

Right To Information As A Matrix To Transform Societies

The notion that the State must, as a matter of course, keep official information hidden from its citizens is a long discredited one. Following the promulgation of the Universal Declaration of Human Rights in 1948, freedom of information has come to be accepted as a fundamental human right.

The common principle of freedom of information legislations worldwide is that the requester need not give an explanation for wanting to have the information, but the State, on the other hand, must give a valid reason for not disclosing the information. Access to information deepens democracy and enhances personal liberties. The State serves the public interest best when it fully discloses how it goes about its affairs and subjects itself to scrutiny.

Prior to the passage of the Act, the Jamaican State's approach to the public having access to the information that it generated was to hold most information close and secret, believing that for the most part the functionaries of the state were the only ones who had a right to see this information. The government's decision, by the passage of the ATI Act, to change that culture of secrecy and withholding information from the public into a culture of openness in which the citizen is given an enforceable right to get information from the government without having to give a reason is to be saluted.

The Act is useless if not used and implemented and using the Act is a place where civil society organizations can make most effective contributions. Jamaicans For Justice (JFJ) undertook a public education campaign through the mass media to inform the public about access to information and how it related to the life of ordinary citizens. The Act ought not to be viewed as some special law only to be used by journalists or special interest groups for research and investigations of government practices.

Instead, citizens were urged to use it actively to gather information which has bearing on their day-to-day lives.

Making the Invisible Visible

Access to Information (ATI) played a vital role in assisting a coalition of civil society organizations in obtaining data and information on the violation of human rights in the Children's Homes of Jamaica. This coalition was comprised of a number of groups and persons working with children and children's issues. The coalition used the ATI Act to submit requests to both the Ministry of Health and the Child Development Agency (CDA) for information.

Requests were made for monthly monitoring reports, financial reports, training and standard guideline records from the CDA for the Children's Homes in both 2004 and 2005. The majority of these requests were promptly facilitated by the Child Development Agency and provided the opportunity to follow up implementations of the Keating report (which was conducted in 2004 and stated its findings on Children's Homes to the Jamaican government), and the provisions of the Child Care & Protection Act (CCPA) 2004. The aim of the requests was to obtain factual information on

conditions in the Children's Homes and the changes being made by the relevant agencies and ministries to improve such conditions.

The findings were outlined and along with recommendations for change were presented to the Child Development Agency at a meeting in April 2006.

This meeting resulted in commitments to:

- follow a policy of zero-tolerance for abuse in children's homes from the CDA;
- follow and enforce the rules of established standards of care in any instance of the law being broken;
- pursue punishment for any individual who does not comply with these standards;
- enhance and accelerate the process of educating children about their rights;and
- implement a training program for the staff of children's homes in addition to hiring individuals with acceptable levels of training.

Following the meeting with the CDA, further reports were obtained using the ATI Act to evaluate any progress being made since the 2005 reports had been requested. Although the 2006 reports showed clear improvements to the monitoring systems of the homes and the implementation of new regulations when compared to previous reports, the reports simultaneously showed inadequacies within the monitoring system, inconsistencies in the level of monitoring and reporting, weaknesses in management of critical incidents, and breaches of Child Care & Protection Act, CDA Guidance & Standards of care for Residential Child Care Facilities, and the recommendations of the Keating report.

JFJ's analysis of the monitoring reports received in 2006 revealed breaches not only to the Jamaican CCPA and CDA policies, but also to Articles in the American Declaration on Human Rights of the Organization of American States. The continuing human rights violations clearly displayed in the second set of monitoring reports without corrective changes or adaptations to the system were cause of great concern for JFJ and provided the basis for writing *The Situation of Children under the care of the Jamaican State*, a report to the Inter-American Commission on Human Rights.

In October 2006, JFJ presented their report to the IACHR. The presentation of the report to the IACHR allowed JFJ to voice their concerns and findings on an international level along with demonstrating to the State of Jamaica their dedication and determination for change on this issue. The report and presentation to IACHR captured the attention of the Jamaican authorities and resulted in a meeting in November 2006, with members the Office of the Children's Advocate (OCA) and JFJ. The Children's Advocate is a position mandated by Parliament to protect the rights of the children described by the Child Care & Protection Act and to ensure that the best interests of the children are the priority of attention of the Government. At the meeting, the legal advisor for the OCA explained that three issues which had been raised in the report and presentation to the IACHR, had since received established plans of action to be carried out. The meeting also served as a brainstorming session where tentative decisions on the corrective action to problems were established and where a formal agreement between Jamaicans for Justice and the Office of the Children's Advocate to keep channels of communication and correspondence open was made.

The Access to Information Act was the main reason that JFJ, and other concerned organizations, were able to collect the information on the dire state of Jamaica's Children's Homes. The information and the reports that were generated led to positive changes for the children in the homes and to investigations by the Office of the Children's Advocate into the breaches of the rights of the children. Access to Information helped to make the invisible visible and to bring some positive changes to the lives of some of Jamaica's most disadvantaged children.

Cleaning up the Environment

The Jamaica Environment Trust (JET), an environmental, non-governmental organization, has been using the Access to Information Act since 2005 to request information relating to environmental and planning issues from various public authorities. JET is an organisation which advocates for the protection of Jamaica's natural resources. In the current legislative framework for permitting developments, it is not mandatory for Environmental Impact Assessments (EIAs) to be carried out for developments nor is it mandatory to undertake public consultation. This makes it difficult at times to learn of proposed developments which would affect our environment (and quality of life). JET uses the Access to Information Act as an information gathering tool to inform themselves about proposed developments, learn about the frequency and adequacy of monitoring for existing developments, bring breaches to the attention of regulators, and publicise breaches and regulatory failures in the media.

Between June 2005, and October 2007, JET made approximately 90 requests to public authorities for information. In 2007 they filed 17 appeals under the Access to Information Act, heard before the Access to Information Appeals Tribunal, for failure or refusal to provide information requested. The outcome of the appeals has varied:

- a. Seven of the appeals were successful and the Tribunal ordered the public authority to provide JET with the information requested.
- b. In one appeal the public authority insisted that the information did not exist.
- c. Five appeals were not heard after the public authorities in question provided the information at the last minute.
- d. They are awaiting a decision for two appeals which were both heard in June 2007.
- e. They are still awaiting a hearing date for one of the appeals filed on August 15, 2007.

JET has been successful in using the Access to Information Act to improve environmental governance processes and the best example is the outcome of the Judicial Review case that they took in relation to the building of a mega-hotel in a very environmentally sensitive area in Jamaica.

In July 2005, the Natural Resources Conservation Authority (NRCA) granted a permit to Hoteles Pinero Jamaica Ltd. (HOJAPI Ltd.) to construct a 734 room hotel on land owned by them at Pear Tree Bottom in Runaway Bay. JET, the Northern Jamaica Conservation Association (NJCA), and four individuals applied to the Supreme Court for Judicial Review of the decision to grant the permit for the hotel construction. The judicial review case challenged the approval process of the permit. Justice Bryan Sykes found for the applicants, ruling that the consultative process was flawed in several respects. In a subsequent hearing, he varied his order to allow the hotel to continue to be built, while retaining his declarations about the flaws in the process.

After the case, HOJAPI Ltd. applied for a permit for a phase two expansion of the same hotel which would entail the construction of additional rooms. JET used the Access to Information Act to request the monitoring reports for phase one of the hotel. The monitoring reports indicated numerous breaches committed by the hotelier and failure on the part of the regulators to properly assess the conditions of the permit and to enforce effective sanctions. The Natural Resources Conservation Authority (NRCA) approved the permit for phase two on March 5, 2007, and JET wrote objecting to the phase two permit on March 16, 2007, setting out a number of grounds, including the information gleaned from the monitoring reports. As a result of the pressure JET applied to NRCA, they subsequently rescinded the permit for phase two in March 2007.

Citizen Involvement Critical to Improving Governance

While the process of implementation of the ATI Act in Jamaica is not without its flaws, as there are considerable frustrations and delays in providing information by public authorities, it has proved a useful tool to improve governance in at least two instances. While any freedom of information legislation can help greatly to reveal instances of government corruption it is always, we – the citizens – who are the sole guarantors of better governance. An unused Access to Information Act can do nothing to bring about transparency and accountability. An active citizenry demanding and expecting better of its government is needed to ensure accountability and improve governance. It will not happen automatically, but it can happen as these examples have shown, and will continue happening if we get involved.