

FREEDOM OF INFORMATION

BRIEFING PAPER

**'FREEDOM OF INFORMATION IN PAKISTAN:
DRAWING ON INTERNATIONAL EXPERIENCE'**

World Bank Workshop - June 19, 2008

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Introduction

This Briefing Paper on Freedom of Information (FOI) has been produced to support the World Bank 'Freedom of Information in Pakistan: Drawing on International Experience' workshop held on June 19, 2008 in Islamabad.

It is now widely acknowledged that good governance is an essential prerequisite for development. Definitions of 'good governance' vary but most include transparency, accountability, predictability and rule of law, and participation. These elements help curb corruption and maladministration, promote better planning and efficiency, and lead to improved service delivery, access to justice and other benefits. The end result is an environment conducive to growth and poverty reduction.

FOI is a core principle of good governance. FOI enables citizens to understand and participate in public affairs, to hold those in office accountable, to demand their rights and entitlements, and to ensure that policy-making and implementation are geared towards bringing about equitable development. The growing global movement to pass and implement FOI legislation is testimony to its importance. Countries as diverse as the UK, India, Jamaica and Honduras are among the many who have taken initiatives to promote FOI in recent years.

The World Bank workshop aims to support the establishment of an effective FOI regime in Pakistan by facilitating lesson-learning from international experience and best practice, raising awareness of the issue, providing stakeholder input into the drafting of new FOI legislation, and promoting a wider process of stakeholder consultation on FOI.

This Briefing Paper provides core information on the concept of freedom of information including why it is important and 'generic' principles and requirements for FOI legislation, implementation and enforcement. Many of the challenges faced by different countries in introducing FOI regimes are common and there are useful lessons to be learned through sharing experiences. The Paper gives a number of case studies of FOI initiatives in other countries. These are followed by a 'chronology' of FOI developments in Pakistan to date and an outline of the main features of the 2002 FOI Ordinance. The Paper ends with a selection of available resources on FOI: organizations working on the issue at national, regional and global levels; useful publications and websites.

Note on Terminology

This Briefing Paper uses the term 'freedom of information' but 'access to information', 'right to information', 'right to access information' and 'right to know' are also commonly used to refer to people's right to obtain information from government/public bodies.

There are subtle differences in meaning between these: 'freedom of information' refers to the right to seek, receive and impart information and thus includes freedom of opinion and expression. 'Access to information' more specifically refers to the right to obtain information. 'Freedom of information' is found more frequently in older legislation while 'access to information' tends to be used in recent legislation.

BUT in literature and in legislation these different terms are really used interchangeably and can be considered as having the same meaning.

I. Importance of Freedom of Information

Freedom of Information is a fundamental human right. As far back as 1946 the UN General Assembly passed a resolution recognizing this. It is guaranteed in Article 19 of the Universal Declaration of Human Rights.

Why is freedom of information important? What benefits can it bring to the ordinary citizen?

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19, Universal Declaration of Human Rights

FOI is important because it is fundamentally related to citizen empowerment, good governance and development. Its benefits include:

- **Promotes transparency** – FOI enables citizens to see how government, those in public office, are working;
- **Promotes accountability** – once citizens know what their government is doing they are in a position to hold those in office accountable for their decisions and actions. The same applies for designated oversight bodies such as parliamentary committees: they need information to be able to fulfill their mandate;

‘Without information, accountability will merely be the shadow of an idea lacking any substance.’

Patrick Birkinshaw, *‘Freedom of Information and Openness: Fundamental Human Rights?’*¹

- **Reduces corruption** – secrecy and lack of information create a breeding ground for corruption and abuses of power. By promoting transparency and accountability FOI curbs such abuses;

“It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with access to information laws are also perceived to be the least corrupt. In 2002, of the ten countries scoring best in Transparency International’s annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning access to information regime.”

Commonwealth Human Rights Initiative website, RTI Resources²

- **Improves service delivery and government functioning** – by making those in office accountable for their actions and by giving citizens a voice, FOI helps ensure the former work for the benefit of the latter. It thus promotes better planning and service delivery, i.e. improved education, health care....

¹ Patrick Birkinshaw, ‘Freedom of Information and Openness: Fundamental Human Rights’, (*Administrative Law Review* 58:1, 2006), p. 194.

² <http://www.humanrightsinitiative.org/programs/ai/rti/rti/what.htm#8>.

- **Promotes access to services/entitlements** – when citizens have access to information about service delivery and other government functions, they know *what* they are entitled to and they know *how* and *where* to demand their right to those services and other benefits;
- **Promotes political participation** – citizens who understand public affairs and what government is doing can voice their opinion on issues that affect their lives: they can *participate* in the business of government. FOI facilitates citizens in making political and economic choices and thus strengthens democracy;
- **Strengthens Press Freedom** – the media are sometimes referred to as the ‘fourth pillar of the state’. They have an important role to play in keeping citizens informed, keeping those in office ‘on their toes’, highlighting issues of public interest, and so on. In order to be able to perform this role properly the media need access to information. FOI strengthens the media, and thus democracy;
- **Promotes economic growth** – by promoting transparency and reducing corruption, FOI creates a rule-based environment in which, for example, information about business opportunities is equally accessible to everyone, contracts are awarded in an open and transparent manner, investor confidence is high..... FOI thus creates an environment conducive to investment and business.

In sum, FOI is an essential requisite for democracy, good governance, development and poverty reduction. In the words of the UN Special Rapporteur on Freedom of Opinion and Expression: ‘Freedom will be bereft of all effectiveness if the people have no access to information.’³

Box 1: International Right to Know Day⁴

International Right to Know Day began on September 28, 2002, when freedom of information organizations from around the world came together in Sofia, Bulgaria and created the FOI Advocates Network, a global coalition working together to promote the right of access to information for all people and the benefits of open, transparent, and accountable governments. The members of the Network decided to commemorate this day as a way to share ideas, strategies, and success stories about the development of freedom of information laws and genuinely transparent governance in their own nations.

³ Abid Hassan in his 1995 Report to the UN Commission on Human Rights, cited in Toby Mendel, ‘Freedom of Information as an Internationally Protected Human Right’.

⁴ <http://www.freedominfo.org/features/20050928.htm>.

II. Basic Principles of FOI Legislation

Underpinning the concept of FOI is the premise that information belongs to the people. The state has an obligation under international law to disclose information to them. Governments that ensure access to information for their citizens are simply fulfilling that obligation and giving people their fundamental rights.

Even though FOI should be a given – it is not a voluntary matter in which governments decide whether or not to provide FOI – individual countries still need national FOI legislation to ensure their citizens can access information.

The design of FOI legislation greatly determines its impact. Over-restrictive laws, those with vague provisions, with lots of scope for exemptions, etc will not deliver FOI in practice. There are a number of features which must be included in any FOI legislation if it is to be effective:

- **Statement of Objectives and Principles** – FOI legislation should spell out the goals it is trying to achieve, e.g. ensuring rights to citizens, promoting democracy, and so on. Spelling out these objectives will ensure FOI regimes are focused on ends rather than means: they serve as a reminder that FOI is in place *to help achieve something*. A statement of principles lays out the underlying premise of FOI – that information belongs to the people and hence should be available to the maximum extent possible.

The Jamaica Access to Information Act states its objectives in Part 1 as ‘to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely:

- a) government accountability**
- b) transparency, and**
- c) public participation in national decision-making.’**

- **No Justification Needed** – FOI legislation should stipulate that no justification or reason needs to be given when accessing information. FOI is a fundamental right and its use requires no explanations.
- **Maximum Disclosure** – FOI legislation should be based on the premise that the maximum information relating to public bodies should be available to citizens. That must be the starting point, and exceptions/restrictions reducing the amount of information available should be applied later. The sequence should not be vice versa i.e. where governments start off with a blank sheet and add on information they are ready to make public.
- **Scope** - FOI legislation should be applicable to all public bodies (including those providing public services, private bodies receiving public funds, any entity performing a public function...) and to all information held by them (organizational set-up and functions, reports, budgets...).

Box 2: 'Public Bodies' and FOI Application to Private Bodies

FOI legislation is generally applicable only to public bodies, which commonly include those:

- a) established by or under the constitution – legislature, executive, local administration, judiciary
- b) established by statute – commissions, public sector enterprises, public sector banks
- c) established by executive order – corporations, boards, committees
- d) financed directly or indirectly by government and public bodies – NGOs, schools, colleges, trusts
- e) providing public services – electricity, water, transport, telecommunications⁵

FOI legislation is also being applied to private sector bodies which are performing public functions. This is particularly the case with the privatization of services such as water and rubbish collection. Citizens need access to information about public sector service provision in order to ensure quality, accessibility and accountability. When a private sector entity becomes responsible for that service citizens have the same concerns (if not more) and therefore must have access to the same information.

In most countries private sector bodies are only covered by FOI legislation if they receive public funds or if they provide public services. South Africa is unique in allowing access to information held by any private sector body if this is 'necessary to protect or exercise a right'.

- **Minimum Exemptions** – Exemptions should only be allowed where there is a clear public interest in keeping information out of the public domain, e.g. where releasing it would do harm to national security, or where unreasonable invasion of privacy is involved. These exemptions should be clearly specified at the outset: there should be no scope for ad hoc interpretations and expansion. Where greater harm to the public interest is caused by *non*-disclosure of information by exempted bodies, the exemptions should be over-riden. Furthermore access to information permitted under FOI legislation should not be curbed by other laws: FOI legislation should be supreme.
- **Automatic Disclosure and Proper Record-Keeping** – To facilitate citizens, FOI legislation should place the onus on public bodies to proactively disclose information rather than on citizens to request it. Examples include stipulating regular release of annual reports and making documents available on websites. Related to this is the legal requirement for public bodies to maintain proper records.

'The ideal openness regime would have governments publishing so much that the formal request for specific information...would become almost unnecessary.'

Thomas Blanton, *The World's Right to Know*⁶

⁵ List based on presentation by Venkatesh Nayak, 'Right to Information: Ideal Components of a Good Law', made 22-23 May 2007 for World Bank workshop in Jakarta, Indonesia.

⁶ Thomas Blanton, 'The World's Right to Know', (*Foreign Policy*, No. 131 July-Aug 2002), p.56.⁶

Box 3: Exemptions

Exemptions to FOI legislation are commonly made for the following reasons:

- a) if defence, security, scientific, economic interests, relations with foreign governments will be harmed
- b) if disclosure will lead to commission of an offence
- c) in the case of trade secrets where disclosure could harm the competitive position of a public or private body
- d) if disclosure will impede investigation/prosecution of a case
- e) if disclosure will endanger life or safety of a person or reveal the source of information given for law enforcement purposes.⁷

Exemptions generally carry a 'public interest over-ride' whereby if the harm caused by non-disclosure of information is greater than that caused by disclosure, the exemption is put aside.

- **Open to All** – FOI legislation should ideally provide access to all people, not just to citizens of the state or those resident in it.
- **Training of Public Officials** – legislation should include mandatory provision for training of public sector officials in implementing FOI, i.e. making information readily available to citizens.
- **Clear Processes and Procedures** – FOI legislation should stipulate clearly *how* people can obtain information and by when. Efforts should be made to keep 'red tape' as well as costs incurred by those seeking information to a minimum; so too the time given to respond to information requests. Procedures should be simple and straightforward, designed such that it is easy for citizens to understand and follow them. [See section III for more details.]

'(W)hen writing an access to information law, it is important to consider the processes and procedures necessary for its effective implementation and full enforcement. While national security exceptions may be more interesting and controversial than the implementation procedures, they are often much less important in determining the bill's overall effectiveness in promoting real transparency.'

*'Making the Law Work: The Challenges of Implementation'*⁸

- **Appeals Mechanism** – provision should be made for independent appeals mechanisms to deal with cases where information requests are refused. The bodies involved should be mandated to enforce release of information where this has been illegally with-held, and to monitor FOI implementation. There should be scope to punish wrong-doers (those willfully obstructing release of information) and to give protection to 'whistle-blowers' who provide information about wrong-doing (e.g. corruption) in good faith.

⁷ Ibid.

⁸ Laura Neuman and Richard Calland, 'Making the Law Work: The Challenges of Implementation' in Ann Florini ed., *The Right to Know: Transparency for an open world*, pp.188-9.

III. Requirements for Effective Implementation

Passage of FOI legislation is just the first step in achieving an effective FOI regime: the second is implementation. Legislation without implementation has negligible practical value.⁹

Some key measures necessary for FOI implementation are:

- **Awareness-raising** – Communication activities should be undertaken to make the public aware of their rights under FOI legislation and how they can exercise those rights. This includes disseminating information about appeals procedures.
- **Simple Procedures** – The steps involved in accessing information should be simple and straightforward. Pre-printed request forms should be available, but their use should not be mandatory.
- **Time Limits** – these should be set for all FOI procedures: responding to initial requests, referring requests to other bodies, responding to appeals, and so on. Time limits should be kept to a minimum. There should also be fast track procedures to access urgent information.
- **Free/Minimal Cost** – ideally people should be able to make requests for information free of charge: the cost of providing information should be borne by the public body concerned. If fees are necessary they should be kept as low as possible.
- **Designation of FOI Responsibility** – within each public body officials should be designated responsible for handling FOI requests, e.g. Information Officers. There should be coordination between responsible officials in different public bodies so that, for example, requests made to one body for information that is held by a different body can be referred quickly – saving citizens from having to make repeated requests.
- **Capacity-building** – Designated officials in public bodies should be trained appropriately so they can respond efficiently to information requests.
- **Record-Keeping** – Public bodies should be required and facilitated (through training, resource allocations, etc) to maintain proper and timely records.
- **Resource Allocations** – Sufficient funds should be allocated to implement FOI legislation. This includes allocation of funds to each public body specifically for record-keeping and responding to FOI requests, as well as to designated FOI bodies (e.g. external appeals and review bodies).

In the US, the Freedom of Information Act generates a huge number of information requests: 2 million to the Federal Government just in the year 2000. Responding to these cost \$253 million – or \$1 for each US citizen.¹⁰

- **Appeals Procedures** – These too should be kept simple and information about them should be readily available. Ideally, there should be internal appellate mechanisms within each public body. If these do not provide satisfaction, people should have the option of taking appeals to independent external bodies.

⁹ Note that there is a degree of overlap between these since many of the measures required for implementation will be stipulated in legislation.

¹⁰ Thomas Blanton, op. cit., p. 50.

- **Review and Monitoring** – Regular internal and external reviews of FOI implementation (e.g. number of requests received, number of responses made with information, number of denials of information, time taken, etc) should be carried out. This should be geared to promote enforcement of FOI legislation as well as to identify weaknesses and bring about improvements in FOI regimes.
- **Civil Society Engagement** – while not strictly an ‘implementation measure’ this is critical to the success of FOI initiatives. Consultation with stakeholders in the process of formulating FOI legislation ensures the end result meets people’s needs and thus gives it credibility and creates a sense of ownership. The knock-on effect of this is that people are aware of FOI provisions and play an active role in implementing them. Conversely FOI measures that are brought in without civil society involvement lack public ownership, or even awareness, and thus achieve little.

It is when civil society has played a significant role that the information regime has truly flourished When there is such a (*widespread civil society*) campaign the law enjoys greater credibility and legitimacy. There is more significant buy-in from society....And, therefore, the law is more likely to be used and failure of the government and information holders to comply with its terms will be noticed and challenged.

‘Access to Information Laws: Pieces of the Puzzle – Analysis of International Norms’¹¹

¹¹ Laura Neuman, ‘Access to Information Laws: Pieces of the Puzzle – An Analysis of the International Norms’, (Carter Centre).

IV. Case Studies

In recent years there has been a growing movement in developed and developing countries alike to pass FOI legislation and thereby bring about improved governance, democracy, accountability and all the other benefits of free access to information. Between 2002 and April 2006 the number of countries which had passed some form of FOI legislation rose from 40 to almost 70.

As the experience of different countries shows, however, FOI legislation does not automatically translate into FOI. Where success has been achieved it has been through sound legislation coupled with effective implementation and enforcement measures. The case studies given below illustrate some of the “do’s and don’ts” of bringing about FOI:

a) India

The history of FOI efforts in India demonstrates how important the design of FOI legislation is: where legislation is inherently weak, implementation automatically fails.

The trigger to combat traditionally restrictive legislation in India (inherited from colonial times) and push for FOI was a landmark ruling by the Supreme Court in 1975 which held that: ‘the people... have a right to know every public act, everything that is done in a public way, by their public functionaries’. Progress on FOI legislation began at state level: Tamil Nadu and Goa passed Right to Information (RTI) Acts in 1997, Rajasthan and Karnataka in 2000, Delhi in 2002....and so on. But there was no national level law for FOI.

A Freedom of Information Bill was prepared in 2000, and this became law as the Freedom of Information Act in 2002. But the Act had significant shortcomings: there were numerous exemptions (far beyond those considered justifiable such as security information). Public bodies could even be exempted if the cost of responding to information requests was considered ‘disproportionate’. At the same time no upper limit was placed on the cost incurred by citizens in seeking information. Even more damaging, there was no penalty for non-compliance with the Act, i.e. for not responding to a request for information. Given this it is not surprising that the 2002 FOI Act was never really implemented.

The failure of the 2002 Act led to a national movement to pass effective FOI legislation. As a result, a greatly strengthened Right to Information (RTI) Bill was placed before the Lok Sabha in December 2004. The Bill was subject to intense scrutiny and revisions over the next 6 months: more than 100 amendments were made before it was passed on 15 June 2005. The RTI Act came into effect on 13 October 2005.

The 2005 RTI Act is wide-ranging in scope, covering all public bodies and even privatized utilities. The exemptions are those that apply in normal FOI practice, i.e. security issues, commercial information, information that could undermine a criminal investigation, and so on. All public departments must appoint Principal Information Officers (PIOs) and Assistant PIOs. Time limits are placed on handling requests: 30 days for PIOs to respond to requests relating to their own department, 5 days to transfer requests to other public bodies, and so on. For urgent requests there is a fast track procedure which should take not more than 48 hours. There are charges for information requests but these are very low (Rs.10 per request) and the poor are exempt.

The 2005 Act also requires the government to disseminate information about the Act and its provisions (especially among the poor), ensure capacity building of PIOs and other relevant staff, publish contact details for PIOs and carry out other measures to strengthen both supply and demand sides of the RTI regime. Record keeping is one aspect which public bodies are required to improve. Citizens unhappy with the response to their information requests can take appeals to an independent Central Information Commission. This can impose financial

penalties on PIOs found guilty of non-compliance and/or recommend departmental action against them.

Just in its first year of coming into force, the RTI Act led to almost 43,000 requests for information.

b) United Kingdom

The UK experience highlights both the importance of getting the design of FOI legislation right and of proper planning and implementation measures.

Efforts to pass FOI legislation in the UK date back several decades: a Freedom of Information and Privacy Bill was circulated in 1977. However, it was only following the Labour Party's 1997 election promise to bring in an FOI law that real progress was made on this. The Freedom of Information Act was passed in 2000, covering some 100,000 public bodies in England, Wales and Northern Ireland. Bodies under the control of the Scottish Parliament did not fall within the ambit of the 2000 Act and hence separate legislation, the Freedom of Information (Scotland) Act was passed in 2002, to cover those. The essential features of the two Acts are identical.

The 2000 Act gives anyone a 'general right of access' to information held by public bodies, including government ministries and departments, councils, schools. However it also has a long list of exemptions, some absolute and some qualified (i.e. allowing exemptions to be put aside if the public interest in disclosure outweighs that in maintaining the exemption). Exemptions have been criticized as far more extensive than in other comparable countries. Furthermore access by individuals to their own personal information falls outside the Act – it is covered under the Data Protection Act 1998. As well as responding to requests, the Act places the onus on public bodies to carry out proactive disclosure of information such as publication of annual reports and accounts.

The Ministry of Justice (formerly the Lord Chancellor's Department) is responsible for implementation. But an Information Commissioner oversees its operation. When information requests are denied people can appeal to the Commissioner, who can order disclosure. But appeals against the Commissioner's rulings can be lodged with an Information Tribunal and, in some cases, the Government can veto the Commissioner. This is another feature that has come under criticism. It should also be noted that there is a big backlog of appeals with the Commissioner's Office.

As with passage, implementation of FOI legislation took considerable time. The UK government opted for a grace period to allow public bodies to prepare for FOI implementation, e.g. to improve and update their records, appoint FOI officials, train them, and so on. In order to avoid confusion it was decided to bring both the UK and Scottish Acts into force at the same time: 1 January 2005. This effectively created a five-year delay between passage of FOI legislation and it actually being available to citizens. FOI activists have criticized this lag as unnecessary and damaging. The fact that many public bodies were still unable to respond in a satisfactory manner to information requests showed that the time had not been utilized to prepare for this – negating the justification made for the grace period.

MP David Maclean introduced a Freedom of Information Amendment as a Private Member's Bill in 2007. This was designed to exempt MPs' correspondence from FOI access. Other provisions also diluted the 2000 Act. E.g. under 2000 legislation a cap of 600 pounds is placed on the cost spent on responding to requests; under the Amendment time spent *thinking* about responding was included as a cost. The FOI Amendment Bill was passed by the House of Commons in May 2007 but failed to become law because no sponsor was found for it in the House of Lords.

Despite issues in design of FOI legislation and its implementation, the UK FOI Act has led to the release of significant information, e.g. about government spending, MPs' expenses, controversial contraceptive policies to reduce teenage pregnancies and so on.

c) South Africa

The South African FOI legislation is unique in that it allows access to information held by all private as well as public bodies. The inclusion of private bodies had much to do with active civil society participation in drafting legislation.

South Africa's FOI legislation emerged in the aftermath of the apartheid era and was designed in part to allow citizens access to information about that era – and also to mark a clear break from the highly secretive government of that time. While the Interim Constitution of 1994 provided for access to information from government/all public bodies, civil society activism led to this being expanded in the final 1996 Constitution to include: 'any information that is held by another person and is required for the exercise or protection of any rights'.

Legislation to this effect, the Promotion of Access to Information Act, was finally passed in January 2000 after a six-year process during which many changes were made in the original bill, the Open Democracy Act. Civil society involvement in this legislative process stemmed from the fact that many had been involved in the fight against apartheid, and saw FOI legislation as crucial for the consolidation of participatory democracy and accountable government in South Africa.

In 1997, following previous abortive attempts, a civil society coalition was formed: the Open Democracy Campaign Group (ODCG). Headed by three CSOs, the Group actually represented a much larger, nationwide selection of organizations. ODCG worked to analyse the draft bill, make submissions to parliamentary committees, assist in wording of legislation, suggest alternatives when its proposals were not accepted, build rapport with committee members and thus, in a constructive and supportive manner, positively influence the legislative process.

Key features of the PAIA include: it over-rides other legislation, it allows access to information held by private bodies, it requires information officers to notify third parties of information requests relating to them; it lays down a 30-day limit to respond to information requests; it allows exemptions to be over-riden if 'public interest' in disclosure can be shown. The ODCG had wanted an independent Information Commissioner set up as a speedy mechanism to deal with appeals, but this was rejected and appeals must first be heard internally (by the head of the public body concerned) and then taken to the courts. Appeals against private bodies go directly to the courts. The PAIA gives significant responsibilities to the South African Human Rights Commission, including: compiling manuals on the Act and its use; monitoring implementation and making recommendations to parliament; conducting educational programmes to promote dissemination of information by public bodies. Public bodies must report annually to the HRC giving statistical data on information requests.

However, it should be noted that even with active civil society engagement in the process of drafting the PAIA, awareness among the wider public of its provisions was very limited. A 2002 survey by the Open Democracy Advice Centre found that even among public sector employees awareness of the Act was low: only half had heard of it.¹² Worryingly, compliance with the Act is low: a Monitoring Survey in 2003 found 53% of requests received no response;

¹² Allison Tilley and Victoria Mayer, 'Access to Information Law and the Challenge of Effective Implementation', in *The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice*, (ODAC 2002), cited in David Banisar, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, (Privacy International, 2006), p.138.

one year later this had risen to 63%.¹³ These figures point to other problems in implementation: initial lack of funding for the HRC to produce manuals and carry out other tasks assigned to it; limited training of officials; poor record keeping by public bodies. In sum, while South African FOI legislation is now among the strongest in the world, it still needs to be matched by effective implementation if it is to realize its full potential.

V. FOI in Pakistan

Pakistan was the first country in South Asia to pass FOI legislation: the 2002 Freedom of Information Ordinance.

a) Chronology

- | | |
|-------|--|
| 1990s | Senator Khurshid Ahmed tabled a private member's bill for Freedom of Information. Not passed. |
| 1993 | In a case 'Nawaz Sharif v. President of Pakistan' the Supreme Court ruled that the right to freedom of expression includes the right to receive information. |
| 1997 | 29 January: President Farooq Ahmed Khan promulgated a Freedom of Information Ordinance, under a caretaker government. None of the measures were implemented and, since it did not get parliamentary approval, the Ordinance lapsed after 120 days. |
| 2000 | August: a draft FOI bill was circulated for stakeholder comment and feedback, but the exercise remained incomplete because the main person responsible, Federal Minister for Information and Broadcasting Javed Jabbar, resigned soon after. |
| 2002 | 26 October: President Musharraf promulgated a new Freedom of Information Ordinance which came into effect immediately. |
| 2004 | 6 April: The Federal Ombudsman ruled, on a complaint against the Ministry of Commerce for denying a request for information, that implementation of the FOI Ordinance could not be deferred because of a lack of rules of business: public bodies had to provide requested information.

21 May: MNA Sherry Rehman tabled a private member's bill on FOI, calling for repeal of the 2002 legislation.

21 June: The Government notified the rules of business for the FOI Ordinance 2002, allowing it to finally be implemented. |
| 2008 | 29 March: Prime Minister Yusuf Raza Gilani announced that the new government, as part of its first '100 days Programme', would present new FOI legislation and repeal the 2002 Ordinance. |

¹³ ODAC, South Africa Summary Country Report: Open Society Institute Justice Initiative 2004 Monitoring Study <http://www.opendemocracy.org.za/documents/SA2004OSJIMonitoringStudySummaryRTKday.doc> cited in *ibid.*

b) Main Features of FOI Ordinance 2002

- **Objective** – ‘To provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens...’
- **Scope** – The 2002 Ordinance applies only to the federal government: it does not provide access to information held by provincial government or local government bodies. [Local government information can be accessed under the Local Government Ordinance 2001.] Within the federal government it applies to all ministries and departments, councils, tribunals and other such bodies. It does *not* apply to the defence services or to government-owned corporations. The Ordinance gives the right to access information under it solely to citizens of Pakistan.
- **Type of Information** – The Ordinance allows access to ‘public records’ which are defined as: policies and guidelines; property transactions and expenditure; information about grant of licenses, contracts, etc; final orders and decisions; and anything else notified by the federal government as public record.
- **Exemptions** – These are numerous and include: notings on files, minutes of meetings, intermediary opinions or recommendations, records relating to the personal privacy of any individual, records declared as classified by the federal government; records relating to defence forces, installations and national security; banking companies and financial institutions’ customer records and ‘any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance’. There are numerous ‘public interest’ provisions for withholding information including: anything that could damage Pakistan’s relations with other countries; that could cause commission of an offence/harm security of any property or system; damage/impede an inquiry or investigation; cause damage to the economy; cause damage to the financial interests of a public body.
- **Relation to Existing Laws** – the FOI Ordinance 2002 does not have primacy over other laws. Its provisions ‘shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force’.
- **Automatic Disclosure and Record-keeping** – The Ordinance makes it mandatory for public bodies to publish standard information such as accounts, annual reports, organizational set-up, contact details (including of concerned officials), manuals and so on. They are also required to maintain proper, updated, indexed records and to computerize and network these and ensure they are available across the country. This does, however, carry the proviso ‘subject to finances’ and public bodies are allowed a reasonable period to do it.
- **Responsibility** – The Ordinance requires all public bodies to which it applies to designate official(s) responsible for handling requests. It specifies that they ‘are to ensure easy public access to information’.
- **Time** – Requests for information must be responded to within 21 days. If information cannot be provided the applicant must be given a written answer explaining why within 21 days of their request being made.
- **Cost and Procedure** – An initial information request carries a fee of Rs.50. This is for a maximum of 10 pages of information; a further Rs.5 must be paid for every additional page. Requests must be made on designated application forms.

- **Appeals Mechanisms** – If information is not provided, if a request for information which the applicant feels should be accessible is refused, or if applicants have any other grievances they can first take these to the head of the public body concerned within 30 days of the refusal/denial, etc. Should they still fail to get satisfaction they can appeal to the Federal Ombudsman. [Cases related to the Revenue Division must be taken to the Federal Tax Ombudsman.] The Ombudsman can uphold a complaint and order disclosure or reject the complaint.
- **Sanctions** – For officials/personnel found guilty of destroying information at the time it was the subject of a request/complaint in order to prevent its disclosure, the Ombudsman can impose prison sentences of up to two years. But 'no suit, prosecution or legal proceedings shall lie against any person for anything which is done in good faith.' For complaints found to be malicious or frivolous the Ombudsman can impose fines up to Rs.10,000.

c) Implementation Record

The FOI Ordinance 2002 has come in for considerable criticism because of its content, notably:

- the large number of exemptions,
- the leeway given to the federal government to declare any information outside the purview of the Ordinance,
- the fact that it does not over-ride other 'non-disclosure' legislation such as the Official Secrets Act,
- its very limited scope – not covering state corporations, provincial governments, etc.
- the weak sanctions for non-compliance (particularly with the 'good faith' clause)
- the cost involved in requesting information and use of prescribed forms, and so on.

FOI activists argue that these provisions severely limit the access to information provided by the Ordinance. But it has also been strongly criticized for the manner in which it was introduced: namely that it was promulgated before the convening of the National Assembly following the 2002 elections, and there was very limited stakeholder consultation on its design. This again is seen as rendering the Ordinance ineffective.

Such criticisms over origin and design have been exacerbated by concerns over its implementation. As seen, the Ordinance requires all applicable public bodies to appoint information officers responsible for handling requests, to update and maintain proper records, to proactively disclose and make widely available key information such as annual reports and accounts, to respond within 21 days to information requests, and so on.

In 1997 the Centre for Civic Education (CCE) carried out a study on implementation of the Ordinance over the five years since it was promulgated.¹⁴ Key findings included:

- **Funding** - No funds had been allocated (in 2006-7) for FOI Ordinance implementation. This was the case with the federal budget and with individual ministerial allocations.
- **Year Books** - Of the Ministries and federal bodies sampled, only year books for the Cabinet Division and the Federal Ombudsman made any mention of the FOI Ordinance, indicating that no practical steps had been taken by others on that front. Of the year books that did mention the Ordinance, most did so simply to explain what it was; only the Federal Ombudsman year books detailed practical actions (trainings).

¹⁴ *The Freedom of Information Ordinance 2002: 5-Years on: window yet to be opened*, (Centre for Civic Education, Islamabad, 2007).

- **Training of designated officers** - With the exception of the Federal Ombudsman no federal government ministry/other body had provided trainings for designated information officers. Some training had been provided by NGOs.
- **Public Awareness-Raising** – The Urdu version of the law had been prepared by a civil society organization. Only websites of the Law and Justice Commission and the Cabinet Division had information about the FOI Ordinance and how to access information. Not one ministry had information about the Ordinance, designated officers, procedures, etc.
- **Implementation Instructions** – The Cabinet Division had not issued any formal instructions to ministries and departments for uniform implementation of the Ordinance. Only the Federal Ombudsman had issued specific instructions to investigating officers on how to handle complaints about denial of information.
- **Monitoring** – No central monitoring and coordination system was in place, but the Cabinet Division was able to provide data on the number of information requests received by ministries between October 2002 and December 2006: just 59 requests were received during this four year period of which 19 were rejected and 40 processed. As of September 2006 ministries were obliged to provide data on information requests to the Cabinet Division.

The report concluded: ‘though the FOI-2002 was promulgated to give Pakistani citizens the opportunity to monitor government activities and provide for good governance, a lot is still needed to allow for its effective implementation’.

Other assessments confirm the findings of the CCE report. A workshop on the FOI Ordinance organized by the Centre for Peace and Development Initiatives in March 2006, for example, found that many information officers were still not aware of their roles and responsibilities.¹⁵ In sum, the implementation record of the 2002 FOI Ordinance is poor.

¹⁵ Cited in David Banisar, op. cit., p. 119.

VI. Available Resources

a) Organizations/Websites

(Pakistan, regional, international), e.g. CRCP, HRCP, NCPRTI (India), Article 19...

b) Publications

Thomas Blanton. 'The World's Right to Know'. *Foreign Policy*, No.131, July-August 2002, pp.50-58.

Principles on Freedom of Information Legislation and Model Laws (Article 19)

Guidelines on Access to Information Law (SOCIUS)

ANNEX 1: Freedom of Information Ordinance 2002

Approximately 6 pages

ANNEX 2: Freedom of Information Rules 2004

Approximately 4 pages

ANNEX 3: Comparison of FOI Legislation in Pakistan and India¹⁶

¹⁶ This table was prepared by the Centre for Peace and Development Initiatives (CPDI), Islamabad, in 2005.

ANNEX 4: Excerpts from Draft Freedom of Information Act 2004 [Private Member's Bill]

In May 2004 a Freedom of Information Act 2004 was presented as a Private Member's Bill for consideration by the National Assembly. Excerpts of the Act, where it differs substantially from the FOI Ordinance 2002, are given below:

2. Definition. –

(f) "public record" means record mentioned in Sec 7 in any form, whether printed or in writing or in any form such as map, diagram, photograph, film, video, microfilm;

(i) transactions involving acquisition and disposal of property and expenditure undertaken by a public body;

(ii) information regarding grant of licences, approvals, consents, allotments and other benefits and privileges, and contracts made, by a public body;

(iii) information relating to appointments, promotions, disciplinary actions etc. of personnel employed by a public body;

(iv) correspondence, summaries and notes relating to any of the above matters;

(v) any information required to be furnished by a person to a public body under any law or furnished for the purpose of receiving any benefit or advantage;

(vi) any information of whatsoever nature in possession of a public body in which members of the public may have a legitimate interest; but does not include the following:

(i) all internal working documents of a public body, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body.

(Explanation: After a final decision has been taken and implemented in respect of any of the matters referred to in this clause, all documents, including summaries and proposals shall be deemed to constitute public record available for access under this Act);

(g) "public body" means:

(i) any ministry, division, department, or attached department of the federal or the provincial government;

(ii) any federal or provincial legislature, and any municipal or local authority set up or established by or under any law;

(iii) any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the federal or a provincial government;

(iv) any incorporated or unincorporated body or legal entity functioning under the control or authority of the federal or a provincial government or wherein one or more of such governments owns or has controlling interests, or which is funded by any such government;

(v) any court, tribunal, commission or board.

5. Publication and availability of records.

(ii) The principal officer of each public body shall within six months of the commencement of this Act cause to be published in the Official Gazette or special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:

(a) description of the public body's organisation and functions, indicating as far as possible the duties and functions of various officers of the body empowered to take decisions;

(b) statutes, statutory rules, regulations, orders, notifications applicable to the public body disclosing the date of their respective coming into force or effect;

(c) substantive or procedural rules and regulations of general application evolved or adopted by the public body;

(d) statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;

(e) the conditions upon which members of the public can acquire any licences, permits, consents, approvals, grants, allotments or other benefits of whatsoever nature from any public body, or

upon which transactions, and contracts (including contracts of employment) can be entered into with the public body;

(f) the methods whereby specific information in possession or control of the public body may be obtained, and the basis of the fee required therefore;

(g) such other matters which the principal officer of the public body deems fit to be published in the public interest;

Provided that no information otherwise already published in the Official Gazette shall be required to be so published under this sub-section.

(2) any amendment, alteration or modification relating to matters described in sub-section (1) shall also be published and made available for inspection and copying in the like manner, and no person shall be adversely affected by any amendment, modification or alteration of any matter other than a statute.

7. Declaration of public records. - 1] Subject to the provisions of section 8, all record of public bodies mentioned in this Act is hereby declared to be the public record. 2].-Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiation.

8. Exclusion of certain record. - All exclusion and classification must be accompanied by a record of reasons for such exclusion. Nothing contained in this Act shall apply to the following record of public bodies, namely:

a] record of the banking companies and financial institutions relating to the accounts of their customers;

b] record relating to deployment of defence forces, defence installations or connected therewith or ancillary to national security will apply only when its threat to national security can be demonstrated;

c] record relating to the personal privacy of any individual; and

d] record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person.

13. Procedure for disposal of applications. - (1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within fourteen days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record.

(2) In case the designated official, on the authority of the Principal officer, is of the opinion that -
(a) the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;

(b) the required information or, as the case may be, the required record does not constitute a public record;

(c) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8, he shall record his decision in writing and the applicant shall be informed about such decision within fourteen days of the receipt of the application.

19. Recourse to the Mohtasib and Federal Tax Ombudsman and the Judiciary: -

(2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint. All such applications shall be disposed of within 14 days of being filed.

(3) The complainant may challenge the Mohtasib or the Federal Tax Ombudsman.s decision to classify or exempt a record in the High Court of competent jurisdiction and in the event of an adverse decision appeal to the Supreme Court.

23. Whistleblowers.- 1] No one may be subject to any legal, administrative or employment related sanction, or that which would disclose a serious threat to public health, safety or the

environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to public health, safety or the environment.

2] For purposes of sub-section [1], wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

24. Act to Over-ride other laws. - The provisions of this Act shall override, anything contained in any other law for the time being in force.

25. Repeal. - The Freedom of Information Ordinance 2002 stands hereby repealed