which civil society affected the drafting process itself, actually influencing the kind of legislation that was approved. The paper looks at the interaction between civil society and public officials, which is an important dynamic in the passage of any legislation. The paper also considers the various roles played by civil society groups in helping with implementation after the passing of the law.

Experience in various countries shows that civil society can play a number of important roles in promoting ATI. Civil society groups can mobilize pressure from below to contribute to the formulation and encourage the passing of legislation, while forming alliances with those sections of the bureaucracy that want to implement reform. They can be a source of independent expertise or legal assistance, able to advise public officials on different aspects of the law. Civil society groups can promote the law by explaining its benefits to both the general public and public officials. Civil society groups can often serve as valuable conduits for knowledge sharing and an impor-

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1. Although there may be differences, generally ATI (Access to Information), FOI (Freedom of Information), and RTI (Right to Information) are used interchangeably. The main determining factor for the selection of an acronym is the particular country context. For example, the United States uses FOI, and India uses RTI.

tant training resource. They can also be a source of new ideas, applying lessons learned from other countries to the local situation or drawing on original research. Moreover, civil society groups play an extremely important role in monitoring the implementation of information legislation, once passed. Finally, civil society groups can, once the law is passed (and even before this happens), build capacity, both within government (to help implement the law) and with citizens, for its use. In many cases, it has been demonstrated that for a law to be effective, strong civil society contribution to the process and the drafting of the legislation has been instrumental.

Although each of the five country studies presents unique socioeconomic and political contexts, some general observations regarding the role that civil society has been able to play in the promotion, passage, and implementation of ATI legislation should be borne in mind in considering the individual case studies:

- Civil society is extremely varied. Different coalitions represent different—and sometimes competing—interests. Each coalition needs to be assessed separately for its effectiveness.
- Civil society can be engaged in all aspects of the campaign for ATI legislation, although there will be different entry points and opportunities for engagement, depending on local context.
- Civil society plays a crucial role in holding government accountable for effective implementation and monitoring of the law.
- Civil society will often be the principal actor on the “demand” side of the information equation, raising public awareness and emphasizing the importance of exercising the right.
- Each country’s unique political history and the historic relationship between civil society and government, along with its socioeconomic characteristics, will have a significant bearing upon civil society’s ability to effectively engage in a successful campaign.
- Civil society groups have a variety of experiences with international partners (including donors), some choosing to eschew institutional support and others to embrace it.
- Although the media is a key stakeholder within civil society, it responds to campaigns for ATI in different ways.
- Whether or not civil society has the capacity to conduct research and identify information needs, public satisfaction—or a lack thereof—is a crucial factor in determining whether or not civil society will become a key partner for government.

This paper represents an attempt to examine these observations. There are issues that can be explored further and many more lessons to draw from these cases. This paper aims to contribute to a broader debate on the role of civil society as it relates to this essential right to information.

# Country Analyses

## Bulgaria

The debate over access to information in Bulgaria can be traced back to the national environmental campaigns of the late 1980s, held in the wake of the Chernobyl nuclear explosions, when the then-Soviet and -Bulgarian governments had been accused of withholding information from the public on the actual scale and consequences of the disaster. It was also built upon a post-Communist desire for information and transparency that was general across the region. On that occasion, a political movement was formed in Bulgaria called “*Ecoglasnost*” (the word “*glasnost*” meaning “transparency”), which in 1989 organized public demonstrations at the Organization for Security and Co-operation in Europe (OSCE) Ecoforum held in Sofia. Some representatives of *Ecoglasnost* and other environmental organizations—such as the Borrowed Nature Association<sup>2</sup>—were also involved in international advocacy and monitoring of access to environmental information. They worked with international partners such as Friends of the Earth and the Regional Environmental Center for Central and Eastern Europe, European Environmental Bureau—Brussels,<sup>3</sup> both of which were active in the campaign for the adoption of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Following *Ecoglasnost’s* campaign, the 1991 Environmental Protection Act (EPA) was approved, introducing for the first time the principle of access to information in a legislative instrument and providing mechanisms for judicial review in case of refusal from the authorities to disclose environmental-related information. Notably, this was seven years before the Aarhus Convention, establishing Bulgaria as one of the early practitioners of a principle that eventually became the norm for Europe. The participants in this first wave of environmentally led movement campaigning for access to information were also members of the political opposition, whose major objective was to break through the long decades of secrecy experienced under the previous Communist regime. Indeed, following the ousting of dictator Todor Zhikov in 1989 and the creation of

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2. [http://www.bornat.org/index\\_main\\_en.html#hum](http://www.bornat.org/index_main_en.html#hum).

3. <http://www.unece.org/env/pp/documents/cep43e.pdf>.

a Constitutional Assembly in 1990 leading up to the new 1991 Constitution, the first list of categories of information previously protected as “state secrets” was published.

Following the introduction of the EPA, a second wave of debate on access to information began, focused more broadly on the demand for general openness and transparency. A group of legal experts drafted a more general Access to Information Bill, although the initiative gained little momentum because of an absence of public interest and pressure. However, toward the end of 1996, public opinion began to be concerned about the double-digit inflation and the economic crisis that afflicted the country. Although the existing right to environmental information granted by the EPA was rarely used, demands for transparency of statistical and economic information—including financial information about the National Bank—soared.<sup>4</sup> At the same time, calls were made to supervise and guarantee the transparency of the process of privatization and restitution of land and property that ensued after the fall of the Communist regime. Within the private sector, companies dealing with legal software also showed a general interest in the debate on access to information.

The campaign for the right to information in Bulgaria was boosted by the work of the Access to Information Programme (AIP), a not-for-profit organization officially launched on October 23, 1996, with the statutory mission “to facilitate implementation of Article 41 of the new Bulgarian Constitution, which establishes the right that ‘everyone is entitled to seek, receive and impart information.’”

### *ATI Coalition: Structure, Funding, and Strategy*

AIP’s original 11 founding members had different academic backgrounds, expertise, and reasons for setting up a vehicle for the promotion of access to information. The group comprised

- A human rights lawyer and a corporate lawyer specializing in issues of access to information in public registries and other government-held information,
- Sociologists and journalists concerned about the culture of secrecy in which the government bodies operated, and
- Economists dealing with problems of lack of available statistics and frequent changes in business regulatory frameworks.<sup>5</sup>

4. From an interview with Gergana Jouleva, Chairperson of AIP, held on January 21, 2008.

5. During 1995–96 and (to some extent) until 1999, when Bulgaria qualified for the International Monetary Fund’s (IMF)’s financial statistics standards, access to economic/statistics information was very poor:

- Monetary and bank statistics were very difficult to obtain from the Bulgarian National Bank (BNB).
- Paper reports of the National Statistics Institute (NSI) were generally available, but the NSI did not prepare and disseminate sectoral information or statistics on firms.
- Although required to do so by the law, the executive branch did not report privatizations of public assets and their proceedings. (In 1996 alone, amendments to tax regulations were as frequent as 17 times a month and were issued as instruction letters to the fiscal administration, without being published.)

At the beginning of 1995, before AIP was formally established, its future members started reviewing the existing regulations and practices of access to information in a sample of five municipalities, to understand how people acquired the information they needed and how this was provided or denied by public servants and institutions. The results of this initial research revealed the following:

- Citizens (and legal persons such as organizations or companies) did not have any experience in requesting and using government information.
- Public servants and institutions generally assumed that their duty to provide information, as defined by the 1991 Constitution, should be legally prescribed.
- The internal regulations of public institutions (in the form of instructions and rules) were either out of date or dealt mainly with recording procedures rather than procedures for information disclosure.<sup>6</sup>

Following this research, it was agreed that a dedicated organization was needed to tackle the issue of access to information; therefore, AIP was founded and officially launched in 1996. It received initial funding for the implementation of its activities from the Netherlands Organisation for International Development Cooperation (Novib). This initial funding was progressively followed by grants coming primarily from the Open Society Foundation—Bulgaria, Novib, the Charles Stewart Mott Foundation, the Open Society Institute (OSI), EU's PHARE Programme, ProMedia USAID, and ABA CEELI.<sup>7</sup>

AIP's work can be divided into two stages:

- Before the adoption of the Access to Public Information Act (APIA) in 2000, when citizens, journalists, and NGOs exercised their right to information only on the grounds of Article 41 of the 1991 Constitution and the EPA
- After the adoption of the APIA onward, when emphasis was put on the implementation practices and improvement of the new law

As soon as it was established, AIP started working on a structured campaign emphasizing the importance of access to information, based on the considerations stemming from its informal 1995 review. At the same time, AIP forged partnerships with other national NGOs—such as the human rights organization Bulgarian Helsinki Committee (BHC), the foundation Creating Effec-

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6. Gergana Jouleva, "10 Years Access to Information Programme," 2007 (see [www.aip-bg.org/pdf/aip\\_en\\_10y.pdf](http://www.aip-bg.org/pdf/aip_en_10y.pdf)).

7. For a detailed list of all the current funders of AIP, see <http://www.aip-bg.org/finance.htm>.

tive Grassroots Alternatives (CEGA), and the Institute for Market Economics (IME)—and began publishing contributions in their monthly bulletins.<sup>8</sup>

Before the launch of the access to information campaign, AIP disseminated a “manifesto” across the media to gather volunteer support, describing the objectives of its organization and calling on journalists to send in cases of public institutions refusing citizens and the media access to information. Following the distribution of the manifesto, 25 journalists across the country offered to volunteer and formed a network of “local coordinators” who sent AIP a resume of cases of denied access to information in their areas every month, asking AIP lawyers to provide legal assistance and advice. The AIP lawyers’ comments were sent back to the journalists/coordinators, who published them in their articles.<sup>9</sup>

The local coordinators subsequently began to disseminate AIP reports and campaigning materials in the local press, to encourage citizens and NGOs to keep submitting written requests for information, and to increase the pressure on public officials to overcome their culture of secrecy. The records of all the cases in which access to information was denied were gathered by AIP and stored in an electronic database. Its analysis formed part of a publication, released by AIP in 1998, titled *Access to Information: Norms and Practices*. This paper described how citizens exercised their right to information, highlighted how the most typical reason for refused disclosure was “without any specific reasons cited” (that is, no reason at all), and concluded that the obligation of the public bodies to provide information should be prescribed by law.<sup>10</sup>

### *Interaction between Civil Society and Public Institutions*

At the start of 1998, the advocacy efforts of AIP’s campaign—carried out through meetings with Members of Parliament (MPs), in Government Information Services departments, and with local government officials, as well as through the dissemination of publications, presentations, and participation in TV and radio shows—led the new Bulgarian government, elected in 1997, to announce the adoption of an Access to Public Information Act (APIA) as part of its legislative agenda. A

8. The BHC is an independent NGO for the protection of human rights. BHC objectives include stimulating legislative reform to bring Bulgarian legislation in line with international human rights standards. The IME is the oldest independent think tank in Bulgaria. Its tasks include assessment and analysis of the government’s economic policies, which in 1993–94 focused on information disclosure and antifraud policies (see <http://www.ime.bg/>).

9. Examples of these cases can be found on the following AIP Web pages:

- <http://www.aip-bg.org/newsletter.htm>.
- <http://www.aip-bg.org/court.htm>.
- <http://www.aip-bg.org/cases.htm>.

10. Gergana Jouleva, “Case Study: Bulgaria—The Access to Information Programme: Fighting for Transparency during the Democratic Transition,” 2002.

government working group was formed and tasked with drafting the law.<sup>11</sup> At the same time, AIP formed its own working group of experts to conduct a comparative study on access to information legislation and best practices from a wide range of other countries, as well as a sociological survey (including jurists and journalists) on the principles that they thought should be enshrined in the APIA.<sup>12</sup>

AIP's initial intention was to work in full cooperation with the government working group, sharing knowledge and facilitating the drafting of the law. However, despite sending all of AIP's materials to the government APIA working group, any attempt to get in touch with them and exchange information was discouraged, and the Council of Ministers told AIP that the text of the draft would be presented only once it was ready, without preliminary public discussion. Therefore, in the following six months, the AIP working group focused on conducting the survey and preparing a concept paper, while AIP carried out an intensive media campaign to change attitudes among journalists toward the right-to-access information.<sup>13</sup> The AIP working group drew its main inspiration from the Principles of Johannesburg (published by international NGO ARTICLE 19) and from the U.S. Freedom of Information (FOI) Act, which were both translated and disseminated in Bulgarian. The discussions within the AIP working group were open for participation and were often joined by academics, by lawyers from the National Bank, and even by Members of Parliament, but they were never attended by government representatives. According to AIP, the only time that they had a chance to meet up with the government working group experts was at an international conference organized by AIP, ARTICLE 19, and other NGOs in December 1998 to discuss the upcoming legislation and to present *The Right of Access to Information: Concept on Legislation* (<http://www.aip-bg.org/pdf/concept.pdf>), but the working group experts turned down the invitation to participate as speakers and intervened only as guests, thus reducing the opportunity for an open debate on the topic.

The Council of Ministers officially released its draft bill at a conference, held on April 27, 1999, by the International Press Institute (IPI) and the Bulgarian Media Coalition. The release of the bill came as a surprise, because it had not been previously announced and because the topic of the conference was generic and did not lead the participants to believe that the government would use it as a platform for the launch of the bill. This event highlights an example of "internal competition" and subsequent lack of communication and cooperation between civil society organizations: Apparently only IPI knew at the time that the draft APIA would be presented at the conference; no other

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11. No official information is available on the composition of this working group. It is assumed that the group comprised lawyers from the legal departments of the Council of Ministers and experts on administrative reform from the Ministry of State Administration.

12. The team was formed exclusively by lawyers, mainly from the NGO sector: Three lawyers were from AIP, two lawyers from the Bulgarian Helsinki Committee, two lawyers from commercial law companies, and one lawyer from the legal department of the Council of Ministers of the EU. Gergana Jouleva acted as leader of the group.

13. The AIP working group also disseminated legal surveys conducted in other countries on access to information legislation (Sweden, United States, Australia, Canada, Hungary, Finland, Denmark, Norway, and the draft FOI law in the Czech Republic).

NGO participants in the conference had been informed beforehand. AIP publicly criticized the secrecy and methods surrounding the release of the bill, prompting the government to post the bill on its Web site and to open a consultation about it. AIP not only submitted an opinion on the draft but also organized a press conference and held meetings with local government officials, journalists, and NGOs, inviting them to post their views on the bill on the government's Web site. However, the government did not reply to any of the submissions collected on its Web site and its final draft, submitted to the relevant parliamentary committees at the National Assembly on June 23, 1999, did not include any significant recommendations submitted by the civil society groups.<sup>14</sup>

AIP and the Bulgarian Media Coalition organized another international conference in September 1999 and collected recommendations on the draft bill that were submitted to the parliamentary committees and disseminated through the media.<sup>15</sup> The main critique of the government draft law concerned the definition of "public information" (considered unclear and ambiguous), the breadth of the exemption (which lacked a "harm test" and an "overriding interest" test in its application), the provision of an administrative appeal (which was not regulated), and the obligation for private media also to provide information under the ATI law (whereas according to international standards, only public media should be subject to ATI legislation). The recommendations were taken on board by one MP of the majority coalition, who introduced them as amendments to the bill. However, in February 2000, following pressure from the government, he unexpectedly withdrew them all, without any official public explanation. Subsequently, the Bulgarian National Assembly approved the final draft without including most of the recommendations submitted by civil society, and the new APIA was officially enacted on July 7, 2000.

According to AIP, from an international perspective the adoption of APIA was more connected with requirements related to Bulgaria's membership in the Council of Europe rather than the requirements necessary for Bulgaria to join the European Union (EU), and AIP's access to information campaign constantly referred to the 1981 Council of Europe Recommendations on access to official documents as standards to incorporate in the national legislation.<sup>16</sup> However, following the approval and entry into force of APIA and the run-up to Bulgaria's accession to the European Union (EU), AIP also secured funding from the EU's PHARE Programme Development of Civil Society (in 1998 and in 2006)—one of the EU's "preaccession" financial instruments to assist the

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14. Five submissions were posted on the government's Web site, including one from international NGO ARTICLE 19, translated into Bulgarian by AIP.

15. As referenced by G. Jouleva (see <http://www.freedominfo.org/features/20040616.htm>), the international experts taking part in the conference were Helen Darbishire, Constitutional and Legal Policy Institute—Budapest; Erin Egan, Attorney, Covington & Burling—Washington, DC; Robert Gillette, Independent Media Commission—Sarajevo; Evan Ruth, Legal Officer, ARTICLE 19—London; and Ivan Szekely, Counselor, Open Society Archives—Budapest.

16. From an interview with Gergana Jouleva, AIP Chairperson, held on January 21, 2008. Also see Recommendation No. R (81) 19 on the access to information held by public authorities: [http://www.medialaw.ru/laws/other\\_laws/european/e-rec81-19.htm](http://www.medialaw.ru/laws/other_laws/european/e-rec81-19.htm); and Recommendation (2002)2 of the Committee of Ministers to member states on access to official documents: <https://wcd.coe.int/ViewDoc.jsp?id=262135&Lang=en>.

applicant countries of Central and Eastern Europe—to continue its activities of implementation and improvement of the existing legislation.<sup>17</sup>

### *Follow-Up to Adoption of ATI Law*

In the Bulgarian case, AIP's key contribution came during implementation, with AIP's activities focusing primarily on monitoring the implementation of the law, providing legal assistance to those seeking information or who had been refused the information requested, and conducting information campaigns on the functioning of the law through its local coordinators' network. In particular, the strategies envisaged by AIP to make the most of the new law included the following:

- Inviting judges and lawyers to seminars and conferences to discuss the interpretation and implementation of the law<sup>18</sup>
- Publishing handbooks on the APIA and how to apply it
- Providing support, legal advice, and (when necessary) representation in court to those who request information
- Training public officials on how to handle requests for information
- Establishing an annual “award” in which a padlock is given to the public entity identified as the least open in terms of access to information and a key awarded to the public entity deemed most open

The provision of legal advice and assistance appears to have been particularly successful because in the last 10 years, AIP has reported receiving requests for help for more than 3,000 cases of information refusals, of which 746 were received before the adoption of the APIA and a staggering 2,533 after its adoption. All cases have been recorded, described, and commented upon in an electronic database.<sup>19</sup>

Thanks to the support of foreign donors and cooperation with national and international NGOs, AIP has also been involved in several training programs for public officials at national and local levels focusing on how to apply the Bulgarian ATI law: Notable examples include the short trainings for public officials around the country developed and carried out in partnership with the American Bar Association (CEELI); the “Training for Trainers” program developed with ARTICLE 19 and other NGOs in Eastern Europe; and the three-year “Matra” program funded by the Dutch

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17. For more information on the PHARE Programme, visit the EU Commission's Web page: <http://europa.eu/scadplus/leg/en/lvb/e50004.htm>.

18. For example, AIP has released a publication (in Bulgarian only) titled “Problems in the Implementation of the Access to Information Law,” which is the result of the discussion with judges and lawyers ([www.aip-bg.org/books\\_bg.htm](http://www.aip-bg.org/books_bg.htm)). The center for training of judges also regularly invites AIP to hold training courses on the law on access to information.

19. The database can be viewed on AIP's Web site: [www.aip-bg.org](http://www.aip-bg.org). Summaries of the most interesting ones can be found in AIP's annual reports: “Access to Public Information in Bulgaria” (see [www.aip-bg.org/l\\_reports.htm](http://www.aip-bg.org/l_reports.htm)); also see <http://www.aip-bg.org/court.htm>).

Ministry of Foreign Affairs, which included training of public officials in cooperation with the Bulgarian Ministry of Public Administration and the Institute of Public Administration and European Integration (IPAIEI).<sup>20</sup> It is also important to highlight that IPAIEI, which is an official training institute for the government departments, to date has not included the ATI Law in its compulsory training program.

AIP has undertaken an information campaign, providing the Bulgarian public with approximately 1,250 publications and participating in more than 1,100 radio and television shows over the last 10 years. This includes AIP's own weekly radio show, broadcast from 2004 to 2005 on Radio NET and specifically dedicated to discussing and analyzing events related to access to information in Bulgaria.

AIP is also one of the cofounders and a member of the Freedom of Information Advocates Network (FOIANet), set up in 2002, and internationally supports the Right to Know Day celebrated on September 28 each year, with the aim of raising awareness of the right to information globally. In an annual press conference held on the same day, AIP presents awards to Bulgarian citizens, media, and NGOs that have actively exercised their right of access to information. Awards are also presented to public institutions that have most efficiently organized the provision of public information. The gathering of nominations for the awards starts a few months earlier (April and May), when AIP presents its *Annual Report on Access to Information* at a press conference widely attended by national media. The nominations are sent to the Web site [www.righttoknowday.net](http://www.righttoknowday.net). The Ministry of State Administration and Administrative Reform usually sends its nominations, but nominations of Web sites of government institutions normally come from AIP's own annual assessment survey. The Awards Committee comprises representatives from other NGOs, journalists, and the heads of departments from the Ministry of State Administration and Administrative Reform itself. In the run-up to the awards ceremony, AIP does intense promotion of the event in the media and through the dissemination of its newsletter.<sup>21</sup>

Evidence of the success of this awards initiative is shown by the increasing number of nominations received each year from public institutions and the extensive media coverage that the event is granted.

In addition, AIP is a member of other networks, including the European Civil Liberties Network and the European Citizen Action Service.

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20. Within the Matra program, AIP developed training materials, manuals, and a handbook for public officials and provided three days of training, with participation of Dutch and Slovakian experts to present their experience of implementation of access to information acts. For more information on the Matra program, see [http://www.minbuza.nl/en/themes/european-cooperation/the\\_matra\\_programme\\_file](http://www.minbuza.nl/en/themes/european-cooperation/the_matra_programme_file).

21. For more information on the awards, see [http://www.righttoknowday.net/ceremony07\\_eng.php](http://www.righttoknowday.net/ceremony07_eng.php).

Three surveys carried out by AIP in the first three years of implementation of the APIA by the public institutions highlighted that the public administration was ill prepared to comply with obligations set up by law and argued that the lack of an independent body to monitor and review the implementation of the APIA had triggered an even greater responsibility for civil society groups to control the correct application of the law.<sup>22</sup>

At the same time, official statistics on the use of the APIA released by the Ministry of State Administration showed that the total number of requests received by executive agencies across the country reached a peak in 2003, but is now more or less back to the initial levels of 2000, when the law entered into force.

In March 2007, AIP started a project, funded by the United Nations Development Programme (UNDP), named “Increasing Government Transparency and Accountability through Electronic Access to Information,” aimed at monitoring the Internet sites of the executive branch to assess its provision of electronic access to information. This project is being carried out with the cooperation of the Bulgarian Ministry of Foreign Affairs and the Ministry of Public Administration and State Reform and consists of evaluating the Web sites of 411 public institutions for three years. The analysis of the results are published in AIP’s annual reports.<sup>23</sup>

AIP has also continued campaigning for better legislation on access to information and has taken part in the debate on other laws such as the Personal Data Protection Act, enforced after publication in the *State Gazette* in January 2002, and the law on the Protection of Classified Information, adopted in 2002.

## *General Observations*

AIP has been effective for both internal and external reasons. Internally, it is a highly professional organization that was built upon a diverse group of professionals and that subsequently has worked hard to establish itself as a center of expertise. These professionals understand international and national laws and standards, are media savvy, and are generally more knowledgeable than those around them. Externally, they initially benefited from linking ATI to international and local movements. Now their remit includes a broader set of issues, grounded in the general concerns of the public. This is important because all too often ATI campaigns can sound abstract, concerned with the process of government (which fascinates mostly those who are politically involved) rather than outcomes (which engage the general public).

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22. See “Survey by Access to Information Programme” (December 2000), “Survey by Access to Information Programme” (October 2001), and “Survey by Access to Information Programme” (October 2002).

23. See [http://www.aip-bg.org/projects/undp/descr\\_eng.htm](http://www.aip-bg.org/projects/undp/descr_eng.htm).

AIP also prides itself in having learned through its long-term campaign experience (a) that aiming to achieve legislation is only the beginning of the process leading to more access to information and (b) that the awareness, usage, understanding, and implementation of an ATI law must be relentlessly supported before, during, and after the law's entry into force, stimulating demand for information from both the government and civil society and always stressing the importance of access to information for good governance, public participation, and preventing corruption.

## Mexico

The debate over the right to information (RTI) in Mexico traces its origins back to the constitutional reform of 1977, which introduced a new provision into its Article 6 stating that “the right to information will be guaranteed by the State.”<sup>24</sup> The explicit acknowledgment of this right triggered a 25-year-long process involving government, academics, civil society groups, and media practitioners about how to give effect to that constitutional provision and whether to regulate the right to information. Civil society practitioners and academics were generally in favor of regulating the right to information, whereas the media sector support was mixed. Newspaper outlets were generally in favor, while broadcast media—for the most part—along with many conservative members of the government did not favor the adoption of legislation implementing Article 6 of the Constitution asserting that the right to information was not a right held by individuals, but rather by society as a whole. In reality, many in the media sector felt that the new law would limit their monopoly of access to government information by making the government accountable for its actions directly to the citizens. This would in turn create more competition in the media market.

Following national elections held in 2000 and a regime change following the defeat of the Partido Revolucionario Institucional (Institutional Revolutionary Party; PRI) after 70 years in power, the new government, led by President Vicente Fox, announced that access to information (ATI) as a tool to tackle corruption would form one of the priority items on its agenda. Anticorruption reforms gained salience during the first months of Fox's administration. The government's decision to prioritize these measures followed the signing by Mexico in the mid-1990s of a number of international agreements, compelling it to adopt and implement measures to tackle corruption and guarantee financial transparency. In the late 1990s, Mexico had joined the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO) and had signed the North American Free Trade Agreement (NAFTA). Furthermore, the traditional relationships between the media and the government, based on financial dependence and limited freedom of expression, had been shaken. On the one hand, the government was forced to reduce the provision of government subsidies to the media, given the economic situation. On the other hand, journalistic practices—especially in print media—began to change, leading to a more inde-

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24. Article 6, Political Constitution of Mexico, 1917, as reformed in 1977: <http://info4.juridicas.unam.mx/ijure/fed/9/7.htm>

pendent journalism. This created a new set of circumstances for realizing access to information, which civil society was able to take advantage of and build upon.

The opportunity for the discussion on access to information to regain crucial momentum was offered in February 2001, when a draft bill regulating access to information prepared by the executive branch's Secretaría de Contraloría y Desarrollo Administrativo (SECODAM) was leaked to the national press. The bill was part of a wider government initiative aimed at setting up a comprehensive anticorruption program and therefore had been drafted with the limited perspective of fighting corruption within public institutions, rather than as a way to implement the people's fundamental human right of access to information. The leaked bill kicked off an animated debate within civil society on the necessity to actively take part in the shaping of new legislation protecting the right of information. The first response came from the academic environment, with the organization of academic seminars in public and private universities, where national and international experts discussed and commented on the government's proposal. The international experts, called by the academics to support the debate on the required legislative standards of access to information, included representatives from ARTICLE 19, the Konrad Adenauer Foundation and the Oxford University Programme in Comparative Media Law and Policy (PCMLP). The seminars were also open for participation to citizens, journalists, and public officials, who were repeatedly invited to contribute to the debate with their views. Even the Sociedad Interamericana de Prensa (SIP; or Inter American Press Association [IAPA]), which had traditionally opposed regulation of freedom of expression and access to information, fearing the introduction of so-called "*leyes mordaza*" ("gag laws"), took part in the discussion and agreed on the opportunity to ensure proper legislation on access to information.

### *ATI Coalition: Structure, Funding, and Strategy*<sup>25</sup>

The rekindled debate on access to information paved the way for the creation of a coalition of social activists, academics, mass media owners, and journalists, whose purpose was the effective implementation of the right of information enshrined in Article 6 of the Constitution. This coalition envisioned the adoption of a law on access to information informed by the fundamental principle that the information held by public institutions belongs to the citizens and is kept on their behalf. The media component of the coalition included the main associations of editors of Mexican magazines (representing more than 90 publications), as well as editors of major national newspapers that were not SIP members, regardless of their political orientation.

In the early months of 2001, the newly formed coalition held 15 informal meetings—generally lunches or dinners funded by the press or editorial members—to review the government bill on

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25. Interview with Issa Luna Pla, held on January 29, 2008.

access to information (the first of its kind in the country) and to analyze the comparative experience of countries such as the United States, Canada, Hungary, the United Kingdom, and Spain.

On May 24, 2001, the coalition disseminated its conclusions in a manifesto sent to the mass media, called the “Declaration of Oaxaca,” which explained the six democratic principles that formed the basis of its campaign for legislation on access to information.<sup>26</sup> From this moment onward, the coalition was called the “Grupo Oaxaca” (the “Oaxaca Group”).<sup>27</sup>

Soon after the publication of its manifesto, the Oaxaca Group appointed a Technical Committee tasked with the coordination of the activities of the whole group, which lasted approximately one year (from May 2001 until April 2002).

One of the strengths of the coalition appears to be the fact that it set itself very specific, not overly ambitious, short-term targets; namely, an intense media campaign to promote the need for legislation on access to information and the development of model legislation that would influence the content of the draft bill to be discussed and approved by Congress. Once these objectives were achieved, the Oaxaca Group, which never assumed the status of a formal NGO or political movement and whose activities were either funded by the main editorial members or participated in on a pro bono basis, ceased to exist, and other civil society groups and NGOs were set up to pursue the objective of monitoring and promoting the implementation of the law.

Another element that appears to have enhanced the credibility and reputation of the Oaxaca Group was its heterogeneous composition (that is, its members came from diverse political interests and had different motivations for supporting the right to information). For example, the representatives of the press were interested in the passage and implementation of a law on access to information to stop the practice of obtaining information through political connections or bribery, whereas academics defended the need to implement access to information as a fundamental civil right, and some editors supported a law on access to information as a way to bring competition and level the playing field. However, the Oaxaca Group was created with the sole purpose of supporting legislation on the right to access information, and its members publicly defended this right as a “citizens’ right,” without trying to push ahead the respective agendas of the Group’s members (press, civil society, and academics).

One more aspect that favored the cohesion of such a diverse coalition was the agreement around the principle that the right to information should not be exclusively instrumental to the promotion of transparency, accountability, and efficiency of public institutions—as the original draft bill of the government had intended it—but should be regarded as a fundamental individual human

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26. To see the full text of the Declaration of Oaxaca (in Spanish) and for a full list of the members of the coalition, visit [www.amed.com.mx/oaxaca2.php](http://www.amed.com.mx/oaxaca2.php).

27. The definition was used for the first time by *New York Times* journalist Ginger Thompson, who pointed out that the peculiarity of this group lay in the diverse ideological motivations of its members.

right. For this reason, a law on access to information should be informed on the principle of maximum disclosure of the information held by public institutions. Moreover, the Oaxaca Group took care to use a different terminology for its campaign from the one used for the text of the bill. In the media campaign, the term “right to know” was preferred to the legal term “access to information” because it was considered easier for the public to understand.<sup>28</sup>

The activities of the Oaxaca Group were consistently publicized in the national and local press by the coalition’s media members, who also organized seminars on the right to information, published articles explaining how the right to information (always referred to simply as the “right to know”) would benefit society. They also gave editorial space in their publications to the academics of the Oaxaca Group and to international experts and invited political actors to participate in the debate and answer questions on the draft legislation, pinpointing the promise of transparency that the government had emphasized in presenting its political agenda. At the same time, the media sector supportive of the law kept exposing cases of corruption within the government to sway public opinion to keep pressuring the government on its promise to legislate on access to information and fight against corruption.

It is important to point out that although some radio and television channels also broadcast news about the initiatives of the campaign led by the Oaxaca Group, in 2001 the National Chamber of Commerce for Radio and Television publicly announced that it was opting out of the collective action, arguing (as mentioned above) that the right to be informed belonged to the population as a collective, not to each person. The broadcast media sector was also busy lobbying for reforms of the Telecommunications Law, so it had other priorities. The Oaxaca Group did not seek to maintain its support, fearing that this might cause a loss of focus on the sole priority of the Group: the adoption of a law on access to information.

### *Interaction between Civil Society and Public Institutions*

To increase the positive response of public opinion and the coverage they had in the media, all the parliamentary groups—except the ruling party, Partido Acción Nacional (National Action Party; PAN)—supported the initiative of the Oaxaca Group. The combination of media, academics, and other civil society practitioners allowed the Group to gain access to a wide political audience. One of the most influential arguments used by the Group to persuade the politicians of the need for an access to information law was that it would improve the relationship between the government and the citizens by enhancing transparency, increase public confidence, and bring about considerable administrative efficiency (by requiring government departments to organize their filing systems and archives).

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28. Issa Luna Pla, *Movimiento Social del Derecho de Acceso a la Información*, forthcoming.

Soon after the launch of the Declaration of Oaxaca in June 2001, a member of Congress from the opposition Partido de la Revolución Democrática (Party of the Democratic Revolution; PRD), Miguel Barbosa Huerta, set forth another draft bill on access to information, which was reviewed and commented on by the Oaxaca Group. At the same time, the newly formed Technical Committee of the Oaxaca Group prepared a “Decalogue on the Right to Information” that the government draft proposal on access to information should incorporate into its text to comply with the international standards on the topic.<sup>29</sup> Subsequently, the Committee set about drafting a model access to information law for the government to draw on in the review of its own proposal, describing the comparative experience of other countries and highlighting their best practices as examples to follow.

At the end of October 2001, the Oaxaca Group presented its proposed model access to information law to the Chamber of Deputies of the Congress. Meanwhile, the government had started organizing a series of consultations addressed to the citizens, to hear the views and suggestions on the draft access to information bill. The Oaxaca Group deliberately abstained from taking part in these consultations and even criticized them, arguing that they were likely to disguise an attempt by the government to claim that its original proposal was supported by public opinion.

In the two months following the presentation of its model access to information draft law to Congress, the Oaxaca Group concentrated its efforts on pressuring President Vicente Fox to present the government draft bill in Congress, which eventually was done on December 1, 2001.

The final government draft proposal incorporated some of the suggestions made by the Oaxaca Group, but was not considered entirely satisfactory by the Group. By that time, the only two bills presented to the Congress were the government version supported by the ruling party (PAN) and the version presented by Congressman Barbosa Huerta and supported by the major opposition party (PRD). Another major opposition party (the PRI) contacted the Oaxaca Group and offered to sponsor the Oaxaca Group’s model draft law on access to information as its own. The Technical Committee of the Oaxaca Group accepted the offer on the condition that all the other opposition parties sponsor the proposal as well, to ensure that the bill was seen to be independent of party interest. Following meetings of the Technical Committee of the Oaxaca Group with the presidents of all the political parties—meetings to which even the PAN was invited, but declined to attend—the members of five opposition parties were convinced to sign and sponsor the Oaxaca Group’s model draft law on access to information as if it were their own. The bill was subsequently presented by the President of the Congress on December 6, 2001.

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29. For a full list of the Decalogue, see Juan Francisco Escobedo, “*Movilización de Opinión Pública en México: El Caso del Grupo Oaxaca y de la Ley Federal de Acceso a la Información Pública*,” 2002 (see [www.juridicas.unam.mx/publica/librev/rev/decoin/cont/2/art/art3.pdf](http://www.juridicas.unam.mx/publica/librev/rev/decoin/cont/2/art/art3.pdf)).

At this stage, the strategy of the Oaxaca Group switched to convincing the members of Congress and the government to merge the existing three draft proposals presented, retaining the best principles and norms of each of them. The legislative debate was then postponed until March 2002. In the meantime, the Technical Committee of the Oaxaca Group was invited to take part in an internal debate with the members of Congress and the executive branch, leading to a single draft bill that was discussed and finally approved in April 2002 before entering into force on June 12, 2003. However, this last stage involved close and exclusive cooperation between the Oaxaca Group members and the legislative and executive branches and was heavily criticized by the rest of the civil society that were not members of the Group, who felt left out of the final, crucial debate over the law itself.

### *Follow-Up to Adoption of ATI Law<sup>30</sup>*

After the adoption of the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Federal Transparency and Access to Governmental Public Information Act; LFTAIPG)—the main objective of the creation and activity of the Oaxaca Group—the Technical Committee of the Group publicly declared the Group’s decision not to convert itself into a political group or a permanent organization, but to naturally dissolve itself once LFTAIPG entered into force in April 2003, having accomplished its original mission.

Following the entry into force of LFTAIPG and the dissolution of the Oaxaca Group, academic institutions, NGOs, journalists, and other civil society groups have taken over the role of upholding and monitoring the implementation of the right of access to information at both the federal and state levels.<sup>31</sup> An example is the Colectivo por la Transparencia, a coalition of NGOs (set up with the financial support of the Hewlett Foundation) whose mission is to act as an “observatory on transparency, promote best practices on access to information, raise citizens’ awareness and empower them in the use of this law to access information, lobby for improved access to information, and act as a bridge between civil society and the government to advance the quality of democracy.”<sup>32</sup> The strategies used by this coalition to carry out its mission involve research and analysis, training and capacity-building events, user-friendly publications for the public, and dialogue with public institutions across the country.

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30. Interviews with Tania Sánchez, held on September 11, 2008, and Miguel Pulido, held on September 25, 2008.

31. For a list of the academic institutions, NGOs, and civil society groups active on access to information in Mexico, visit the Web link at [www.derechoasaber.org.mx/enlaces.php?PHPSESSID=823bd5f8e2ff803c722ac32d14a8ba66](http://www.derechoasaber.org.mx/enlaces.php?PHPSESSID=823bd5f8e2ff803c722ac32d14a8ba66).

32. For more information on the mission of the Colectivo por la Transparencia, see [www.fundar.org.mx/quehacemos/analisisProyectos/colectivo\\_transparencia.htm](http://www.fundar.org.mx/quehacemos/analisisProyectos/colectivo_transparencia.htm). The 11 members of the coalition are Fundar—Centro de Analisis e Investigacion (coordinator), Academia Mexicana de Derechos Humanos, Alianza Civica, Centro Mexicano de Derecho Ambiental, Centro Nacional de Comunicación Social, Cultura Ecológica, DECA—Equipo Pueblo, Iniciativa Ciudadana para la Promoción de la Cultura del Diálogo, Libertad de Información—México, and Presencia Ciudadana Mexicana.

The members of the *Colectivo por la Transparencia* started their involvement in access to information as they began to use the law for their own lines of work. The NGO *Fundar*, for instance, while investigating a case on the use of public funds for HIV patients, was able to uncover a case of mismanagement in the use of such funds through LFTAIPG. As the members of the *Colectivo* became more involved in access to information, they changed their goals from promoting the use of the law to improving the implementation of the law through advocacy, research, and events such as the *Sunshine Week*. The heterogeneity of the *Colectivo* has been the key to broadening their reach—and thus their advocacy capacity—as members have a different set of networks that are put to use to advance the goals of the coalition.

However, the *Colectivo* has faced challenges. The fact that it is a heterogeneous coalition has affected the coordination among the different members, because not all members share the same agenda or get involved to the same extent. The release of public statements only when there is consensus among members on certain issues has contributed to easing the coordination and advancing their objectives. Another delicate issue faced by the *Colectivo* is funding. Because *Fundar* was the recipient for the funds that would support the *Colectivo*, to a certain extent this determines the dynamics among members of the *Colectivo*.

On the other hand, the mandate of the *Instituto Federal de Acceso a la Información Pública* (Federal Institute for Access to Information; IFAI) created by the federal law includes the promotion of the right of access to information. In this respect, IFAI has engaged with civil society at the national and subnational levels in a wide range of projects, promoting dialogue and furthering the use of the right of access to information. For instance, the *Proyecto Comunidades—México* is one example. This project was carried out between 2005 and 2007 in seven Mexican states with the participation of 20 local civil society organizations, whose objective was to empower vulnerable local communities to use their right to access information to improve their conditions and their socioeconomic rights. The results of the activities conducted within the framework of the project were evaluated by the *Universidad Nacional Autónoma de México* (National Autonomous University of Mexico; UNAM) and led to the identification of tools and methodologies to promote the exercise of the right to information among vulnerable communities.

Another initiative promoted by IFAI and funded by the Hewlett Foundation is the creation in 2005 of the *Centro Internacional de Estudios de Transparencia y Acceso a la Información* (International Center for Studies on Transparency and Access to Information; CETA), a think tank and research center aimed at fostering a culture of transparency, access to information, and accountability of public/private institutions.

At present, one of the main challenges that civil society groups are facing in Mexico follows the latest amendment to Article 6 of the Constitution, which was introduced in July 2007 and outlines the minimum common standards that must be guaranteed on access to information, at both the

federal and state levels.<sup>33</sup> This reform aims to extend the implementation of ATI standards at the state level. There is a role for civil society to engage in promoting law reforms in each state and in their implementation. In this regard, organizations like Fundar, Libertad de Información—México (Freedom of Information—Mexico; LIMAC), and Centro de Investigación y Docencia Económicas (Center for Research and Teaching in Economics; CIDE) are monitoring the actual implementation of these minimum standards at the state level. Despite the one-year deadline established by the reform for the Mexican states to amend their legislation and regulations accordingly, most of them are still lagging behind. Furthermore, as the rationale behind the Proyecto Comunidades highlights, it is important to expand the reach of the law to other segments of the population, particularly vulnerable groups in poorer states. Civil society, in coordination with IFAI, can play an important role in promoting the use of LFTAIPG at the state level. To do so, synergies between organizations at the national level, most of them based in Mexico City, and organizations at the local level could be fostered.

In addition, as noted by some practitioners, after six years of an ATI law, there has been a frequent use of the term “transparency” in the political arena. The use of the law has raised the expectations about what can be achieved through transparency, so when these expectations are not met, it becomes more difficult to promote access to information. The challenge for civil society is to place ATI on the agenda as one tool within the accountability system, not the ultimate tool that will solve all problems.

Finally, securing the necessary funds for civil society organizations’ (CSOs’) work is still a challenge. In general, CSOs in Mexico working in the areas of transparency and access to information obtain their funds from international organizations such as international cooperation agencies and international nongovernmental organizations (INGOs); as these funds become scarce, competition among CSOs intensifies, thus increasing tensions. However, this could be seen as an opportunity for CSOs to diversify their financing.

## *General Observations*

There is no doubt that the original Oaxaca Group bears a great deal of credit for the steps Mexico has taken toward legislating ATI. As with AIP in Bulgaria, there are both external and internal reasons. Internally, the Oaxaca Group brought together a diverse group of experts representing a broad range of interests, including substantial support from the Mexican print media. The Group set itself realistic objectives—focusing on a draft bill and a media campaign—and delivered both, drawing inspiration mainly from a set of agreed principles, as well as from comparative best practices from other countries’ legislation. The wider external context was also important, from the regime change

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33. New Article 6 of the Political Constitution of Mexico, as amended by decree published on July 20, 2007 (see <http://info4.juridicas.unam.mx/ijure/fed/9/7.htm?s=>).

and President Fox's desire for institutional reform to Mexico's participation in the OECD, NAFTA, and the WTO, and the requirements for greater transparency that resulted, as well as the need to fight corruption. In the end, the momentum generated by civil society engagement, coupled with the sense by the government that ATI was an achievable reform in the complex politics of Mexico, were crucial elements leading to passage.

Beyond the adoption phase and the participation of the Oaxaca Group, civil society has played various roles to advance the right to access information in Mexico. They have been eager users of the law, taking advantage of it in their particular areas of work, particularly journalists, NGOs, and academics. Civil society has been involved in the development of analytical work: A significant number of Mexican scholars and organizations continue to further the understanding of access to information, while academic institutions (such as CIDE) provide the space to advance and disseminate this kind of work. This shows the evolving role of civil society in furthering access to information, from advocacy and awareness raising to secure its adoption to upholding, monitoring, and improving the implementation of the law.

## India

The right to information was formally acknowledged in India in 1975, when the Supreme Court of India ruled that such a right was implicitly protected under the right to freedom of speech and expression guaranteed in Article 19(1) (a) of the Indian Constitution. Nevertheless, it took more than 20 years before the right to information was finally regulated and implemented through legislation, first by state governments and then by the central government, following a series of grassroots civil-society-led campaigns scattered across the country.

### *ATI Coalition: Structure, Funding, and Strategy*

One distinctive trait that characterizes the civil society movement for access to information in India and makes it unique vis-à-vis similar campaigns worldwide is the fact that it was built by working with the poor of society, including the rural poor, together with activists who belonged to the more educated elite. It also, at least initially, upheld the right to information not so much as a fundamental human right in itself, but more as an instrumental tool for the achievement of socioeconomic rights of the people and as a deterrent against the rampant corruption operating at all levels of society. From being a grassroots movement, the campaign for ATI gradually gained momentum and spread out, leading eventually to the enactment of state and national legislation pertaining to the recognition and defense of the right to information.

### The Grassroots RTI Movement in Rajasthan

The first organized civil society movement campaigning for access to information was the so-called Mazdoor Kisan Shakti Sangathan (MKSS), officially launched on May 1, 1990, in the state of Rajasthan, as a solidarity group of farmers and rural workers, most of whom were indigent and illiterate. The primary stated objective of MKSS—which sustained itself exclusively from members' and individuals' contributions—was to improve the living conditions of its constituents. To do so, it started staging protests, public marches, rallies, sit-ins, and hunger strikes in the villages to demand fair working conditions and minimum wages for daily workers and farmers that were promised under the government-sponsored drought relief and rural development work programs. Whenever workers and farmers asked to be paid the statutory minimum wage, they were told by the local administrators that their work did not appear on the muster rolls (that is, the employment and payment records). Under the slogan “Our Money, Our Accounts,” collective action undertaken by MKSS demanded that the local administrators provide the muster rolls (daily record of payment of wages) recording the tasks performed by each worker and the wages paid to them, as well as documentation accounting for all expenses incurred for the works carried out in the villages.

The marches, rallies, hunger strikes, and sit-ins protesting the lack of transparency were regularly reported in the local and national media and ultimately led to the Rajasthan government authorities consenting to release the information requested by the villagers. At this stage,<sup>34</sup> MKSS organized a series of so-called *jan sunwais* (public hearings) in which the records describing the development projects, their timelines, the number of people employed, how much they had been paid, and so forth were read aloud and the villagers and workers attending the hearings were called to testify whether the information reported in the books, to the best of their knowledge, was correct. More often than not, villagers would stand up and say that the information recorded in the books was incorrect or falsified. For example, public works might be reported as completed but never actually started, or there may have been recorded payments to people who were actually dead. This resulted in the naming and shaming of corrupt public officials, thus exposing the corruption that permeated the activities of the public administration.

In the second half of the 1990s, following the increasing attention paid by the media to the scandals uncovered by the *jan sunwais*, the MKSS campaign started to focus more closely on the importance of the right to information as a tool to empower poor people in the fight for their rights and a means to monitor public authorities and hold them accountable for their actions. At a mass meeting organized in the city of Beawar on September 25, 1995, under the slogan “The Right to Know, the Right to Live,” more than 2,000 villagers from all over Rajasthan rallied to demand a law that would operationalize their right to information. In October 1995, a first non-official bill on access to information was drafted by the Rajasthan Academy of Administration in cooperation with some of the founding members of MKSS and other individuals from different

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34. There was a statutory obligation to disclose such information in the laws governing village councils: the Panchayati Raj Act of Rajasthan. The administration had not delivered on this promise.

professional backgrounds. However, it was not until 1998, following reiterated public hearings and mass mobilization, that the Rajasthan government appointed a committee to draft a state right-to-information bill, inviting MKSS for rounds of discussion. The final Right to Information (RTI) Act was approved in 2000.<sup>35</sup>

### Other Civil Society Groups

In addition to MKSS, there were other voices from civil society, most notably groups working for consumer protection, such as the Consumer Education and Research Council, Ahmedabad, led by Prof. Manubhai Shah; groups demanding transparency and accountability in environmental governance, such as the CHIPKO movement; people's movements demanding just resettlement of people displaced by development projects, such as the Narmada Bachao Andolan; campaigns aimed at ending hunger, such as the Right to Food Campaigns; and so forth. The movement against widespread corruption in the bureaucracy launched by the Bhrashtachar Virodhi Andolan, led by Anna Hazare in Maharashtra, also provided the necessary breadth to this movement, drawing upon diverse sections of civil society and the citizenry. Several bureaucrats who had retired from prominent positions, such as Madhav Godbole; prominent lawyers, such as Prashant Bhushan; retired judges from the Supreme Court, such as Justice P. B. Sawant, and from the High Courts, such as Justice H. Suresh; and senior media professionals, such as Ajit Bhattacharjea and Prabhash Joshi, voiced their support for the adoption of a comprehensive transparency law to make the deemed fundamental right to information a reality for the people.

### The National RTI Coalition

The resonance at a national level of the success of the MKSS campaign paved the way for the creation of the National Campaign for People's Right to Information (NCPRI), set up in New Delhi in 1996 following a meeting organized by the National Press Council of India. Members of the successful MKSS campaign held in Rajasthan participated in the meeting and subsequent creation of NCPRI.<sup>36</sup>

NCPRI is a nonregistered group whose aim is to provide support to the grassroots movements for the right to information in the different states and to lobby the central government for the adoption and implementation of effective access to information legislation. The group has no exclusively dedicated staff, nor does it have a regular administrative budget. NCPRI members belong to the broadest range of sectors, including people's movements campaigning for livelihood protection, children's rights organizations, antiglobalization activists, environmental activists, women's rights groups, consumer rights groups, lawyers, and retired bureaucrats, as well as media and a small number of academics. However, NCPRI members do not represent their organizations within NCPRI; rather, they participate as individuals. They bring their experience to the table dur-

35. Neelabh Mishra, "People's Right to Information Movement: Lessons from Rajasthan," 2003 (see <http://data.undp.org.in/hdrc/dis-srs/Rajasthan/Right%20to%20Info.pdf>).

36. Aruna Roy and Nikhil Dey were among the leaders of the MKSS campaign and founding members of the NCPRI.

ing meetings and discussions. They meet once a year in a large event where people from each state working at the grassroots level come together to share their experiences of working on a variety of development, social justice, and human rights issues.

NCPRI is adamantly opposed to receiving any sort of institutional funding, even coming from international donors, because this would undermine the independence and the strictly “grassroots, home-grown” nature of the right-to-information movement across the country. Therefore, NCPRI relies exclusively on contributions from individuals, which forces them to operate with a very meager budget. All policy decisions are made by an appointed Working Committee, which also raises resources and periodically reviews NCPRI’s objectives, priorities, and strategies. The Director and the Right to Information Programme Coordinator of the INGO Commonwealth Human Rights Initiative (CHRI) are members of NCPRI’s Working Committee and cooperate with them toward developing a consensus on actions and priorities.

The first action of NCPRI was the discussion and formulation of a draft national RTI Bill, which was sent to the central government in 1996 and was finally introduced in Parliament in 2002, albeit as a much-diluted version of the original draft. The bill was approved by the Indian Parliament in December 2002 and signed by the President on January 11, 2003, but because a date for its entry into force was never set, it was never implemented. In the meantime, because of popular pressure or pressure from donor agencies, nine states passed their own information-access laws.

In the meantime, NCPRI, with the support of CHRI, also campaigned for the adoption of RTI Acts at the state level and in 2002 organized its first national convention in Beawar (Rajasthan), which was attended by more than 1,000 activists across the country. The second national convention was held in Delhi in 2004, and more than 30 workshops were also organized across the country to discuss the need to enact and improve the existing national RTI Act.

### *Interaction between Civil Society and Public Institutions*

In 2004, ahead of the parliamentary elections, the United Progressive Alliance (UPA) promised in its manifesto to put some life into the access to information law that languished on the statute book. Upon winning the ballot, the UPA government, led by the Congress Party headed by Mrs. Sonia Gandhi, published the “National Common Minimum Programme (CMP),” in which it promised that “the RTI Act will be made more progressive, participatory and meaningful.”<sup>37</sup> The primacy given to the issue of transparency in administration was in no small measure because of the efforts of RTI advocates who were in direct contact with Mrs. Gandhi. To oversee the implementation of the CMP, the central government appointed the National Advisory Council (NAC), a body comprising professionals in diverse fields of development activity who serve in their individual

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37. UPA government’s National Common Minimum Programme, May 2004 (see <http://pmindia.nic.in/cmp.pdf>).

capacities. They also acted as an interface between the government and civil society in the discussion on access to information legislation.

It is important to note that one of the members of the NAC, Aruna Roy, was one of the founders of the MKSS movement of Rajasthan and among the founders of the NCPRI itself. Other supporters of transparency nominated to this Council were N. C. Saxena, who had authored the “good governance” chapter of the 10th Five-Year Plan document, which recommended that the administration give people access to development-related information as a matter of right; Professor Jean Dreze, a leading figure in the campaign for the right to food and work; and Dr. Jayaprakash Narayan, a supporter of transparency and accountability in the electoral sphere. It comes as no surprise that the Council, heavily influenced by advocates of transparency, took up the rewriting of the RTI bill as its first task under the CMP mandate. The moment could not have been more politically opportune for the RTI coalition. NCPRI and CHRI began working on a new draft access law based on the experience gained from the nine states that had already implemented similar legislation and the knowledge emanating from developing countries like Mexico and South Africa, which had enacted similar laws in the recent past.

In August 2004, NCPRI submitted to the NAC a series of suggested amendments to the RTI Act of 2002. The NAC accepted most of them and forwarded them to the Prime Minister of India, recommending their adoption. Subsequently, a new right-to-information bill was introduced in Parliament on December 22, 2004. This was a much-watered-down version of what had been recommended by NCPRI. Activists successfully lobbied for its reference to a standing committee for detailed clause-by-clause analysis before adoption. Several NCPRI members were called to give evidence before this parliamentary committee, and as a result of these hearings, the bill was further amended to incorporate NCPRI’s recommendations. The considerably amended bill was approved by both Houses of Parliament in May 2005, and the law entered into force fully on October 12, 2005.

NCPRI found that most MPs had limited knowledge about the RTI bill when it was presented, even though the print media were writing about it almost every day. Therefore, it was fundamental for the movement to have two crucial allies in the fight for the approval of the new act: one was the leader of the ruling Congress Party coalition, Mrs. Sonia Gandhi, and the other was the chairman of the relevant parliamentary standing committee, with whom the representatives of NCPRI established a close advisory relationship. In the words of Venkatesh Nayak, coordinator of the Right to Information Programme in India, on behalf of CHRI, “If not for the close contacts that advocates of transparency had developed with Mrs. Gandhi, we would not have been able to prevail upon the government to pass the law in its current form in the face of enormous pressure from the bureaucracy that preferred a weak one.”<sup>38</sup> This shows how significant it was for the supporters of

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38. Interview with Shailesh Gandhi, NCPRI Convenor, held on January 25, 2008, and interview with Venkatesh Nayak, CHRI Right to Information Programme Coordinator, held on February 7, 2008.

the ATI campaign at the national level to establish and maintain close links with the members of the Congress, voicing the concerns of the grassroots movements across the country.

However, when the government made its submissions on the bill to the committee, civil society was not allowed to attend the session, because parliamentary committee meetings are still not open to the public.

### *Follow-Up to Adoption of ATI Law*

Clearly, the role of civil society in India extends beyond advocating for the right to information. Civil society has expressed an intention to be a meaningful actor in monitoring the implementation of the RTI Act. So far, as confirmed by both Shailesh Gandhi, convener of NCPRI, and Venkatesh Nayak, CHRI Right to Information Programme Coordinator, there is no comprehensive documentation available to review the effective implementation of the national RTI Act in the country. There is only partial data, reported occasionally by some states and compiled on the basis of the information passed to the local media by the same people who submitted requests for information under the Act. This has made full engagement of civil society on monitoring difficult. However, two large-scale exercises have been launched recently to assess the performance of the law—one commissioned by the government and executed by PricewaterhouseCoopers,<sup>39</sup> and the other a civil society initiative called the “RTI Accountability and Assessment Group,” supported by several NCPRI members and funded by the Google Foundation. On a smaller scale, several scholars from universities in India and abroad and other similarly placed research institutions, such as the Centre for Media Studies in Delhi, have taken up focused studies of the impact that RTI is making on people’s lives, governance, access to services, and petty corruption.

CHRI works with grassroots organizations in some states, playing the role of a catalyst, promoting better understanding of the processes for seeking and obtaining information under the RTI Act, helping large networked organizations identify areas where they can make interventions using RTI to improve the quality of governance and expose corruption or poor decision making. CHRI also provides free-of-cost assistance in representing any of them who files an appeal before the Central Information Commission (CIC) and State Information Commissions.

Despite its relatively recent adoption, there have already been attempts at the national level to weaken the content of the national RTI Act: in July 2006, for example, a tentative draft RTI Amendment bill was leaked to NCPRI, which it circulated to its members during a press con-

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39. Toward the end of 2007, the central government launched a tender for a study aimed at reviewing and assessing how effectively the RTI Act has been implemented since its entry into force. However, it appears that key civil society groups were not consulted on the intention of carrying out this study and the methodology to be used for the review. For this reason, it is feared by civil society organizations that the results of this study could be manipulated to justify further proposals for restrictions on access to information.

ference in August 2006. NCPRI also called on the government to confirm its validity, since it included a number of amendments that would narrow significantly the scope of the current RTI Act. Although the government declined to reply, NCPRI and CHRI submitted a critique of the amendments to the Prime Minister, several members of government, the CIC, and civil society partners.

In reflecting on both the passage and now the implementation of the RTI Act in India, it is clear that one major challenge is the mind-set of resistance from bureaucracy within public institutions. Although a moment of political will and a concerted push from civil society allowed RTI to be manifested in legislation, whether or not that political will is followed up with meaningful action, given this resistance, is a legitimate concern. Add to this bureaucratic mind-set of resistance the fact that respect for rule of law by citizens is not always a given, and further challenges present themselves.

A recognition of the crucial role played by civil society groups is evidenced by the numerous examples of involvement of civil society organizations in designing and conducting capacity-building and training programs for duty holders by various governments all over the country. The ATI community expanded manifold overnight, with new organizations and groups equipping themselves with knowledge of the law in detail, testing it by using it in innovative ways, and spreading awareness among people in rural and urban areas. Although the statute placed the mandate for public education on the government, the responsibility has been ably shouldered by NGOs and—most notably—the media that highlighted stories of people's success and failures in accessing information.

### *General Observations*

MKSS is a relatively unique entity in its composition and method of working. Both it and the broader coalition, NCPRI, have eschewed receiving donor funding on the grounds that it would compromise their independence. Rather than operating in urban areas as most NGOs working in this field do, MKSS seeks to embed itself in local rural communities, with the day-to-day lives of its activists mirroring those of local people and undertaking community-based mobilization. They build upon traditional forms of activity and see themselves as part of a wider movement against poverty and poor living conditions, in which campaigns for RTI are instrumental. This integration into the socioeconomic struggles of poor communities gave the campaign real weight and attracted wider media and public support (as well as international recognition). Given the roots of MKSS in particular antipoverty struggles, the creation of a broader coalition focusing on an RTI law was a logical step. One lesson in the case of India is that no matter how deep-rooted a popular campaign might be, allies within governing institutions are crucial if successful legislative reform is to be achieved.

## South Africa

The historical backdrop against which South Africa has adopted an ATI regime is a unique one. Stepping out from the shadow of apartheid has been an exercise requiring political commitment to democratic ideals that reach far beyond access to information. That said, groups opposing the apartheid regime recognized early on that access to information would be an important building block in the foundation on which to build a new South Africa. Systemic denial of information was a key enabler for the racial, social, and economic oppression that plagued South Africa for more than 40 years.

As the old political order was torn down, two key conferences that explored ATI were held, foreshadowing the importance of the issue in establishing a more inclusive and participatory democracy: The Breakwater Conference on Administrative Law for a Future South Africa (in 1993) and Ensuring Government Accountability, Accessibility, and Transparency in the New South Africa (in 1994) were important steps toward generating the political will necessary to ultimately result in the enshrining of the public's right to access to information as an essential constitutional principle.

As South Africa was undergoing its process of transformation into a modern pluralist democracy, the constitutional drafters included the right to information in both the interim Constitution, which was drafted in 1993 (and which took effect in April 1994), and the final Constitution, which took effect in February 1997. Civil society realized that comprehensive legislation was needed to operationalize this constitutional right. Moreover, the new Constitution included a stipulation requiring that a legal instrument to do so be implemented in a period of three years. It was around this identified need that an active civil society campaign consolidated, yet it was not until February 2000 that the Promotion of Access to Information Act (PAIA) was finally passed.

### *ATI Coalition: Structure, Funding, and Strategy*

PAIA, originally introduced as the Open Democracy bill, was the subject of a lengthy campaign by social justice groups. One of the first formal attempts to organize civil society around ATI legislation was the Open Democracy Advisory Forum (ODAF), which was convened by the Freedom of Expression Institute (FXI). Following ODAF's dissolution, an array of organizations, including IDASA, Black Sash, Human Rights Committee, Legal Resources Centre, Environmental Justice Networking Forum, South African NGO Coalition, National Association of Democratic Lawyers, South African Council of Churches, South African Catholic Bishops Council, and Congress of South African Trade Unions (COSATU), formed the Open Democracy Campaign Group (ODCG), which was active from 1996 through 2000. It made numerous submissions to the Parliamentary Ad Hoc Committee on the Open Democracy Bill, based on three years of extensive research into the international experiences of countries such as the United Kingdom and more

established access to information regimes such as those in Sweden. ODCG encouraged exchange visits with countries that had an established ATI system to reassure parliamentarians that it would not threaten the integrity of government. This helped create a positive interaction between ODCG and Members of Parliament, in particular the parliamentary committee that was handling the legislation, which became a champion of the reform alongside ODCG itself.

A strength of ODCG was its diversity. The earlier attempt made by FXI to organize around ATI by creating ODAF was similarly diverse, but lacked resources to be able to truly convene such a varied spectrum of members. In the case of ODCG, while it was at times difficult to coordinate across such an array of organizations with such diverse interests, ultimately ODCG was able to, through division of tasks according to each group's strengths, more effectively exercise an informed voice on a broader scope of issues related to the law. This also meant that ODCG became known as a key resource for media, Parliament, and their own member organizations.

Another area in which the diversity of ODCG was a strength was in dealing with the media. In the South African case, the media played the important role of helping civil society's voices be heard on substantive policy issues and avoid being captured by the party politics that can often characterize legislative processes. Having ODCG members with a specialized skill set to deal with the media in a strategic way was a strong asset.

As noted earlier, South Africa had gone through a transformative experience of social change following the transition to majority rule, and the campaigners were able to argue successfully that this issue was an essential part of that change. A somewhat unique contribution of the South African campaign, in the global context, was the inclusion of private companies within the scope of the legislation. There was recognition that in many countries private companies have taken on a considerable number of public functions that affect the quality of life of citizens. This argument was helped by the strongly innovative tradition in new South African legal thinking. The need to create new institutions of government, legislature, and judiciary brought to bear an unusual degree of openness to change.

Throughout the five-year campaign, ODCG undertook research into international good practices adapted for use in the South African socioeconomic rights campaign context, while using this research as the basis for its advocacy activities. Effective campaigns, such as MKSS from India, were brought to South Africa, along with representatives from other ATI campaigns in Africa (such as the Nigerian campaign), and these were complemented by international experts from groups such as ARTICLE 19, as well as a number of national and international lawyers and legal scholars used to provide timely advice on specific issues.

At the same time as the PAIA was passed, a new law intended to give legal protection to employees who blow the whistle on corruption and other wrongdoing in good faith was passed.

The Protected Disclosures Act (PDA) (no. 26 of 2000) makes provisions for procedures so that employees, in both the public and private sectors, who disclose information of unlawful or corrupt conduct by their employers or fellow employees are protected from occupational detriment. The civil society campaign emphasized the importance of both pieces of legislation, believing that in the South African context, one would reinforce the other (and perhaps with an eye to securing the support of the powerful South African trade unions).

### *Interaction between Civil Society and Public Institutions*

Although ODCG had been a protagonist throughout the drafting phase of the legislation, a further opportunity for engagement between civil society and the government presented itself when the ATI bill was finally presented in Parliament in 2000. By this time, ODCG—after four years of tireless advocacy, in-depth research, and extensive surveys of the global ATI landscape—became a highly skilled group intimately familiar with the document that had been presented. ODCG had the collective power of a diverse coalition, with each member an expert on his or her particular issue, and oftentimes had to exercise restraint to ensure that it spoke in a singular voice.

The process to submit recommendations on the presented bill was also one that required a good deal of strategy. ODCG understood that it was necessary to strike a balance between submissions that they enthusiastically supported as ideal modifications to the bill and those that would be more palatable to those within public institutions. In this way, ODCG intentionally cultivated a respectful relationship with government, recognizing that if it pushed too hard, it could risk no longer being seriously considered in the debate around the legislation.

Another tactic that ODCG was careful to utilize was to not allow the actions of the group to be viewed by government as simply complaining without offering viable solutions. ODCG, in providing submissions to parliamentary committees, often offered possible alternate language for legislative drafts—an important strategy, especially given the scarce financial resources of many committees and therefore inability to hire individuals, often lawyers, with the technical skills to draft effective legislation.

Constant contact with parliamentary committees through submissions and other interaction also allowed ODCG members to develop a rapport with some members of Parliament, allowing the adversariness that oftentimes characterizes the relationship between government and civil society to become less of an obstacle. This consistency of engagement was a major ODCG strategy. By demonstrating persistence and offering constructive solutions to legislative obstacles, even when those solutions were not ultimately adopted or were modified beyond recognition, civil society was able to successfully insert itself into the process and in doing so, frame an extremely important debate.

### *Follow-Up to Adoption of ATI Law*

Throughout the period of campaigning for a new ATI law, demand emerged for a practical, specialist service organization to assist social justice-based organizations to access their rights in relation to both the PAIA and the whistle-blowing law. As a result, the Open Democracy Advice Centre (ODAC) was established in October 2000 as a not-for-profit partnership between the Institute for Democracy in South Africa (IDASA), the University of Cape Town Department of Public Law, and the Black Sash Trust.

Because ODAC's primary role is to assist in the implementation of the PAIA, ODAC aims to equip organizations and individuals with the necessary knowledge and skills to comply with the law and to use the legislation to their own benefit. In this sense, the training is aimed at both requestors and providers of information. ODAC supports requests for information either by providing technical guidance and support to those making requests themselves or by submitting requests on behalf of the requestors (often the approach in cases where there is some degree of sensitivity). ODAC has also identified litigation as a key strategy in moving forward. In South Africa, the Law Society restricts ODAC to litigating on behalf of only those who cannot otherwise afford litigation, which is a significant limitation.

Strategic litigation is an important strategy for civil society groups to adopt, but there are constraints. Litigation tends to make an open-ended call upon resources, and consequently it can be difficult to identify the funds or even predict the expenditure with any certainty. Also, some of the litigation can involve extremely sensitive issues such as controversial arms deals involving the South African and foreign governments or political-party funding. Litigation on these kinds of issues can attract a hostile response from public authorities and create a very difficult climate for civil society work. In addition, while such cases are fascinating to those in the political realm, they tend to have little public resonance, except as a general backdrop to a climate of disillusionment with politics. For that reason, ODAC has consciously sought to identify ATI issues with a strong relevance to the poor or to rural communities (for instance, looking at municipal water supply).

It is perhaps unsurprising that the interest in ATI among civil society groups in South Africa is confined to a small number of organizations. There is a large and vibrant civil society, but it is one that is engaged across a wide range of concerns: rural development; health; poverty; campaigns about HIV and access to retro viral drugs; and ongoing issues of race, sexuality, and class. In this context, the emphasis that ODAC places upon ATI issues that are relevant to socioeconomic rights is understandable as an attempt to demonstrate the ongoing relevance of ATI measures in the wider development of South African society.

Between 1996 and 2000, the campaign highlighted a number of potential pitfalls that might prevent effective implementation of an access to information law. These included how accessible the law was, lack of awareness by citizens about ATI and related laws, and lack of awareness about how they

might use such laws. Finally, the campaign believed in the importance of monitoring the implementation and use of the law to be able to better understand how best to refine and improve it.

The body responsible for overseeing implementation in the South African context is the South African Human Rights Commission (SAHRC). This is a result of opposition from the judiciary during the passage phase, during which an information commission/er was excluded from PAIA. Consequently, enforcement is difficult, because SAHRC does not hold the power to adjudicate, but only the courts, while awareness raising has been weak.

### *General Observations*

The example of implementation of the PAIA in South Africa, as one of the continent's most successful economies, is a valuable advocacy tool for civil society groups elsewhere, and the strategic lessons of the South African experience can be passed on. The experiences, particularly in passage, of ODCG—and its later incarnation as ODAC—are instructive examples of the power of broad coalitions that effectively communicate and are able to use their diversity as an asset.

Moreover, as in other cases, the campaign in South Africa demonstrates the importance of civil society's readiness to offer solutions, rather than just criticisms. Civil society, in this case, often suggested draft language for sections of the legislation to be revised.

Because ODAC is the leader in the region on this issue, some attempts have been made to link up with similar campaigns in the African continent—particularly in Nigeria, where there is a long-standing initiative designed to secure access to information legislation. Currently, there is cross-membership on each other's advisory boards, but lessons learned in South Africa, particularly most recently on its implementation phase, need to be more widely disseminated if meaningful legislation is to spread.

## **The United Kingdom<sup>40</sup>**

The United Kingdom (U.K.) provides an interesting contrast to other countries in this paper. It is a developed, long-established democracy, politically stable and comparatively wealthy. In 1997, the incoming Labour government embarked on a broad program of constitutional change, which included incorporating the European Convention on Human Rights into U.K. law; establishing a means of directly electing mayors of big cities; devolving power to new Parliaments in Scotland, Wales, and Northern Ireland; changing the voting system; and introducing new rules on the fund-

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40. Interview with Katherine Gundersen, CFOI officer, held on January 28, 2008.

ing of elections and a Freedom of Information (FOI) Act.<sup>41</sup> Some progress toward openness was made in 1994, when the then-Conservative government introduced an Open Government Code of Practice, which committed government departments and agencies to releasing information on request unless it fell within specified restrictions. However, the Campaign for Freedom of Information (CFOI) argues that the code was relatively little known about by the public and rarely used.<sup>42</sup>

Such a program is very rare in an established democracy (as opposed to a country like South Africa, where constitutional reform was a necessary part of the new political settlement). There were many reasons why the government chose to make these changes. Some were structural: a sense that the old “imperial” centralized structures of government were not “fit for purpose” in the modern world. There were more narrow political factors: the Labour Party needed to fight off the advance of the Scottish Nationalist Party, and devolution was seen as a way of defusing its threat. Finally, civil society groups of various kinds were advocating an FOI measure, either for its own sake or because it was necessary to underpin a wider program of reform. Maurice Frankel says that, at the time leading up to the Act, CFOI had about 100 organizations supporting the cause.

### *ATI Coalition: Structure, Funding, and Strategy*

The main lobbying for FOI, in the run-up to the Act, came from CFOI, which was highly instrumental in the drafting of model bills before the Act itself was passed. CFOI is an ad hoc NGO set up in 1984. It relies on funding mainly from charitable sources, including the Joseph Rowntree Charitable Trust and the Nuffield Foundation, as well as from donations and the fees charged for training workshops and seminars requested by individuals or organizations. In the last 25 years, CFOI has also campaigned in cooperation with the media to promote a series of successful bills giving the public the right to see their own medical, social work, and housing records and information about environmental and safety hazards.<sup>43</sup> The impact of this long relationship was considerable. The media came to trust implicitly the work of the campaign and began to rely upon it as a primary source of reliable information and comment. As a result, the government was often forced to respond to the campaign’s own initiatives, which in turn provided a powerful motor for the introduction of legislation.

In operational terms, CFOI was (and is) a small group,<sup>44</sup> headed by one driven expert, Maurice Frankel, who retains to this day a detailed and comprehensive overview of the workings of the legislation. Although CFOI comprised a number of constituent organizations, in reality it was

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41. The two main pieces are the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998, whereas Scotland has its own freedom-of-information legislation (the Freedom of Information [Scotland] Act 2002).

42. <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=1842&sID=63>.

43. For a list of the laws with specific aspects on access to information supported by CFOI, see [www.cfoi.org.uk/legachiev.html](http://www.cfoi.org.uk/legachiev.html).

44. Other NGO-led initiatives and campaigns that are directly or indirectly related to freedom of information include, among others, ARTICLE 19, BOND, Transparency International, Privacy International, and the Fraud Advisory Panel.

an elite expert group that worked closely with the then-opposition Labour and Liberal parties to highlight the importance of FOI. Also significant was the constitutional pressure group Charter 88, which was urging the drafting of a codified constitution for the United Kingdom and, as part of the preparation for that, believed that an FOI measure was an essential step forward.<sup>45</sup>

### *Interaction between Civil Society and Public Institutions*

In the run up to the Labour government's election, a number of scandals broke in U.K. public life. These included the extent of bovine spongiform encephalopathy (BSE; popularly called "mad cow disease"), which had penetrated most cattle herds in the country, and the export of machine parts to Iraq, during the UN embargo, that were capable of being weaponized. In each case, demands for ATI accompanied the debate, with proponents arguing that ATI would have prevented these scandals from developing in the way they did.<sup>46</sup> Opposition politicians were also able to exploit the growing distrust of the incumbent government, arguing that the lack of transparency indicated a corrupted political culture, one that needed an ATI measure to purge itself. In other words, debates about substantive issues of concern to the general public were framed as ATI issues, which helped build wide support for reform. Opposition politicians (including future Prime Minister Tony Blair) were invited to speak at the annual Freedom of Information guest lecture. Key media outlets took a keen interest and reported political comment on ATI issues. Unfavorable comparisons were made frequently with countries like the United States. The result was that by the time of the 1997 election, ATI was seen as an essential part of the overall program of reform, despite the well-documented reservations of many senior politicians.

However, although part of the overall program of legislative reform, ATI legislation was not passed until 2000 and did not come into effect until 2005. This delay is generally attributed to a long tradition of "secrecy" in U.K. government practices, despite the fact that "freedom of information" was a priority in several electoral manifestos released by the Labour Party since 1974.<sup>47</sup> CFOI's campaign strategy consisted of establishing regular contacts and cooperation with the media and key members of Parliament to keep up the pressure on the government to comply with its repeated promises to legislate on the subject. To do so, the CFOI campaigners wrote briefings for parliamentary committees, drafted proposals to be sponsored and discussed by MPs, responded to government initiatives and consultations, held public meetings, and published articles in the main newspapers explaining the need for a law and how it would affect citizens' rights.

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45. For a full list of the supporters of CFOI, see [www.cfoi.org.uk/suppobsorgs.html](http://www.cfoi.org.uk/suppobsorgs.html).

46. The main civil society groups referring to these arguments were CFOI and Charter 88 (a pressure group formed in 1988 to promote constitutional reform in the United Kingdom to make the public institutions more democratically accountable to the citizens).

47. CFOI has compiled a list of the official pledges on freedom of information made by the Labour Party since 1974, available at [www.cfoi.org.uk/pdf/labcmits.pdf](http://www.cfoi.org.uk/pdf/labcmits.pdf).

A turning point in the political debate on access to information legislation was provided on March 25, 1996, at CFOI's annual awards ceremony by the then-Leader of the opposition Labour Party, Tony Blair, who officially pledged his commitment to a Freedom of Information Act.<sup>48</sup> This commitment was reiterated in the May 1997 Labour electoral manifesto and, once the Labour Party won the elections, led to the publication of a White Paper for consultation in December 1997,<sup>49</sup> followed by an FOI bill issued for consultation in May 1999 and then the final bill, introduced to Parliament in 1999.

CFOI was deeply disappointed by the difference between the principles outlined in the White Paper and the final bill issued for consultation, which (in their view) was a very watered-down version. The CFOI efforts then concentrated on lobbying MPs to introduce amendments to the bill, which was partly reviewed for the better and finally approved by Parliament in 2000. It took another five years before it entered into force, which is the longest period for implementation ever taken when compared with the experiences of other countries with similar legislation.

### *Follow-Up to Adoption of ATI Law*

Following the entry into force of the U.K. FOI Act, CFOI concentrated its activities on fostering the implementation of the law, raising awareness of its use among civil society, and organizing training courses for public officials and other interested stakeholders.

Despite shortcomings in the Act, its first year of operation was evaluated by the government as a "significant success,"<sup>50</sup> an assessment that was generally shared by CFOI and the media. Civil society and the media closely cooperate in using the FOI Act and submitting FOI requests to make the public institutions accountable to the public opinion. In particular, CFOI claims that so far, the most enthusiastic users of the FOI Act have been the media and NGOs, although these organizations appear to support the FOI Act not so much as a right in itself, but for the information they want to obtain for their own purposes through the use of the legislation.

Meanwhile, since the entry into force of the FOI Act, the Information Commissioner's Office (ICO) has been conducting annual surveys to gauge the level of public awareness and attitude of the public toward the Act before and after its entry into force. A first survey released in 2006 shows that before the entry into force of the Act, roughly 50 percent of the sample interviewed acknowledged that an FOI Act would increase the knowledge of what the public authorities do, would promote their accountability and transparency, and would increase confidence/trust in them, boosting democratic participation in governance. Two years after the Act came into force, however, already

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48. Tony Blair's full speech is available at [www.cfoi.org.uk/blairawards.html](http://www.cfoi.org.uk/blairawards.html).

49. The White Paper, "Your Right to Know: The Government's Proposals for a Freedom of Information Act," is available at [www.archive.official-documents.co.uk/document/caboff/foi/foi.htm](http://www.archive.official-documents.co.uk/document/caboff/foi/foi.htm).

50. Department for Constitutional Affairs, "Freedom of Information: One Year On," 2006, HC 991, p. 9.

more than 70 percent of the people interviewed said that the FOI Act had increased the knowledge of what public authorities did, promoted their accountability and transparency, and definitely increased confidence and democratic participation among the public. These data are even more significant if one considers that when the same people were asked if they had actively used the Act to request information from the government, 95 percent said that they had not—thus confirming that the Act in fact was largely used by the media and NGOs—but that nevertheless its very existence boosted the public opinion's sense of accountability of the public authorities. Besides, the second survey released in 2007 shows further improvement on the level of the public's spontaneous and prompted awareness of the right to request information held by the government and public authorities (from 11 percent in 2006 to 20 percent in 2007). There is also an annual information conference sponsored by the Commissioner, the Ministry of Justice and the Constitution Unit of University College, London. This "FOI Live" event draws experts and officials together.

The need for civil society to be ever vigilant and ready to tackle implementation challenges was made clear soon after the Act entered into force in the United Kingdom. As has happened in Bulgaria and Mexico, a number of retrogressive amendments that would have seriously limited the effectiveness of the legislation were presented by Parliament. Principal among these were two amendments in particular, one dealing with the costs of providing information and the other aimed at limiting the scope of the Act.

In October 2006, the government brought forward a proposal to review the fees assessed for disclosure of information. In the event that the cost exceeded a set amount, information could be denied on the grounds of excessive cost. It also sought to limit the number of requests made by a requester in a defined period of time. In this case, a "requester" was understood to mean not only an individual but also an organization, which could have limited large media organizations such as the BBC. CFOI and other organizations made submissions rejecting these limits on the grounds that they would have made it easier to reject a greater number of politically sensitive or complex information requests. A year after its introduction, on October 25, 2007, the new government led by Prime Minister Gordon Brown announced that it would drop the proposal to review the fees for FOI requests, following the opposition of 73 percent of the media representatives and NGOs who had responded to the consultation on the proposal. In this case, civil society was able to defeat a challenge to the Act first by remaining vigilant during the implementation phase and second by mobilizing a unified voice to participate in the consultation.

Another significant example of an attempt to limit the scope of the FOI Act is provided by the bill presented in early January 2007 by David Maclean MP seeking to exempt Members of Parliament from the FOI Act. This bill's most obvious effect would have been to block requests that seek information about an MP's expense claims. Following a first vote of approval of the bill by a cross-party majority of MPs, CFOI drafted a "name and shame" list of the MPs who had voted in favor of the bill and disseminated it to the media. The widely published list prompted people whose constituency was represented by MPs who had voted in favor of this limit to the right to information

to write to them expressing their disapproval about their conduct. The uproar caused among public opinion proved successful, and in the end, the bill's discussion was dropped in October 2007 in the House of Lords because of the lack of sponsors upholding it.

These two cases, again, underscore the importance of the watchdog role of civil society in ensuring effective implementation and meeting challenges to the Act head on. However, amendments are a fairly obvious challenge to the exercise of the right. Civil society must not only be able to detect obstacles for users but also be committed to remaining engaged in the constant and dynamic process of shaping the law. In the United Kingdom, this challenge has been accepted by CFOI and other groups who have opened another consultation exercise on the opportunity to extend the scope of the FOI Act to include private bodies exercising public functions or acting as public procurement contractors. An amendment to expand the scope of the Act would bring it more in line with that envisaged in the consultation document.

### *General Observations*

In the United Kingdom, civil society involvement sustained the campaign for FOI over a long period when there was little sign of legislative progress. The aggressive attitude of the British media also helped: From the early 1990s, the media took the view that most governments were concealing something important and that it was their task to reveal it. There was relatively little public engagement, however, and the campaign operated at an elite level for most of its existence, although periodic scandals such as the spread of BSE in cattle and the threat to humans gave some traction to public demands for FOI.

Since the passing of the Act, the role of the Freedom of Information Commissioner is vital in the United Kingdom. Some observers point out that civil society organizations have tended to focus on lobbying government and Parliament, rather than informing the public of their rights. The Commissioner's work in enforcing ATI, providing accurate and up-to-date data on its impact, and acting as a source of expertise and advice strongly contrasts with those countries reliant upon the work of civil society groups to fill that gap. Civil society, in the shape of CFOI, has also established a fruitful cooperation with the Information Commissioner's Office (ICO) in the review and approval of the so-called "publication schemes" that the public institutions subject to the FOI Act are required to draft periodically and that specify the classes of information that they publish or intend to publish proactively, without prompting from FOI requests. This cooperation and the strengthening of the ICO role is likely to prove a solid foundation for further improvements in ATI in the United Kingdom.

## Concluding Observations

There is no doubt that the impact of civil society upon measures to promote access to information is considerable: as experts, innovators, mobilizers, and sources of advice and support. It is instructive to consider the example of an access to information law for which no civil society involvement occurred. In 2002, Zimbabwe introduced an access to information and privacy law. Although it contained some provisions for providing access to public information, it was so hedged with exemptions and restrictions that the impact was virtually meaningless.<sup>51</sup> In fact, the majority of the provisions of the bill involved restrictions on press freedom; something that would not have passed without protest had civil society been involved in the process.

If we wish to understand the potential impact of civil society engagement, we need to analyze the opportunities offered by the changing political or socioeconomic environment. Civil society on its own is unlikely to be able to secure the passing of ATI legislation in the face of a hostile government and an indifferent population. There needs to be a wider environment for change. But civil society can hold government to account for promises made regarding ATI and push for legislation, as in the United Kingdom.

An example of this might be Mexico, which agreed to a new constitutional provision in 1977, but this remained relatively inactive until Mexico joined the OECD, NAFTA, and WTO in the late 1990s. In the wake of this development, the government proposed an ATI measure focused narrowly on the need to tackle corruption in public institutions. This created opportunities that local civil society groups understood and were able to exploit to expand the debate into one that called for a broader right of access to information. In the case of the United Kingdom, there was a preexisting campaign for constitutional reform into which a group of campaigners were able to insert the demand for ATI. In South Africa, it was important to link ATI to both the wider debate on constitutional reform and the specific issue of whistle-blowing legislation.

A crucial way in which civil society can impact ATI by raising public awareness of the importance of public information. For most people, the process of acquiring information has no intrinsic

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51. <http://www.article19.org/pdfs/analysis/zimbabwe.foi.1.02.pdf>.

interest—people are interested in outcomes, not processes: They want the product of an information request without concerning themselves with the means to get it. As a result, citizens often have little idea how to get information from public bodies. This problem is compounded if there is no specific law guaranteeing ATI because this can make public officials indifferent to the information needs of citizens. In addition, internal information systems are frequently not designed to be accessible to the public, or even to other public officials. In this atmosphere, detailed research by civil society groups can identify this kind of problem, as happened in Bulgaria and, in doing so, help create favorable conditions for the passing of a law.

A related issue is the need to promote the concept of ATI in its most accessible form. The Oaxaca Group used the term “right to know” rather than the more technical “access to information” and constantly sought to present the issue as one concerning basic human rights, rather than using a more instrumental approach that emphasized functionality. This was very effective in the context of Mexico, but needs some careful thought by civil society before being applied more generally. In moments of political change, the Oaxaca Group’s approach is likely to be fruitful. If however, ATI is being pursued in a society that is relatively stable, the more instrumental arguments may be more effective in persuading governments to act (as in the United Kingdom). In addition, if the issue is constantly being presented as a measure for anticorruption (as has happened in many countries), it can build resistance among domestic political elites, and in those circumstances the functional administrative arguments may be more productive. Again it will depend on an accurate analysis of specific circumstances in each country.

The role of the media is a complex one. Many media organizations are indifferent to ATI because they either fear that the outcome of any regulatory initiative in this field will be a loss of media freedom or because their own privileged networks of information would be undermined by a broader exercise of the right. Where the media can be mobilized, however—as they were in Mexico (in part) and the United Kingdom—the impact of their campaigning can be very significant. Any attempts to involve the media in ATI initiatives should therefore be strongly encouraged. But civil society groups should always bear in mind the ambiguity of the media’s relationship to ATI initiatives. Where the media organizations feel they have some kind of monopoly over the flow of information between people and government, which is most common in the broadcast sector, they are likely to resist ATI measures. It may be sensible, therefore, to concentrate on building support among the print media. Of course, the media can be persuaded of the benefits of using an ATI system once established, and this can help broaden popular awareness of the measure. In the United Kingdom, although the Information Commissioner’s Office is not currently allocating funds to media advertising concerning ATI legislation, it has nonetheless found that the media are promoting ATI almost daily, through the fact that many of their articles are based on information retrieved using the FOI Act.

Preliminary research by CSOs can clarify citizen information needs and citizen perceptions about government. It can also reveal how citizens approach securing information. All of this infor-

mation is useful in any campaign to secure the passing of ATI legislation. Although campaigners for greater openness will often focus on glamorous, high-profile issues such as government corruption, citizens' information needs are more likely to be concerned with day-to-day problems such as health or employment (for example, in South Africa, ODAC prioritizes social and economic issues in its litigation because these are the concerns of ordinary South Africans). A good NGO initiative will enable awareness-raising campaigns to be tailored to these needs.

CSOs can contribute to the shape of legislation (for example, South Africa and the United Kingdom), although this depends crucially upon the willingness of the government to open up the legislative process to consultation and debate. Where such willingness exists, there is evidence from the United Kingdom and South Africa that inputs from civil society have a positive impact on the shape of the legislation. One of the most striking examples of influence over legislation is that of the Oaxaca Group in Mexico, which prepared its own draft bill and persuaded opposition parties to present the bill in Congress. Such high-level lobbying can be very effective, but it is difficult to sustain a broad coalition in such circumstances, when tactical judgments have to be made swiftly and without elaborate consultation. It is for this reason that while the Grupo Oaxaca encompassed a range of interests, the small secretariat at its head was able to move with more agility when circumstances dictated.

A strategy that has been effective is for CSOs to partner with each other in an active coalition. The politics of CSOs and competition among them for resources can make this difficult, but in Bulgaria, India, Mexico, South Africa, and the United Kingdom, the formation of an effective coalition was crucial to the success of the initiatives. However, partnerships are inherently unstable and require constant management. Moreover, as has been previously pointed out, the tactical judgments involved in responding to day-to-day politics can make sustaining partnerships a strain. In those circumstances, civil society partnerships need to be highly structured, with clear lines of accountability and a common understanding about the latitude given those leading the coalition.

In other cases, civil society groups have seen the need to form an organization to work full-time on this issue because the preexisting coalitions were not enough. In some cases, such as Bulgaria, India, and South Africa, a dedicated CSO was formed, or an existing CSO took the lead. In most cases, these "specialist" organizations worked well with broader coalitions. In the case of Mexico, there was tension between the Oaxaca Group and wider civil society, but involvement in the details of the drafting of the law was more intense there than in other cases.

In developing societies, a powerful lever for change is the demand for greater socioeconomic rights. It is usually assumed that campaigns for ATI will inevitably depend upon relatively "elite" groups—intellectuals, academics, journalists, and so forth. India is an interesting exception, however: The campaigns for ATI there extensively involved poor people.

To establish their legitimacy, some campaigns refused external donor support and relied upon contributions from their members. This also has its drawbacks, but it helps give the domestic campaign a powerful legitimacy and immunizes a group from accusations that it is the creature of a foreign donor.

Monitoring and enforcement constitute one of the areas where CSOs have played a very important role, particularly in the absence of an information commission or comparable body. Bulgaria offers the most striking example of this in that it has maintained an extremely comprehensive record of responses to information requests. The creation of ODAC in South Africa was a reflection of a need to establish an NGO that could follow up the coalition's work in lobbying for the law with monitoring, training, advocacy, or (more recently) strategic litigation. In all the countries analyzed, with the exception of Mexico, the civil society groups promoting access to information legislation have continued to exist and campaign for its improvement and implementation, as well as to raise the awareness of the public and keep up the pressure on public authorities. In Mexico, the Oaxaca Group ceased to exist as soon as the ATI law entered into force, but the Group has been replaced by several NGOs and think tanks such as Colectivo por la Transparencia, CIDE, LIMAC, ARTICLE 19, and so forth. Most of these groups sprang up soon after passage to monitor the implementation of the law and guarantee minimum common standards on ATI at national and state levels.

It is also worth noting that civil society is often the main source of expertise for ATI. For example, many Information Commissioners are drawn from the ranks of either academia or NGOs (for example, Ireland, Mexico, Scotland, Slovenia, and now Chile).

Some cautionary remarks: The only countries that appear to regularly gather data and publish surveys on the implementation of the FOI legislation and the level of awareness among the different sectors of society are the United Kingdom and Mexico. It is interesting to note, however, that these publications come from the bodies set up by the respective FOI laws to receive appeals against rejected FOI requests and to promote FOI among the public (that is, IFAI in Mexico and the ICO in the United Kingdom). In the United Kingdom, the Ministry of Justice also conducts surveys on the implementation of the FOI Act and the number of requests received by the government department and agencies. Otherwise, in the other countries where a specialized institution like IFAI and the ICO have not been established, NGOs are struggling to get a grip on data available from public institutions regarding the number of requests received and the number of appeals issued to the courts, often relying exclusively on the cases that they assist or the news reported to them by the media and other NGOs.

It is interesting to highlight that in all the countries analyzed, with the notable exception of India, the debate on access to information appears to have been monopolized by an elite of experts—media, NGOs, and academics in different measure—rather than surging from grassroots movements of individuals directly affected by the absence of access to information legislation. This

is not necessarily a bad thing if these elites defend a right that can be used by others, but it can be used by elected politicians to try to undermine the legitimacy of ATI campaigns if they have no popular resonance.

Finally, it is important to note that comparatively less attention has been paid to the role of the private sector, other than media corporations, in the passing of access to information laws. More research would be needed to determine whether the private sector had any impact on the process.

As we move toward an evidence-based approach to policy, there will be a need to assess more rigorously the impact of programs that support civil society efforts to improve ATI. This will require commitment from donors as well as civil society itself.

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