



AMERICAN UNIVERSITY OF BEIRUT

FREEDOM OF INFORMATION:  
BRIDGING THE GAP BETWEEN THE CITIZEN  
AND STATE

by  
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A thesis  
submitted in partial fulfillment of the requirements  
for the degree of Master of Arts  
to the Department of Political Science and Public Administration  
of the Faculty of Arts and Sciences  
at the American University of Beirut

Beirut, Lebanon  
June 2008

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## ACKNOWLEDGMENTS

Special thanks are for Mr. Thomas Susman and Ms. Patrice McDermot for their time and effort in sharing their experiences with Freedom of Information.

My recognition and gratitude are addressed to Gilbert Doumit from Nahwa-el-Muwatiniya and Dr. Kalil Gebara from LTA for their help in shaping the recommendations for Lebanon.

My appreciation goes to Dr. Randa Antoun for offering her insight and expertise in Public Administration and Public Sector Reform.

# AN ABSTRACT OF THE THESIS OF

Carmen Geha for Master of Arts  
Major: Public Administration

Title: Freedom of Information: Bridging the Gap between Citizen and State

Freedom of Information entails the right of citizens to request and receive government-held documents. It constitutes a major pillar of democratic governance and allows for effective citizen engagement in public policy. A free flow of information on government performance enhances participation and opens the door for civil society to engage itself in public policy. This thesis shows that the right to information has explicit bases in international human rights law. Although more must be done by the international community to assert this law, it has gained momentum in recent decades. Today over 65 countries have adopted laws allowing access to government records. The main problem this thesis tackles is the absence of Freedom of Information in Lebanon creating a gap between citizens and their public officials. This constitutes a major hindrance to democratic development and good governance. The absence of such law means that the Lebanese government is under no legal obligation to archive and disseminate critical information about its performance. This does not allow for active informed participation in public policy.

To tackle the problem of the absence of Freedom of Information in Lebanon, the thesis first shows that there are no legal or constitutional barriers for enacting this law in Lebanon. In addition it proposes specific recommendations in the form of an action plan that aims to enact and implement a Freedom of Information law. The recommendations stress the role of civil society in advocating for and constantly monitoring the practice of Freedom of Information. Freedom of Information is not the cure of all evils but it is an important step in enhancing transparency and encouraging citizen engagement in public life. In the final analysis, information sharing is a form of power sharing between government and its citizens. It is only with enhanced participation based on factual information that the gap between Lebanese citizens and their state can be bridged.

I am grateful beyond words...

To Said and Therese for the gift of education; the most precious gift of all...

To my thesis advisor Dr. Antoun, my mentor and my friend whose guidance and support I never wish to lose...

To my professors who helped shape the person I am today by often helping me raise more questions than there are answers...

To my fellow activists for inspiring this topic and giving meaning to my thesis recommendations... the road is long.

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# CHAPTER I

## INTRODUCTION

*“Upon what meat doth democracy feed? It feeds upon facts.”*  
Herbert Brucker

### **A. Background**

Freedom of Information (FOI) is the bedrock of democracy. Informed citizens can make better decisions about their government officials during and after an election process. A free flow of information on government performance enhances participation and opens door for civil society to flourish and to engage itself in public policy. The right to information has explicit bases in international human rights law<sup>1</sup>. Although more must be done by the international community to assert this law, it has gained momentum in recent decades. Today over 65 countries have adopted laws allowing access to government records. Even though implementation may be a constant struggle because information is a form of power-sharing with the masses, the principle and practice of freedom of information show no signs on slowing down. This thesis provides much evidence in support of the proposition that Lebanon, as part of the global village is under an obligation to guarantee citizens a right to access information.

### **B. Statement of the Research Problem**

*“Government is worked by ordinary men.  
It needs, not their simple acquiescence, but their active participation.”*  
JS Mill (1806 – 1873)

The right to access government-held information is non-existent in Lebanon.

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<sup>1</sup> Article 19 & The British Council, *Access to Information Booklet*, [publication online] (British Council 2004, accessed 12 January 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

At the time where this right has been given a legal institutional framework in many countries, Lebanese citizens still lack critical information about the performance of their public officials. This helps maintain the existing sectarian nature of State institutions and gives rise to nepotism. Indeed, implementing freedom of information in Lebanon is a way to curb corruption and enhance democratic reform. When public officials know they are being watched and have the obligation to publish records, they will be less likely to engage in abuse of public funds.<sup>2</sup> The objective of this thesis is to show that the absence of such a law in Lebanon allows for secrecy to prevail and does not encourage civil servants to act responsibly by sharing information about government agencies with the public. This thesis aims at exploring the prospects of enacting a Freedom of Information in Lebanon and explains its implications.

On a macro-level the absence of freedom of information inhibits development, democracy and effective citizen participation. Even on a micro-level citizens are ignorant about public agency functions, services and performance. The trend has always been a closed system where only elites can participate in the decision process. Information is power. Good government is not that which rests only upon the will of the people but that which relies on their participation. An uninformed citizenry is ignorant of the true workings of government. On what basis shall its participation be? This thesis addresses questions on how freedom of information encourages citizen participation and creates a responsive system of government. It seeks to make evident the links between freedom of information and democracy as well as development. It explains how information is directly related to good governance.

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<sup>2</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 238.

### **C. Significance and Scope of the Study**

Democracy requires well-informed citizens actively engaged in public affairs and involved in setting public policy priorities. Informed citizens are the best suited actors to shape and advocate public sector reform and it is only positively involved citizens that can truly guarantee democratic development.<sup>3</sup> Legislating laws for Freedom of Information institutionalizes governments' responsiveness to people's demands into a binding legal framework forcing public officials to carry out their work in a more transparent manner. This paves the way for a true accountability process. In the absence of public informational channels, such as in the case of Lebanon, societies can demand change but continue to face obstacles and limitations within the system that prohibit this change. The main premise of this thesis is that without Freedom of Information, citizens are not empowered to actively participate to influence policy processes and outcomes. As such absence of information about government performance inhibits economic development because the masses are to articulate their demands. Information creates a platform for debate based on facts and truths about past performance, current priorities and future challenges.<sup>4</sup> Without this knowledge base, people's needs may remain in the margin and government naturally becomes unresponsive. Information is an important pillar of democratic governance. In this thesis, information is depicted as the power to know, to hold accountable, to participate and to effectively influence the decision process in the public sector.

This thesis analyzes the ways in which Freedom of Information impacts the quality of governance. It discusses the effect that such laws have on democracy through strengthening the quality and scope of citizen participation. Information is not only

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<sup>3</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 112.

<sup>4</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 21.

necessary for the people but it is an important part of good state governance. Even in the private sector, information is important for maintaining an efficient market place based on competition.

Finally, this thesis explores the case of Lebanon with regards to government practices and citizen behavior in the absence of a Freedom of Information law. It provides an overview of the Lebanese public sector and its institutions with the aim of exploring the prospects for more transparency through information dissemination. Currently Lebanon lacks a law that forces government to publish information regarding all its agency performance and the policy process in detail. Instead, the system can be characterized as rather secretive, inhibiting true democratic governance. The main contribution of this thesis comes in the final chapter with specific recommendations to enact, implement and monitor a Freedom of Information law in Lebanon. The bases of these recommendations are grounded in the analysis of achievements and shortcomings in Freedom of Information laws in various countries. Case studies are presented for the United States and Sweden, because they constitute precedents.

For emerging democracies Freedom of Information has become a right of passage. The topic of this thesis was selected based on direct personal experience with the frail Lebanese democracy that lacks a system of information-sharing with citizens. Indeed, in Lebanon citizens are unable to obtain critical government records and detailed on policy processes. It is even more significant to note that the legislative body is shielded from scrutiny because only minimal information is available on the legislative process as well as the working of Parliamentary committees. Lebanon is experiencing a period of change that can negatively influence its democratic institutions. However, important steps can and should be taken to strengthen democratic governance and force positive changes in the political and administrative system. Notwithstanding

that perhaps the most important of these steps can begin with the enactment of a Freedom of Information law that allows citizens to access public records and ultimately enforces transparency in the public sector.

The concept of 'a citizen' is regarded in this thesis as a central concept. A citizen has the right to know and the duty to participate. In the debate over Freedom of Information in Lebanon this concept emerges are crucial. Implementation of Freedom of Information in Lebanon can create a breed of citizens that hold public officials accountable based on informed opinions and who seek to know the workings of their government. It is within this context that this thesis was written. The topic at hand has important academic and research implications. Challenges in the future will include further research analysis into the impact of information on society and government. Another challenge is to solidify the policy links between information and development; thereby forcing international organizations like the United Nations to make Freedom of Information more of a priority. Practically, the challenges also involve the need for the international community to make more serious efforts into defining the principles of Freedom of Information, best practices and enforcement mechanisms. In particular the United Nations should begin to play a more authoritative role in the global move towards information-sharing between citizens and governments.

#### **D. Definitions and Principles**

Freedom of Information entails the rights of citizens to access information about government performance. It ought to cover information dissemination of all practices, achievements, shortcomings and proceedings of all public agencies. The principles of Freedom of Information are based on the assumption that all citizens have the right to access public-records in order to make their engagement in public life more

effective. Informed citizen engagement in public policy and government scrutiny successfully improves the quality of participation and increases its impact. For the purpose of this thesis, Freedom of Information is defined as the legal duty of government to publish all government-related material in an accurate and timely manner, unless a significant harm is demonstrated. Experience shows that some exceptions are justified on the basis of national security and that this is often tolerated. However, generally-agreed upon standards entail the release of all information regarding public life, by all government agencies and branches.

Freedom of Information comes to practice with the enactment of a law that makes it legally binding for governments to share information with citizens. The law must adopt principles of fairness and equal rights for all to access government records. In addition, the successful implementation and use of such a law can only come about through undertaking other reforms that allow for citizens to effectively participate in consultations and successfully articulate demands.

It is now important to highlight and explain the phrases that will be used throughout the thesis. The purpose is to provide their meaning within the context of which they will be used throughout this thesis. Although some words or phrases may be used differently in different sources, for the purpose of this thesis whenever any of these terms are referred to they will generally mean the same.

- Public Information: any information pertaining to the public interest and involving the actions and/or correspondences of people in public office.<sup>5</sup>

- Open society: a society that enjoys an institutionalized free flow of information between citizens and the state. It includes laws that protect journalists and

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<sup>5</sup> David Banisar, *Government Secrecy: Decisions without Democracy* (Washington DC: OpenTheGovernment 2007), 22.

civil servants when leaking critical information to the public.<sup>6</sup>

- Citizen: a Lebanese native or resident aware of and willing to exercise his or her rights and duties

- Information Commissioner: an office or headed by an appointed individual established by law required to act perform oversight functions for the implementation of a Freedom of Information Law and to give input on legal appeals by citizens and groups.<sup>7</sup>

- Public official: refers to any person in government officials, whether permanently or temporary and whether part-time or full-time.<sup>8</sup>

- Public Body: includes any body established by or under the Constitution; established by statute; which forms part of any level or branch of Government; owned, controlled or substantially financed by funds provided by Government or the State; or carrying out a statutory or public function.<sup>9</sup>

- Publish: to make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;

- Public record: any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified; including records held on behalf of a public or private agency or individual.<sup>10</sup>

- NGO: any non-governmental organization that works independently from the

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<sup>6</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 12.

<sup>7</sup> David Banisar, *Government Secrecy: Decisions without Democracy* (Washington DC: Open the government 2007), 22.

<sup>8</sup> World Bank, A Model Freedom of Information Law, [article online] (World Bank 2007, accessed 20 April 2008); available from <http://www1.worldbank.org/publicsector/legal/ModelFOILaw.doc>; Internet.

<sup>9</sup> Ibid.

<sup>10</sup> World Bank, A Model Freedom of Information Law, [article online] (World Bank 2007, accessed 20 April 2008); available from <http://www1.worldbank.org/publicsector/legal/ModelFOILaw.doc>; Internet.



State and from political parties.

- Information Request: any request orally or in writing to any public official that is sufficiently detailed to enable an experienced official to identify whether or not the body holds a record with that information.

## **E. Methodology**

The thesis uses the comparative lens to explain the status of Freedom of Information Acts in developed and developing countries. These experiences serve as a framework for exploring the case of Lebanon. The thesis relies on the use of content analysis of legal frameworks and constitutional documents to understand Freedom of Information Acts in Western democracies and the exemptions included in these Acts. In addition, the thesis relies on meta-analysis of existing literature to draw links among the principles presented. The thesis uses specifically the cases of the United States and Sweden among others, to explore and compare their experience and help draw lessons learned for Lebanon. To answer the questions put forth in this thesis, content and meta-analysis will try to make evident the link between FOI and other dependent variables, namely development, democracy and citizen participation. In addition, interviews on the aforementioned case studies by experts contribute to exploring past experiences with FOI law. For the case of Lebanon, legal source of references will be employed as well as interviews with a pool of experts from civil society, politics and the legal profession.

Much of the conclusion of the thesis is comprised of recommendations addressed to the Lebanese civil society and Parliament for the enactment of a Freedom of Information law. In doing so the thesis briefly touches upon public policy formulation and how access to information can improve this activity. It also explains the way in which government functions in Lebanon and how previous reforms provide

some foundation for the enactment of FOI law. The policy recommendations are grounded in the analysis of literature and in interviews with experts on the case of Lebanon. They are presented in a three-phase framework highlighting the roles that different actors must play to create an effective FOI system in Lebanon.

## **F. Expected Research Findings and Implications**

The thesis will explain the role of Freedom of Information in bridging the gap between the citizen and the state. Indeed, Freedom of Information is presented as capable of changing the relationship between the citizen and the state.<sup>11</sup> The new covenant is one of mutual interest and mutual efforts that shape public policy outcomes. The relationship is no longer one of dependency but one shaped by open two-way communication channels.<sup>12</sup> Free flow of information enhances interest articulation and helps people make informed demands. Information also contributes to accountability because it gives the masses the ability to keep a vigilant eye on government performance. The thesis highlights this in light of the experiences of Sweden, the United States and other countries like South Africa, Mexico and India.<sup>13</sup> It makes evident the ways in which Freedom of Information encourages informed debates and forces government to consult with civil society. The research will point to how information empowers citizens to participate and shape policy outcomes.

The thesis will make clear that much effort is yet to be done in the future by all actors in strengthening the principles and practices of freedom of information worldwide. Indeed, the absence of Freedom of Information should be considered a

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<sup>11</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 12.

<sup>12</sup> Khalil Gebara, phone interview by author, 14 April 2008, Washington D.C. (to Lebanon)

<sup>13</sup> Ann Florini, ed., *The Right to Know: Transparency for an Open World*, (New York: Columbia University Press, 2007), 51.

priority in development policy. Sustainable development is made possible by strengthening democratic governance and allowing the masses to voice their demands. A free flow of information and communication can help alleviate poverty in this manner. For the case of Lebanon, much work has to be done by government and civil society. Academics must focus on researching the implications of Freedom of Information and its link to democratic theory, economics and public policy. Media must raise awareness to the crucial aspects of an open society. Non-governmental organizations must engage in advocacy and lobbying efforts to ensure their right to access government records and influence the policy process. In the final analysis, it is the Lebanese people that bear the responsibility of utilizing such a law and relating it to their daily life and to the ways in which they deal with public officials.

This thesis may provide some significant foundations for the role of Freedom of Information in government, politics and in society. Its findings will show promising prospects for the case of Lebanon. However, future research and advocacy efforts must be directed to enforce the right to know in Lebanon and elsewhere in the world where it is absent. People everywhere should not envision change without a government system that is accountable to its own people. A first step towards this is government's duty to share information with the public.

## **G. Chapter Summary**

The following section provides a brief summary the organization of chapters in this thesis. It explains the structure in a way that helps the reader make sense of the flow of ideas, theories, insights and final conclusions.

Chapter two provides an overview of the principles and practice of Freedom of Information worldwide. The chapter sets the ground for the rest of the thesis because it

introduces Freedom of Information as a global phenomenon, the importance of which is recognized widely and its benefits well documented. The chapter explains the logic employed throughout the thesis and whenever the right to Freedom of Information is mentioned it refers to this concept. It introduces the concept of Freedom of Information as the ability of citizens to request and receive information on the workings of their government is critical to transparency and accountability which constitute the hallmarks of good governance. The chapter explains the international and legal statutes (and common features) in which Freedom of Information is grounded. In reality, these statutes govern the ways in which recent Freedom of Information laws have been adopted. They rest on the experiences of legal precedents that were set by the United States and Sweden among others. For this reason, the chapter includes a detailed case study of this law in the United States and Sweden. These experiences are compared and contrasted in chapter two with the aim of drawing some lessons learnt and ways to improve the implementation of Freedom of Information in other countries struggling with maintaining a democratic system.

The chapter does not stop at these two aforementioned experiences but also provides success stories from Mexico, India and South Africa. The aim of chapter two is to give a large overview of available literature and practices of Freedom of Information worldwide. The most important conclusion that the reader must bear in mind from chapter two is that Freedom of Information is a global movement. It is depicted as such throughout the entire thesis. It is uncontested that the benefits of Freedom of Information reach society as a whole and contribute to responsive government which paves the way for development. This makes chapter two very important because of the resources it employs and experiences it uses to show that the movement towards information sharing has taken off globally and Lebanon among

others must begin to take measures to implement these globally-embraced principles. This chapter sets the stage for the following chapter which aims to analyze the implications of Freedom of Information and answer the thesis questions posed at the beginning of the thesis.

At the start of this chapter, the following questions were stated; how does Freedom of Information influence democratic governance? Chapter three addresses this within the framework of the roles that Freedom of Information can play in government and in society. This is a significant part of the thesis because it goes beyond the mere review of existing literature and experiences to provide significant policy links. Chapter three has both research and practical implications. It seeks to prove that a constructive, healthy political culture depends upon an open society. In doing so, the chapter highlights different forms of citizen participation. Freedom of Information aims to create a two-way communication between the citizen and State based on an active citizenry. The chapter effectively explains that this cannot occur in the absence of a Freedom of Information law that governs this two-way relationship.

Chapter three includes sections on the benefits of Information and Communication Technology. E-government is explained as contributing directly to the principles and full implementation of Freedom of Information, provided governments are able to provide online portals and information channels to citizens. Information Technology and the World-Wide-Web contribute to the citizens' right to access government records and indeed make it easier for citizens to access information at anytime and any place. However, as the chapter highlights e-government must be at the service of Freedom of Information principles and help publish records pertaining to all government agencies and all government officials. The chapter concludes by effectively showing that access is essential for persons to realize their right to participate in the

governing of their country and to live under a system built on the informed consent of its people. The main importance of this chapter is that it sets the framework within which Freedom of Information is explained throughout the thesis. The framework rests in the rights and duties of citizens and full true citizenship to exist information in the hands of citizens is essential. Chapter three highlights all of this and concludes with enough evidence to proceed to the case of Lebanon.

Chapter four build upon the definitions, assumptions and experiences presented in previous chapters to explore the case of Lebanon. It was necessary to include in this chapter a detailed overview on Lebanon before attempting to make conclusions and show links. This is mainly due to the fact that there were insufficient literature and academic sources on Freedom of Information in Lebanon. Therefore to be able to make recommendations and show links, the chapter proceeds by a section on Lebanon and good governance. Since in previous chapters, the thesis shows the impact of Freedom of Information on good governance among other variables, the study on the case of Lebanon begins with an overview on good governance. Chapter four identifies existing problems in the Lebanese system of governance. It presents an overview of Lebanon's State institutions. This makes evident the role of sectarianism and the absence of true mechanisms of accountability.

Chapter four then explains the impact that Freedom of Information would have on the Lebanese public administration and civil servants. As such the chapter recommends training in order to overcome resistance to change. In discussing public administration, the chapter touches upon past and existing problems as well as past reform initiatives. Efforts to introduce Freedom of Information need not start from scratch. Indeed the chapter shows the need to learn from past mistakes and

shortcomings and build upon existing initiatives. E-government is mentioned as one tool to expand on information outreach and encourage citizen input.

Finally chapter four explores the role that Lebanese NGOs can play in advocating for Freedom of Information. Indeed there have already been some efforts for more government openness through information sharing. The experiences of Lebanese Transparency Association and Nahwa-el-Muwatiniya are included. Interviews with experts and advocates serve to explain better the case of NGOs and information availability in Lebanon. It becomes evident the lack of sufficient information to empower true participation in public policy. Moreover, the chapter shows that there is critical information that is kept hidden from the public inhibiting them from truly holding their public officials accountable. It concludes by stating that the prospects for Freedom of Information in Lebanon are quite promising. There is nothing inherent in the legal, social or Constitutional framework that prohibits the practice of Freedom of Information. What is missing is the political will to enact such a law but demands for more openness have a great chance of success.

Chapter five is the final chapter in this thesis and builds upon all the rest in order to draw conclusions, implications and present recommendations from the case of Lebanon. The case of Lebanon is not isolated from the rest of the world. As such, previous experiences with Freedom of Information may provide important lessons and similar tactics can be employed in Lebanon. However, this chapter tailors its recommendations to suit the social and governmental elements unique to the case of Lebanon.

Chapter five breaks down the practice of Freedom of Information into three phases: enactment, implementation, and monitoring and evaluation. In the first and third phase it is important for civil society to participate by directly lobbying and advocating

for a law that covers all government agencies. Attention must be given to important details. The law must ensure accurate and timely information for all citizens at very low costs and in a timely manner. In addition, the law must establish an office for independent oversight by an appointed Commissioner. The chapter builds upon principles used worldwide to propose necessary practices for the case of Lebanon.

Finally chapter five presents a short-term, medium-term and long-term action plan with recommendations for campaigning, implementing and evaluating Freedom of Information in Lebanon. It concludes with implications of this thesis for future research and practice.

## **H. Conclusion**

Good governance requires the active engagement of all groups of society. The best form of engagement and participation is that which rests upon accurate and timely information on State institutions. What is Freedom of Information? It is the legal obligation for governments to publish all records, documents and correspondences and make them available to the public. The rationale behind this is that an informed citizen can make better decisions and is empowered through information to hold public officials accountable. This chapter presented some definitions and introduced some concepts that will be used throughout the thesis. In addition, it explains the methodology used and chapter organization.

The topic of this thesis was chosen based on direct personal interaction with a government system in Lebanon that inhibits full participation of individuals and groups due to lack of information sharing in critical areas. This thesis will explain the advent of Freedom of Information principles and practices worldwide. The thesis will show that Freedom of Information has become a worldwide phenomenon and has been proven to



improve good governance, increase participation, enhance government responsiveness and contribute to economic development. As part of the global village and a UN member, Lebanon must begin to take active measures towards information-sharing with citizens.

This thesis will make a small contribution to the academic literature available. Its strength however lies in building upon other experiences to conclude with specific recommendations for the case of Lebanon. In the final analysis, it is important to bear in mind throughout this thesis that information is power. It is a resource that the public has the right to access. Government can use many ways to expand information outreach, like e-government services, but it can also use many ways to hide information. The thesis shows that even in Western democracies like Sweden and the United States, governments will almost always prefer not to disseminate information. In fact, government officials will almost always hesitate to share information about their own performance for fear of scrutiny. There are countless ways to exclude information. A law protecting the right to access government records is one way of ensuring citizens remain informed. Yet it is insufficient. It takes a great effort and vigilance by NGOs, media, academics and individual citizens to keep a watchful eye and utilize available information for the cause of greater transparency, responsiveness and accountability. Only then would participation fulfill its goal.

## CHAPTER II

### OVERVIEW: FREEDOM OF INFORMATION AS A GLOBAL MOVEMENT

*“A passive and ignorant citizenry will never create a sustainable world.”*  
Andrew Gaines (1924-2004)

#### **A. Introduction**

The ability of citizens to request and receive information on the workings of their government is critical to transparency and accountability which constitute the hallmarks of good governance. The position that a ruling body adopts towards the provision of information about its society at large is colored by considerations about the proper role of government, as well as sheer political expedience. According to OECD (2003); Laws establishing rights of access to information coupled with institutional mechanisms, to enforce these rights, is a basic building block for enhancing government transparency and accountability. Transparency and accountability are of specific relevance to building open government. Laws on Freedom of Information play an instrumental role in bridging the gap between policy and implementation. A policy of open transparent and responsive government can be effectively implemented when such laws stipulate how citizens and civil society organizations can be engaged in the policy process. Such laws effectively allow for policy makers to account for public input when reaching decisions, and to be accountable for the decisions reached. United Nations Article 19 perceives freedom of information and expression as a cornerstone right or,

‘empowerment’ right - one that enables other rights to be protected and exercised.<sup>14</sup> The article states, “ Everyone shall have the right to freedom of expression; this right shall include *freedom to seek, receive and impart information* and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>15</sup> Article 19 principles allow people to demand rights based on informed perspectives making electoral democracy meaningful and building public trust in government administration.<sup>16</sup> Access to information strengthens mechanisms to hold governments accountable for their promises, obligations and actions. The free flow of information about government increases the knowledge base within a society and can secure external checks on state accountability; thereby preventing corruption that thrives on secrecy and closed environments.

This chapter addresses existing legal statutes in the international community regarding freedom of information. The purpose is to show that the duty of government to disseminate public information is grounded in international legal statutes. The chapter also explains general frameworks for FOI from a human rights and development perspective. It includes a section on common features of current laws previously enacted and the principles found within these laws. Finally the chapter presents the opportunities, achievements and challenges of two countries’ experiences with FOI, namely the United States and Sweden. The final section of the chapter explains the shortcomings and draws conclusions from these experiences.

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<sup>14</sup> Agnes Callamard, *Development, Poverty and Freedom of Expression* [publication online] (Sri Lanka: UNESCO 2006, Conference on Freedom of the Media and Development, accessed 11 February 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

<sup>15</sup> United Nations, Universal Declaration of Human Rights, (UN, accessed on 10 January 2008); available from <http://www.un.org/Overview/rights.html>, Internet.

<sup>16</sup> Agnes Callamard, *Development, Poverty and Freedom of Expression* [publication online] (Sri Lanka: UNESCO 2006, Conference on Freedom of the Media and Development, accessed 11 February 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

## **B. International Legal Statutes**

The League of Nations originally made the earliest attempt at producing a multilateral instrument on information – the International Convention Concerning the use of Broadcasting in the Cause of Peace of 1936.<sup>17</sup> According to this Convention, states have a right to control and if necessary suppress information transmitted by radio broadcasting. The League’s stance on information was more of an effort at suppression rather than support for openness. It was only after 1945 that freedom of expression and information made a debut in the international governance and democracy arena. Indeed the formation of the UN was coupled with a general concern for individual human rights. According to Osterdahl (1994), this concern spilled over to the field of information and communication giving support to the demands for a human right to freedom of information.<sup>18</sup> At the time, the predominance of the Western liberal attitudes within the newly established UN as well as the emergence of the American news agencies played an instrumental role in shedding light on the need for freedom of information.

Within the UN, freedom of information was recognized as a fundamental right of the people. In 1946, during its first session, the UN General Assembly adopted resolution 59(1) which stated: “Freedom of Information is a fundamental human right and...the touchstone of all the freedoms to which the UN is consecrated.”<sup>19</sup> From its inception, the UN placed great significance to freedom of information especially in summoning the International Conference on Freedom of Information in Geneva in

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<sup>17</sup> Inger Osterdahl, “Freedom of Information in Question: Freedom of Information in International Law and the Calls for a New World Information and Communication Order (NWICO),” *The International and Comparative Law Quarterly*, 43, No. 2 (April 1994): 476.

<sup>18</sup> *Ibid.*

<sup>19</sup> Article 19 & The British Council, *Access to Information Booklet*, [publication online] (British Council 2004, accessed 12 January 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

1948.<sup>20</sup> Romulo, who presided the conference at the time, explained that “in this Conference, the peoples of the world, through their Governments and the representatives of their various media of mass communication, have solemnly pledged themselves to translate into reality the concept of maximum freedom of information for all men and all nations, without distinction as to race, sex, language or religion.”<sup>21</sup> He declared that this premise “might come to be regarded in the future as the “Magna Carta” of freedom in the field of thought and expression.”<sup>22</sup>

Moreover, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), which guarantees the freedom of opinion and expression under Article 19. The adoption of this Declaration was an important milestone that placed the right of access to information at the heart of human rights. The UDHR was reaffirmed by the 1966 legally binding treaty, the International Covenant on Civil and Political Rights (CCPR).<sup>23</sup> Freedom of information was so fundamental in the UDHR that CCPR adopted this provision and Article 19 was mirrored in the CCPR. More recently, the UN Commissioner on Human Rights has established the office of the “UN Special Rapporteur on Freedom of Opinion and Expression” in 1993 who has worked since then on the right to freedom of information through annual reports, commentaries and statements. Although the UDHR, as a UN General Assembly resolution, is not directly binding on States, Article 19 is now widely regarded as having acquired “legal force as customary international law” since its adoption in 1948.<sup>24</sup> It is

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<sup>20</sup> Carlos P. Romulo, “UN Freedom of Information Convention: What the Conference Achieved,” United Nations Bulletin, 4, No. 9 (May 1984), 2.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Article 19 & The British Council, *Access to Information Booklet*, [publication online] (British Council 2004, accessed 12 January 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>24</sup> Toby Mendel, *National Security and Open Government: Striking the Right Balance* (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 4.

now increasingly accepted that this right “includes the right to access information held by public authorities, commonly referred to as the right to freedom of information, or simply the right to information.”<sup>25</sup>

Today, the people of 65 countries have laws that provide mechanisms for them to request and obtain information from their respective governments. Governments around the world are increasingly making more information about their activities available.<sup>26</sup> As one author puts it; “History may well remember the era that spanned the collapse of the Soviet Union and the collapse of the World Trade Center as the Decade of Openness. Social movements around the world seized on the demise of Communism and the decay of dictatorships to demand more open, democratic, responsive governments.”<sup>27</sup> FOIA has become an “inescapable development in democratic and responsible government.”<sup>28</sup> The rapid diffusion of "right to information laws" around the world in the last decade might seem to be signaling a new era of governmental openness.<sup>29</sup> The number of laws on “freedom of information” has increased in recent years, and 53 such laws have been enacted in just the past decade and a half.<sup>30</sup>

The growth in the number of such laws comes in response to demands by civil society organizations, the media and international lenders.<sup>31</sup> International donor organizations place an impetus on combating corruption and ensuring good governance.

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<sup>25</sup> Toby Mendel, *National Security and Open Government: Striking the Right Balance* (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 4.

<sup>26</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

<sup>27</sup> Thomas Blanton, “The World’s Right to Know,” *Foreign Policy*, No. 131 (July-August 2002): 50.

<sup>28</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 238.

<sup>29</sup> Toby Mendel, *National Security and Open Government: Striking the Right Balance* (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 11.

<sup>30</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), preface.

<sup>31</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

In fact, international pressure has been a major reason in the increased adoption of FOI laws. Nowadays it can be argued that, “to gain full access to the international political system, a country must show that it supports the notion of transparency and openness in governance.”<sup>32</sup> In addition, another factor for the adoption of FOI laws has been the advances in information technology. Because of the expansion of the Internet into everyday usage there is an increased demand for more information by the public, private sector and civil society groups. Modernization and the move towards e-government has created an internal constituency that is promoting the dissemination of information as a goal in itself.<sup>33</sup>

Around the world, governments seeking to win the trust of their citizens have, however reluctantly, taken bold steps to respond to demands for information. During the last decade alone “26 countries—from Japan to Bulgaria, Ireland to South Africa, and Thailand to Great Britain—enacted formal statutes guaranteeing their citizens' right of access to government information.”<sup>34</sup> These factors provide significant opportunities for civil society stakeholders to promote open and accountable government. We now live in a world where it is not acceptable to convey to citizens that they have no right to know. However, the proliferation of access to information laws is not without pitfalls; “states eager to tender their democratic credentials to the international community may adopt sub-standards laws” (to satisfy international regulations or superficially respond to local pressures). Where laws are excellent on paper, they may not be well implemented in practice.<sup>35</sup> The challenge is to effectively implement laws that regulate the relation between citizens and their state based on a two-way information relation.

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<sup>32</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 41

<sup>33</sup> Ibid.

<sup>34</sup> Thomas Blanton, “The World's Right to Know,” *Foreign Policy*, No. 131 (July-August 2002): 50.

<sup>35</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 21.

Globally, implementation of access to information laws has created an unprecedented opportunity for people to shift the balance of power between the government and citizens, and create a culture of openness that is marking a new and distinct era. The most basic feature of all FOI laws is the ability for individuals to ask for materials (records, information and documents) held by public authorities and other government bodies.

Access to government records and information is an essential requirement for responsive government. Access facilitates public knowledge and discussion. It provides an important guard against abuses, mismanagement and corruption. Openness and transparency in the decision making process can assist in developing citizen trust in government actions and maintaining a civil and democratic society. While the vast majority of countries that have adopted laws are ‘Western Democracies,’ much of the rest of the world is also moving in the same direction.<sup>36</sup> Central and Eastern Europe leads the way in ‘enshrining’ FOI laws followed by a number of Latin American countries.<sup>37</sup> In Asia, nearly a dozen countries have either adopted laws or are on the brink of doing so. In South and Central America and the Caribbean, half a dozen countries have adopted laws and nearly a dozen more are currently considering them. Openness is starting to emerge in Africa. South Africa enacted a wide reaching law in 2001 and many countries in southern and central Africa, mostly members of the Commonwealth, are following its lead. Ghana and Kenya are likely to enact legislation in the near future.

It is important to note that, Freedom of Information has been widely recognized not only as crucial to participatory democracy, accountability and good

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<sup>36</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 21.

<sup>37</sup> Ibid.



governance, but also as a fundamental human right, protected under international and constitutional law.

### **C. General Legal Frameworks**

The majority of FOI laws around the world are based on three main principles: human rights and privacy, accountability, and democratic participation.<sup>38</sup> There is no agreed upon and fixed international standard governing the right of access to information held by public bodies. International Treaty Law and the Universal Declaration of Human Rights establish only a general framework for the right to freedom of information. In most freedom of information laws, public bodies are obligated to publish information, even in the absence of a request.<sup>39</sup> This includes key information, for example about how they operate, their policies, opportunities for public participation in their work and how to make a request for information.

The United Nations Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, stipulates that “Each Party shall endeavor to ensure that officials and authorities assist and provide guidance to the public in seeking access to information.”<sup>40</sup> However, there is an absence of enforcement mechanisms as well as a set international standard on drafting and implementing FOI laws. The most authoritative international legal text is the Council of

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<sup>38</sup> Lidberg, Johan, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 40.

<sup>39</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 14.

<sup>40</sup> United Nations, *United Nations Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* [printed online] (Denmark: United Nations 1998, accessed 14 February 2008); available from <http://www.unece.org/env/pp/documents/cep43e.pdf>, Internet.

Europe's Recommendation 2002(2) on the Right of Access to Official Documents.<sup>41</sup>

The Justice Initiative has drawn upon these legal resources and identified a set of ten principles to guide legislators and other stakeholders in their efforts to institutionalize access to government information:<sup>42</sup>

**1) Access to information is a right of everyone.**

Anyone may request information, regardless of nationality or profession. There should be no citizenship requirements and no need to justify why the information is being sought.

**2) Access is the rule – secrecy is the exception!**

All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.

**3) The right applies to all public bodies**

Thereby covering any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

**4) Making requests should be simple, speedy, and free.**

The only requirements should be to supply a name, address and description of the information sought. The cost should not be greater than the reproduction of documents.

**5) Officials have a duty to assist requestors**

Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the

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<sup>41</sup> Council of Europe, *Recommendation 2000(2) of the Committee of Ministers to Member States on Access to Official Documents* [printed online] (Strasbourg: Directorate General on Human Rights 2003, accessed 14 February 2008); available from [http://www.coe.int/T/E/Human\\_rights/rec\(2002\)2\\_eng.pdf](http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf), Internet.

<sup>42</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 27.

appropriate body.

**6) Refusals must be justified.**

Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy.

**7) The public interest takes precedence over secrecy.**

Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information.

**8) Everyone has the right to appeal an adverse decision.**

All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.

**9) Public bodies should proactively publish core information.**

Every public body should make readily available information about its functions and responsibilities, without need for a request. This information should be current, clear, and in plain language.

**10) The right should be guaranteed by an independent body.**

An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

These principles represent a general framework provided by The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), whose mission is to “pursue law reform activities grounded in the protection of human rights,

and contribute to the development of legal capacity for open societies worldwide.”<sup>43</sup>

Freedom of Information legal texts are similar in that they embody the ‘spirit’ of the principles, presented above, of equality, openness, access and the need to justify secrecy.

The absence of clear standards may account for the varied effectiveness of Freedom of Information laws around the world. Article 19 has made an effort towards defining FOI standards with its publication ‘*The Public’s Right to Know: Principles on Freedom of Information Legislation*’. Article 19, A Global Campaign for Free Expression, is a London-based NGO whose mission is to protect and develop access to information and freedom of expression. In 2000, Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, endorsed the “Principles on Freedom of Information Legislation” published by Article 19.<sup>44</sup> It is fair to conclude that despite the absence of a specific defined approach, Freedom of Information Legislations often embody and should embody the promotion of open government and should keep exemptions to the bare minimum. Exemptions from the law (also known as ‘exclusions’) refer to bodies entirely outside the ambit of the law and under no obligation to disclose information.<sup>45</sup>

## **D. Common Features of Freedom of Information Laws**

Freedom of Information Acts around the world display various common features beyond the fact that they all entail some right to access and receive government

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<sup>43</sup> Open Justice Initiative [website] (accessed January 15 2008); available on <http://www.justiceinitiative.org/about/mission>, Internet.

<sup>44</sup> Article 19, *The Public’s Right to Know: Principles on Freedom of Information Legislation* [publication online] (London: Article 19, 1999, accessed January 30 2008); available from <http://www.article19.org/pdfs/standards/righttoknow.pdf>, Internet.

<sup>45</sup> Toby Mendel; *Freedom of Information Legislation: Progress, Concerns and Standards* [article online] (Global Corruption: 2002, accessed 10 February 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008438.pdf>, Internet.

documents and records. Common features include:

- Types of bodies covered: Acts generally apply to all government bodies with the exemptions. The courts, security and intelligence are usually excluded from the law. Moreover, there is a recent trend towards extending FOI laws in countries to include non-governmental bodies and the private sector (especially those that receive public financing).<sup>46</sup>

- Exemptions: There are a number of common exemptions that are found in nearly all laws. They include “the protection of national security and international relations, personal privacy, commercial confidentiality, law enforcement and public order, information received in confidence, and internal discussions.”<sup>47</sup> According to Banisar, “most laws require that harm must be shown before the information can be withheld, for at least some of the provisions. The test for harm generally varies depending on the type of information that is to be protected.”<sup>48</sup> Exemptions from the law are the most controversial issue in most FOI laws. All FOI laws include a number of exceptions, many of which protect important social interests such as national security and personal information. Internal decision-making and security are usually the main reasons for exemptions. Banisar explains that international law defines national security “as a legitimate restriction on freedom of expression and information” and many national laws define further how it should be applied, “and yet it remains one of the most problematic restrictions because it is regularly overused and abused in ways which

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<sup>46</sup> Toby Mendel; *Freedom of Information Legislation: Progress, Concerns and Standards* [article online] (Global Corruption: 2002, accessed 10 February 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008438.pdf>, Internet.

<sup>47</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

<sup>48</sup> Ibid.

seem to contravene international standards.”<sup>49</sup> In many parliamentary systems, documents and records of Cabinet meetings are excluded. A number of countries’ laws include “public interest tests” that require that withholdings must be balanced against disclosure in the public interest. Banisar explains that “this allows for information to be released even if harm is shown if the public benefit in knowing the information outweighs the harm that may be caused from disclosure.”<sup>50</sup> Finally, “national security remains an excessively broad area of restriction, both in terms of punishing those who speak out and in terms of government secrecy.”<sup>51</sup> National security is also one of the most difficult areas for campaigners and human rights activists to promote reform, both politically and through the courts.

- Appeals and Oversight: A variety of mechanisms for appeals and enforcement include “administrative reviews, court reviews and enforcement or oversight by independent bodies.” The effectiveness of these different methods varies greatly. In general, the jurisdictions that have created an outside monitor such as an *ombudsman* or information commissioners are more open (the ombudsman is a government official appointed to receive and investigate complaints made by individuals against public officials).<sup>52</sup> Toby Mendel stresses the independence of the oversight administrative body; “independent oversight is essential where public officials refuse to disclose information, especially if they are hiding corruption or other

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<sup>49</sup> Toby Mendel, *National Security and Open Government: Striking the Right Balance* (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 5.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid, 10.

<sup>52</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

wrongdoing.”<sup>53</sup> The first level of appeal in almost all countries is typically an internal review. This usually involves asking a higher level entity in the body that the request was made to review the withholdings. Practically, it has mixed results. It can be an expensive and quick way to review decisions. However, experience in many countries has shown that the internal system tends to uphold the denials and results in more delays rather than enhanced access. Moreover, although “individuals in most countries have the right to appeal to the courts, but this remedy is often inaccessible and the process excessively time consuming.”<sup>54</sup>

Once the internal appeals have been completed, the next stage is to an external body. In many countries, an Ombudsman is asked to review the decision as part of their prerogatives of oversight on government administration. Although Ombudsmen generally do not issue direct binding decisions, their opinions are considered to be quite influential and are typically followed in most countries. The final level of review in almost all countries is to appeal final decisions of agencies to national courts. The courts typically can review the most records and make binding decisions. Courts usually “sympathize” and tend to side with public agencies, especially in matters of national security related information. According to Mendel, if exceptions are too broad they can effectively undermine the legislation.<sup>55</sup>

- Affirmative Publication of Information: this refers to the “duty of government agencies to routinely release certain categories of information.”<sup>56</sup> According to Banisar,

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<sup>53</sup> Toby Mendel; *Freedom of Information Legislation: Progress, Concerns and Standards* [article online] (Global Corruption: 2002, accessed 10 February 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008438.pdf>, Internet.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

these categories usually include information on the structure of the organization, its primary functions, internal rules, decisions, a listing of its top employees, annual reports, and other information. With the advance of information technology, FOI laws tend to require that the information be made available on the Internet.

- Problems: The enactment of a FOI law will not ensure its effective implementation or its utmost utility. To successfully achieve its mission, “governments must change their internal cultures. Civil society must test it and demand information.”<sup>57</sup> The mere existence of an act does not always mean that access is possible. In many countries strict regulations and prohibitions on access act to restrict public information, not promote it. In other countries, the laws are adopted and simply never implemented, often by not publicized (users remain unaware of the law). Moreover, the lack of funds weakens the role of independent oversight bodies. Excessive fees are often charged in some countries to prevent requests, which diminish people’s ability to appeal or complain about delays.<sup>58</sup> To succeed, these restrictions must be resisted by all stakeholders (civil society, media, political actors, courts and ombudsmen) using mechanisms that we shall return to later.

These constitute the major common features associated with the law on access to government information. Other common features include the type of outcomes associated with requests for information from government agencies. According to a 2006 study by the Open Society Justice Initiative there are ten main outcomes of the sort and they are grouped in two broad categories:<sup>59</sup>

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<sup>57</sup>David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

<sup>58</sup>Ibid.

<sup>59</sup>Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 33.



- Compliant Outcomes:

1. Information Received (complete oral or written answers)
2. Partial Access (sections of the information are severed or excluded)
3. Written Refusal (written statement of the grounds for withholding information provided the basis for appeals)
4. Transferred/Referred (a request is either transferred directly to another department or a referral is provided to another institution)

- Noncompliant Outcomes:

1. Inadequate Answer (an answer that is incomplete, irrelevant or unsatisfactory)
2. Mute Refusal (no answer or vague answer)
3. Oral Refusal (with no justification in writing)
4. Unable to Submit (a requester is unable to file a request)
5. Refusal to Accept (a government body refuses to process an information request)
6. Late Answers (when answers are given after the legal time frame)

The categories provided here are considered common because of surveys and comparisons made across countries that listed similar features not only in the freedom of information legislations themselves, but also in the practice of citizens requesting specific information. The same common features also account for the differences that exist between FOI systems (for instance, the number of agencies exempt from the law range from the Swedish system where “no agency is formally exempt” to the more

“restrictive Australian FOI legislation” that has a list of excluded agencies).<sup>60</sup> The Freedom of Information law itself is one step in a series of measures that must take place simultaneously to ensure that the law serves its purpose and engages all of society’s stakeholders in the process.

## **E. Country Cases (US, Sweden, South Africa)**

This section will present, analyze and explain the evolution of FOI systems in Sweden and the US. These cases are significant precedents in the field and one researcher argues that “US adapted the Swedish FOI regime to suit its own political systems. Most other nations adopted, with very few changes, the US version.”<sup>61</sup> Other examples chosen serve as an important background preceding the section on the case of Lebanon; these experiences are “food for thought” setting the stage for the section on recommendations for the Lebanese case. The United States and Sweden were chosen because they constitute the two main models for Freedom of Information. While the Swedish law is a precedent to the American one by 200 years, both are considered important legal precedents that helped shape other FOI laws around the world.

### *I. SWEDEN*

Sweden is a constitutional monarchy, with a king or queen as the head of state (the King or Queen who occupies the throne of Sweden in accordance with the Act of Succession shall be the Head of State).<sup>62</sup> But like in most liberal democracies, the royal head of state has no real political power. The Swedish system is unique because of a

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<sup>60</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 42.

<sup>61</sup> Ibid.

<sup>62</sup> The Instrument of Government [online legal text] (accessed 20 February 2008); available from <http://www.legislationline.org/upload/legislations/bb/82/8be1bfe7e1a03aa4b4ca65c2d11c.htm>, Internet.

high degree of institutional autonomy underlying power dispersal to various levels of government. The Swedish system is known for “its ideology of local government,” which basically means that local governments enjoy a great deal of autonomy, limited only by the legislative powers of its national counterpart.<sup>63</sup> The father of the Swedish Freedom of Information Act (FOIA), Chydenius, was a member of the Caps party who introduced freedom of information as a means of “promoting social reforms and opposing the supremacy of the nobility.”<sup>64</sup> Chydenius was inspired by John Locke among other political philosophers during that era (which is known in Sweden as “the age of Liberty.” John Locke saw “the supreme power of the State residing in a legislature and behind the legislature in the people.”<sup>65</sup> The people would govern, but “they were not the government.” Chydenius considered the introduction of the right to access for citizens as his greatest lifetime achievement. The Swedish parliament passed the legislation in 1766, and established the world’s first parliamentary Ombudsman (the word itself is Swedish for delegate and has been imported directly into the English language).<sup>66</sup> Birkinshaw observes that “a very large degree of Swedish public administration is depoliticized in so far as many, sometimes important, decisions are not taken by political overlords.”<sup>67</sup>

The principle of openness “Offentlighetsgrundsatsen” (in Swedish public sector) has been long enshrined in Swedish politics.<sup>68</sup> The major underlying incentive

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<sup>63</sup>Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 114.

<sup>64</sup> Ibid, 42.

<sup>65</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 14.

<sup>66</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 43.

<sup>67</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 59.

<sup>68</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2004, accessed 10 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2004.pdf](http://www.freedominfo.org/documents/global_survey2004.pdf), Internet.

for adopting the FOIA in Sweden, was “an information-starved political opposition that was given a rare chance to pass legislation that would grant them and all citizens access to government-held documents and information.”<sup>69</sup> The introduction to the Swedish Constitution describes a time of great change: “the death of Carl XII in 1718 brought to an end not only Sweden’s great power status but autocratic rule as well. The pendulum now swung back in the other direction. A new form of government took shape, which became significantly known as the Age of Liberty government.”<sup>70</sup> The basis for the Swedish FOI system is found in the Swedish Constitution (in the basic principles of the form of government):

“All public power in Sweden proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It shall be realized through a representative and parliamentary polity and through local self-government. Public power shall be exercised under the law.”<sup>71</sup>

This premise resulted in four fundamental laws found in the Swedish Constitution. One of these laws is the “Instrument of Government and the Freedom of the Press Act,” which specifically provides for freedom of information and the right of citizen’s access:<sup>72</sup>

- Chapter 2, Article 1 of ‘The Instrument of Government’ guarantees that all citizens have the right of: “freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others.”

Specific rules on access are contained in the Freedom of the Press Act, which

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<sup>69</sup>Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 43.

<sup>70</sup>Ibid, 44.

<sup>71</sup>The Instrument of Government [online legal text] (accessed 20 February 2008); available from <http://www.legislationline.org/upload/legislations/bb/82/8be1bfe7e1a03aa4b4ca65c2d11c.htm>, Internet.

<sup>72</sup>David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 18 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

was first adopted in 1766. The current version was adopted in 1949 and amended in 1976.<sup>73</sup>

- Chapter 2 on 'The Public Nature of Official Documents,' decrees that "every Swedish subject and resident shall have free access to official documents."<sup>74</sup> Public authorities must respond immediately to requests (which may be anonymous) for official documents.<sup>75</sup> In his 2006 global survey, Banisar explains that "each authority is required to keep a register of all official documents and most indices are publicly available. This makes it possible for ordinary citizens to go to the Prime Minister's office and view copies of all of his correspondence."

Internal documents, however, such as drafts, memoranda and outlines are not considered official documents "unless they are filed and registered or they contain new factual information that is taken into account in decision-making."<sup>76</sup> The Act stipulates discretionary exemptions "to protect national security and foreign relations; fiscal policy, the inspection and supervisory functions of public authorities; prevention of crime; the public economic interest; the protection of privacy; and the preservation of plant or animal species."<sup>77</sup> A comprehensive list of the documents that are exempted is provided in the 1980 Secrecy Act which has over 160 sections. Most of the restrictions require a finding that their release would cause harm to the protected interest. A recent example in 2005 was the government's classifying of list of dead and missing Swedes from the Tsunami because of fears that the houses of the missing would be robbed. The

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<sup>73</sup> Freedom of the Press Act [text online] (The Swedish Parliament, accessed on 18 February 2008); available from [http://www.riksdagen.se/templates/R\\_Page\\_6313.aspx](http://www.riksdagen.se/templates/R_Page_6313.aspx), Internet.

<sup>74</sup> The Instrument of Government [text online] (The Swedish Parliament, accessed on 18 February 2008); available from [http://www.riksdagen.se/templates/R\\_PageExtended\\_6319.aspx](http://www.riksdagen.se/templates/R_PageExtended_6319.aspx), Internet.

<sup>75</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 18 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>76</sup> Ministry of Justice, *The Right of Access to Official Documents in Sweden* [text online] (Sweden, Ministry of Justice: 1996, accessed on 18 February 2008); available from <http://www.regeringen.se/content/1/c6/02/78/10/d6e404ba.pdf>, Internet.

<sup>77</sup> Ibid.

Supreme Administrative Court ruled in February 2005 that the withholding was illegal and the names were released.<sup>78</sup>

Decisions by public authorities to deny access to official documents can be appealed to general administrative courts and ultimately to the Supreme Administrative Court. Complaints can also be directly filed to the Parliamentary Ombudsman (although the decision of the ombudsman is non-binding).<sup>79</sup> According to Banisar's 2006 study, the Ombudsman received 288 complaints relating to access to documents and freedom of the press between July 2004 and June 2005 and issued admonitions to government departments in 90 cases.<sup>80</sup>

In September 2000, the government launched a campaign to make the Swedish public service an international example of "openness." Although Sweden has a long history and traditions of transparency and open government, the campaign "recognized that openness is something one learns and must always be recaptured, generation after generation."<sup>81</sup> To this day it is not unusual for ombudsmen to cite problems of "a lack of fundamental knowledge of these areas [access and information freedom] particularly with local administrations."<sup>82</sup> Moreover, "many citizens have insufficient knowledge of these rights, making it difficult for those citizens to exercise them."<sup>83</sup> Sweden's long-standing tradition in openness and transparency simple needed to assert itself. From the campaigners' point of view, civil servants were not adhering to rules and regulations, and citizens were not fully aware of their rights. The Open Swedish campaign was born

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<sup>78</sup> Ministry of Justice, *The Right of Access to Official Documents in Sweden* [text online] (Sweden, Ministry of Justice: 1996, accessed on 18 February 2008); available from <http://www.regeringen.se/content/1/c6/02/78/10/d6e404ba.pdf>, Internet.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 88.

<sup>82</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2008, accessed 18 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2008.pdf](http://www.freedominfo.org/documents/global_survey2008.pdf), Internet.

<sup>83</sup> Ibid.

when the Minister for Democratic Issues and Public Administration published an action program called “A Government in the Service of Democracy.”<sup>84</sup> The campaign which began in 2000 and ended in 2002 had four major objectives:<sup>85</sup>

- To achieve better appreciation of the Public Access to Information

#### Principle

- To increase openness within the public sector
- To cultivate public knowledge and awareness
- To encourage involvement and debate

The main target groups were the major stakeholders that have to deal with the FOIA systems, and those actors, one could argue, who could either enhance transparency or stand in its way. They included civil servants throughout the entire public sector, as well as administrators both politicians and public officials. One panel recommendation stated the need for further “external oversight, an improvement on the requirement to show harm and improving the protection of sensitive personal information and the link between real and fictitious identities.”<sup>86</sup> Seminars were conducted with over 240 organizations and their project leaders on openness. A website was launched in the form of a training manual that offered practical tools on how to “work to improve openness.” Following this campaign (which concluded with several publications, citizen manuals and local public hearings), a recent debate began to take place in Sweden in 2003 among FOIA observers who are questioning that the law in

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<sup>84</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 89.

<sup>85</sup> Ibid.

<sup>86</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2008, accessed 18 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2008.pdf](http://www.freedominfo.org/documents/global_survey2008.pdf), Internet.

Sweden may be counterproductive.<sup>87</sup> Their reasoning for this has been that, public servants and politicians are well-aware that when documents are archived they may be easily acquired by the public.<sup>88</sup> The result has been reluctance in documenting the policy process which decreases overall goals of government transparency. Moreover, there exists a worrying trend in the increased number of exemptions from the law under the Secrecy Act.<sup>89</sup> One other problem with the Swedish FOI system is that no formalized reporting or auditing system exists. The only FOI statistics that exist in Sweden concern the number of FOI appeals taken to the administrative courts. This is not comprehensive and the information would require a lot of work to collate compared to a formal FOI reporting system.”<sup>90</sup>

Sweden is unique because of the inclusion in its constitution of two comprehensive and separate laws on Freedom of Information and Speech and Media with Whistleblower Protection. ‘Whistleblower protection’ encourages public servants “to speak their mind frankly not only to their Minister when something is wrong, but also to the public, often via the media.”<sup>91</sup> One major area of strength in Sweden’s case is that these acts clearly outlaw censorship of any sort and in fact provide protection for civil servants who “leak” information to the media.<sup>92</sup> Another point of strength in the Swedish FOIA system is that agencies are required to process requests immediately (within one or two days) with no charge of fees for retrieving and collating information. It is clearly evident that the FOIA founding fathers in Sweden envisioned an open society where the individual citizen is well-informed to participate in public affairs. The

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<sup>87</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 117.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid, 153.

<sup>90</sup> Ibid, 117.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid, 122.



relationship envisioned is evidently a two-way relationship; an engaged and information-hungry citizen interfacing with an open and information-sharing system. The legal framework has been set-up to protect those who give out information to the public, through the media, in favor of the public interest. Information is generally seen as falling at the heart of public interest. Despite a tradition that is over two centuries enriched by experiences of openness and participation, recent studies have shown that the pursuit of transparency and democratic governance is an ever-evolving pursuit that does not end even when laws are enacted. In the words of Sundstro, Chief Legal Advisor of the Swedish Agency for Public Management, “the struggle for an open society continues –in Sweden as elsewhere.”<sup>93</sup>

## 2. UNITED STATES OF AMERICA

The US constitutional fathers created the three arms of government (legislative (Congress), executive (President) and judiciary (the Courts); the separation of powers accounts for a system of checks and balances. At the heart of the US political system is the concept of the ‘balance of power.’ According to some sources, the US is indeed an important role model for FOI worldwide. Lidberg (2006) notes that, “the US FOI model grew out of a global move towards more open government following World War II.”<sup>94</sup> In the period of analysis immediately after the war, the US and several other members of the newly formed United Nations concluded that too much secrecy in too many countries had provided fertile soil for conflict.

The case of the US displays is a struggle of maintaining the principle and practice access to public records. One expert on US FOIA explains why this is a

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<sup>93</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 91.

<sup>94</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 44.

struggle, the legacy acquired from the British Empire is for bureaucracies to be secretive; since those times knowledge and information meant power; and trading information was “power *trading*” among bureaucratic agencies. Today, standards should allow for power *sharing*. Everyone, everywhere has the right to know. In the 1970s in the US, the Department of Defense showed high compliance to FOIA because the military were used to obeying legal orders. Whereas, the Department of Agriculture struggled with the newly adopted practice of power sharing and exercised high levels of secrecy; the bureaucrats were simply not used to openness.”<sup>95</sup> In addition, Court records and legislative materials have been open to the public for a long time. In 1946, Congress enacted the Administrative Procedures Act.<sup>96</sup> It required “that government bodies publish information about their structures, powers and procedures and make available all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.”<sup>97</sup> During the 1950’s both Congress and media groups started to advocate for a more wide-ranging and assertive law.<sup>98</sup> The first effective attempt for a FOIA came in 1958 in the form of an amendment to the 1946 Administrative Procedure Act, which made it mandatory for government agencies to “keep and maintain records.”<sup>99</sup> FOIA forced agency compliance and required that proof of justification be given when denying access to records.

Following a long period of hearings based on the 1958 amendment the Freedom of Information Act (FOIA) was enacted in 1966 and went into effect in

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<sup>95</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

<sup>96</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>97</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>98</sup> Ibid.

<sup>99</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 45.

1967.<sup>100</sup> The US FOIA is inspired from and based on the First Amendment of the Constitution. Before 1966, statutes had existed but only allowing the public “access to government documents if a need to know was established,” this also allowed agencies the prerogative to hold withhold information for a good cause.<sup>101</sup> A comprehensive “Citizens Guide to FOIA” published in 1966 points out the paradigm and practice shift that the enactment of this legislation caused; “the *need* to know has been replaced by the *right* to know.”<sup>102</sup> Thomas Susman served as Chief Counsel and General Counsel to the Antitrust and Administrative Practice Subcommittees and to the Senate Judiciary Committee. Susman was the principal Senate staff lawyer responsible for development of the 1974 Freedom of Information Act Amendments. He explains that “prior to 1974 FOIA was ineffective and in fact the real road to change in US government transparency began with the 1974 amendments. In the 1966 version the ability to obtain court reviews was difficult for example.” Susman noted that “the 1974 amendments responded to the failures in the 1966 FOIA but placing fee restrictions for instance.”<sup>103</sup> The original 1966 Act only allowed occasional disclosure while after 1974 Americans enjoyed broader maximum disclosure. All information available today was made available because of the successful lawsuits that employed the 1974 Act. FOIA became a long term strategy for advocates, industries, businesses, lawyers, journalists, NGOs and citizens to participate in government processes.

The Act was amended most recently in 1996 by the Electronic Freedom of Information Act (which allows any person or organization, regardless of citizenship or

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<sup>100</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>101</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 36.

<sup>102</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 226.

<sup>103</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

country of origin, to ask for records held by federal government agencies).<sup>104</sup> The Act's objective is "to provide public access to an agency's records."<sup>105</sup> The applicant does not have to demonstrate a specific interest in a matter to view relevant documents – an idle curiosity suffices. Agencies covered within the Act include "executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President's immediate staff at the White House, including the National Security Council."<sup>106</sup> Each agency or public body that is included within the FOIA has to publish in the 'Federal Register' the details of its organization as well as the rules and policies of its procedures.<sup>107</sup> There are nine categories of discretionary exemptions: "national security, internal agency rules, information protected by other statutes, business information, inter and intra-agency memos, personal privacy, law enforcement records, financial institutions and oil wells data."

The US FOIA is similar to the Swedish FOIA in that it emphasizes that "the request for documents should have priorities; that real avenues for citizen appeals should exist, and that legally binding rulings would ensure repercussions for the public servants that refuse to comply."<sup>108</sup> It differs from the Swedish FOIA because freedom of information in the United States is not a constitutional concept.<sup>109</sup> Moreover, the cost of processing a request and photocopying documents is much higher in the US.

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<sup>104</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>105</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 37.

<sup>106</sup> Electronic Freedom of Information Act Amendments of 1996 [online text] (1996, accessed 20 February 2008); available from [http://www.epic.org/open\\_gov/efoia.html](http://www.epic.org/open_gov/efoia.html), Internet.

<sup>107</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 38.

<sup>108</sup> Johan Lidberg, "Keeping the Bastards Honest: The Promise and Practice of Freedom of Information," (Ph.D. Murdoch University, 2006), 45.

<sup>109</sup> *Ibid*, 46.

Appeals of denials or complaints about extensive delays can be made internally to the agency concerned. The federal courts review appeals and can overturn agency decisions. The courts have heard thousands of cases in the 40 years of the Act.<sup>110</sup> Alongside, FOIA the Sunshine Act (also known as an ‘open meeting’ law) allows “access to the meeting of those agencies within its scope. Its aim is to open up to the public portions of the ‘deliberative processes’ of certain agencies.”<sup>111</sup> A week’s notice is required of the time, date, topic and location of the meeting. In addition, “a named official with a publicized telephone number must be appointed to answer queries.”<sup>112</sup>

The US FOIA mode of management is characterized by decentralization; The US Justice Department (DOJ) provides some guidance and training for agencies and represents the agencies in most court cases.<sup>113</sup> The 1996 E-FOIA amendments require agencies to create electronic reading rooms and make available electronically the information that must be published along with common documents requested. In 2000, the U.S. federal government received more than 2 million FOIA requests from citizens, corporations, and foreigners.<sup>114</sup>

According to Banisar’s 2006 survey, the American FOIA “has been hampered by a lack of central oversight and long delays in processing requests. In some instances, information is released only after years or decades.”<sup>115</sup> Research points out to delays being the most alarming problem today with the US FOIA. The National Security

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<sup>110</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>111</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 43.

<sup>112</sup> *Ibid.*

<sup>113</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>114</sup> Thomas Blanton, “The World’s Right to Know,” *Foreign Policy*, No. 131 (July-August 2002): 50.

<sup>115</sup> *Ibid.*

Archive contains evidence that the oldest request on record was 17 years!<sup>116</sup> There are many reasons for delaying information disclosure. In some agencies human and technical resources are inadequate to respond on time.<sup>117</sup> The need to consult with various government bodies before information can be released is another reason. Some information could be related to ongoing investigation that causes further delay.<sup>118</sup> The area of exemption was originally intended to “cover advisory opinions, not factual information.”<sup>119</sup> According to Susman, “these procedural delays are institutionally designed to avoid responses.”<sup>120</sup> Susman is currently involved in a lawsuit against the Department of Defense regarding a delayed FOIA request by the Physicians for Human Rights regarding mass graves in Afghanistan.

The literature on the American FOIA shows a recent shift in the practice and implications of this Act since September 2001. In the aftermath of September 11, “control of information emerged as a crucial weapon in the war against terror and secrecy has made the most dramatic comeback in America.”<sup>121</sup> One observer explains that “even before the al Qaeda attacks, the Bush administration claimed executive privilege in several high-profile requests for information, fighting off congressional calls for the names of private-sector advisors on energy policy.”<sup>122</sup> September 11 turned this tendency into a habit, sometimes unjustifiably. Banisar simply states that “the (GW) Bush Administration has engaged in a general policy of restricting access to

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<sup>116</sup> Thomas Blanton, “The World’s Right to Know,” *Foreign Policy*, No. 131 (July-August 2002): 53.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*, 50.

<sup>119</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 39.

<sup>120</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

information.”<sup>123</sup> Some authors like Hammerton (2001) will go as far as saying that the shift in American practices of information dissemination has begun to infringe on the basic rights of citizens. “History shows us what can happen when the state acquires arbitrary power to do as it wants—Nazi Germany and Stalinist Russia provide cautionary examples where the state acquired total power to do what it wants.”

Hammerton warns against state secrecy (specifically in the case of America) and explains that this poses a serious threat to the rights of citizens.<sup>124</sup> Yet, State secrecy in the attempt to monopolize information is not unique to America post 9/11. In the United States, withholding information was exacerbated since the terrorist attacks of 9/11, but one could argue that the tendencies have existed all along. The National Security Archives evidently found that there was an immense increase in withholding information and refusing requests from 2003 to 2005.

The analysis of FOIA in America after the attacks of September 11 often focuses around the Ashcroft Memo. In October 2001, Attorney General John Ashcroft issued a memo stating that “the Justice Department would defend in court any federal agency that withheld information on justifiable grounds (this statement overrode the previous practice where the court presumption was always for disclosure).”<sup>125</sup>

Ashcroft’s memo encouraged “careful consideration of the protection of all values and interests when making disclosure determinations under the FOIA.”<sup>126</sup> Ashcroft’s message was clear and called for restricting information release as much as possible by

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<sup>123</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>124</sup> James Hammerton, *Civil Liberties in the Aftermath of the Atrocities of 11<sup>th</sup> September 2001* [article online] (2001: accessed 12 January 2008); available from <http://www.magnacartaplus.org/9-11aftermath/index.htm>, Internet.

<sup>125</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>126</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 223.

public agencies and encouraging the courts to defend restrictions rather than disclosures. Although the memo was never published, it succeeded in becoming the “worst blow to the US Federal FOI since its inception in 1966.”<sup>127</sup> The Bush administration is using the National Security excuse to withhold information and has made secrecy a policy. The Ashcroft memo was written before the 9/11 attacks, proving the secrecy intentions of these leaders.

The current Bush Administration has refused to release information about the secret meetings of the energy policy task force; ordered federal Websites to remove much of the information that they had that could be sensitive; issued a controversial memo limiting access to records under the Presidential Records Act in November 2001 which allows former Presidents and Vice-Presidents to prevent access to records; and refused to disclose information on the Patriot Act and the names of those arrested after September 11.<sup>128</sup> In June 2004, the Supreme Court ruled that “Vice-President Cheney was not required to turn over documents relating to a secretive energy task force that he organized.”<sup>129</sup>

The Ashcroft memo was “embraced by the Bush administration and the bureaucracy,” and stood in the way of a tradition of sharing government information with journalists and the public at large.<sup>130</sup> Since then, several bills have been introduced in Congress to enhance the practices of the FOIA. The American FOIA is detailed in nature and shows a history of positive attitudes towards information sharing. In December 2005, a new executive order was issued on “Improving Agency Disclosure of

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<sup>127</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 223.

<sup>128</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>129</sup> Ibid.

<sup>130</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 244.



Information” which proposes changes to the practices of agencies, including appointing a Chief FOIA Officer who responsible for an agency review and planning to increase access.<sup>131</sup>

‘Open the Government’ is an independent coalition of over 70 organizations in the US working towards government transparency through increased access to public records. According to Patrice McDermott, General Director of Open the Government, “FOIA is a safety net. It is one of the tools that citizens have at hand. However, citizens should not have to constantly ask for information.”<sup>132</sup> Government is under the obligation to make public all information spontaneously without individuals or groups having to ask for it.

Although there is no official Secrets Act in the US, the “Executive Order on Classified National Security Information” sets standards for “the classification and declassification of information.”<sup>133</sup> The Order, issued by President Clinton in 1995 and amended by President Bush in 2003, aimed at restricting the release of information. It created three sets of categories for information classification: “Top Secret, Secret and Confidential.”<sup>134</sup> The Order additionally required all information 25 years and older to be “automatically declassified within five years unless it is exempted.” In the past several years, America has witnessed a great expansion of classification in the past several years (15.6 million decisions for classification in 2004 only, nearly double the 8.5 million in 2001).<sup>135</sup> What may seem alarming is the finding by the Information Security Oversight Office, a division of the National Archives (whose main

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<sup>131</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 224.

<sup>132</sup> Patrice McDermott, interview by author, 31 March 2008, Washington D.C.

<sup>133</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 247.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

responsibility is policy oversight of the Government-wide security classification system) showing in 2004 that “51 percent of the classified documents examined were erroneously classified.”<sup>136</sup> In fact, “only 22 percent of the categories it examined had been authorized by law.”<sup>137</sup> In addition, Susman explains that categories by the current administration such as ‘sensitive information’ but unclassified were meant to be disseminated but should be handled with care by the public. It was meant as a management tool to safeguard the material but not to restrict disclosure. However, civil servants handled this category as classified for fear of repercussions by the top political leadership.<sup>138</sup> According to McDermott, “people got spoiled during the Clinton administration. The policy of openness made people rather lazy.”<sup>139</sup> President Clinton was keen on a policy of information sharing and it often took one phone-call for people or groups to obtain the information they want, they did not even need to file formal requests for some types of information.<sup>140</sup> Under Bush, the process has become very time-consuming and frustrating.

The tradition of FOIA in the United States dates back to over 40 years ago. McDermott notes that it is now enshrined in the American culture to demand and expect release of important documents. In the US, people are willing to push for improvement in access to information. Small NGOs do believe and advocate for their right to obtain government records, but are often turned down and remain not very high users. For non-governmental organizations filing a FOIA request, appealing and perhaps taking the case to court is financially costly and time consuming.<sup>141</sup>

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<sup>136</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 247.

<sup>137</sup> Ibid.

<sup>138</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

<sup>139</sup> Patrice McDermott, interview by author, 31 March 2008, Washington D.C.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

The FOIA in the US was originally written with “very little teeth to enforce its provision.”<sup>142</sup> This is one reason why the Ashcroft memo successfully penetrated the public sector tradition of information sharing. In all 50 states laws existed that provide access to government records, some dating back to the 19th century.<sup>143</sup> Yet State laws (like Federal laws) on freedom of information “have been under threat since September 11 due to terrorism concerns.”<sup>144</sup> Unfortunately, America’s ambitious FOIA is not being translated into concrete facilitation of access to information. Heightened by the threat of terrorism, the law has been reshaped in a way to allow Presidents and agencies to classify information somehow haphazardly as “classified” and prohibit release. The case of US is important because it sheds light on “the FOI system in severe crisis.”<sup>145</sup> In less than a decade, the US FOIA has gone from being one of the most progressive and user-friendly access regimes in the world to one in a state of dysfunction. As one scholar put it “the Federal FOI regime in the US is not worthy of a mature liberal democracy which sees itself as a model for the world.”<sup>146</sup> Examining the practice of FOIA in the US shows the fragility of such a law in the absence of political commitment to its principles. When Bush came into power he sent a message to the bureaucracy that he does not understand FOIA nor thinks that information access is justified. Bush and Cheney both ensured civil servants that they will be defended for withholding information.<sup>147</sup> Top political leadership that is opposed to the principles of information sharing can have a devastating impact on the implementation of freedom of information. McDermott explains that “according to the law, any email correspondences by

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<sup>142</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 47.

<sup>143</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 248.

<sup>144</sup> Ibid, 247.

<sup>145</sup> Ibid, 248.

<sup>146</sup> Ibid, 249.

<sup>147</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

government officials are considered government records. All types of records through whatever medium are appraised according to their time-value.”<sup>148</sup> White House officials’ emails are legally considered permanent records and need to be saved forever at the National Archives. However, the current’s administration President and Vice President have been involved in secret correspondences throughout their terms. These officials and their staff have been using email account services of the Republican Committee (a political party) to conduct state and government affairs.<sup>149</sup>

The White House today remains with “no email record system and as such over 400 days of back-up emails have been erased.” ‘Open the Government’ has been engaged in a lawsuit to raise awareness to the fact the missing email correspondences all occur on very practical dates such as prior to the invasion of Iraq.<sup>150</sup> In addition, most government agencies in the US save only final policy versions.<sup>151</sup> Essential parts of the policy process, the drafting, the various versions and editions are lost when the final version alone is saved. This way of saving records does not allow Americans to witness how policy evolved or improved over time.

The US FOIA represents a precedent that other countries have followed. In fact, many countries around the world have managed to learn from the mistakes made in the US and built on the lessons learnt. India for example included in their law clauses on allowing disclosure for email correspondences.<sup>152</sup> The problems and shortcomings it faces today are hardly legal problems. The problems lie in the practice of FOIA and not in the law itself. In addition, the US has no independent administrative body responsible for oversight; yet more recent laws have included clauses on an independent

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<sup>148</sup> Patrice McDermott, interview by author, 31 April 2008, Washington DC

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

Ombudsman. Politicians will always prefer not to share with the public information about their own failures. However, an independent office for an Information Commissioner can ensure proper oversight for the implementation of FOIA. Susman adds that “even national security should be subject to a *second guess*.”<sup>153</sup> An independent commissioner should be able to “rise above the problem and issue orders on enforcing people’s right to access information.”<sup>154</sup> Third party input is very necessary, and becomes almost binding in nature when the party is independent and reputable for its commitment to openness.

The US must put its efforts in the near future to restore the tradition of information sharing. When asked why changes need to be made after the Bush administration, McDermott replied, “because this is OUR information and government works for us.” We have the right to hear from them.”<sup>155</sup> She added, the need to re-establish the demonstrable harm standard as the only exception. The rule should be the release of information and the exception of from the rule should be significant demonstrable harm.<sup>156</sup>

## **F. Examples from Other Countries**

This section paints a hopeful picture for FOI systems around the world. The case of the US is one where the government’s desire for restrictions triumphed over a vague and *toothless* law. It is interesting to shed light on other examples in the world because they present the ability of countries to learn from historical mistakes and successfully enact relatively better FOI laws. Since most country laws have not been implemented for as long as those of the US and Sweden, further studies with time will

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<sup>153</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

<sup>154</sup> Ibid.

<sup>155</sup> Patrice McDermott, interview by author, 31 April 2008, Washington DC

<sup>156</sup> Ibid.

be able to determine perhaps more definitive results. For the time being, the following brief survey hopes to serve as a basis on which the case of Lebanon will rest upon.

As noted at the beginning of this chapter, international pressure as well as civil society involvement account for the main reasons for adopting laws on access to government records and freedom of information. A closer look at the case of Eastern Europe after the fall of the Berlin Wall clearly shows how these factors have prompted governments to undertake legislation encouraging open government and citizen participation through information sharing with the public. In 1992, Hungary was the first post-communist country that adopted a freedom of information law.<sup>157</sup> The law became a legal precedent and helped set the standard for other countries in the region. Eastern Europe shows a unique involvement of the European Union and how this encouraged other post-communist countries to follow in the footsteps of Hungary. The 1998 Aarhus Convention at the European level linked citizen participation in government affairs to environmental information openness. As a result, post communist leaders in Eastern Europe who were “motivated by the desire to join the Council of Europe and the European Union adopted access to information laws across the region: Lithuania (1996), Latvia (1998), Estonia (2000), Czech Republic (1999), Slovakia (2000), Bulgaria (2000) and Romania (2001).”<sup>158</sup> These laws successfully “captured the lessons learned during implementation of earlier transparency laws and reflected developing standards.”<sup>159</sup> In other words, these laws successfully employed the experience of traditional FOI systems by enacting legislation that strongly encouraged transparent government and an informed citizenry. In addition, these relatively recently adopted laws, “provide for much greater specificity on mechanisms for accessing information,

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<sup>157</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 66.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid, 67.

application of exemptions and the use of harm and public interest tests for assessing the necessity of withholding information from the public.”<sup>160</sup> In Bulgaria, “an exceptionally active civil society organization, the Access to Information Program (AIP) has been promoting access to information since 1996.”<sup>161</sup> AIP has successfully raised public awareness through nation-wide NGO trainings and media coverage. Today, Bulgaria has “a weekly FM radio show dedicated to access to information.”<sup>162</sup> Since the law was passed in 2000, government was not involved through any direct policies but has instead allowed civil society to lead the initiative and promote the FOI legislation.<sup>163</sup> Although this may be good news for civil society activists, the absence of official oversight agencies poses a threat on the administration of the law.

In Montenegro, the constitution does not provide for the general right of freedom of information in the Constitution.<sup>164</sup> The Law on Free Access to Information was adopted and went into effect in November 2005; stipulates that any natural or legal person has “the right to access information held in any form by state and local authorities, public companies and other entities that perform public powers.”<sup>165</sup> Inherited communist ideals and political culture inhibits true open communication channels between citizen and state and the freedom of information in Montenegro is described as being in “regression.”<sup>166</sup> Analysis of Montenegro’s law on information (provision of the Public Information law) shows that its contents remain vague thereby causes its efficient exercise to remain conditional upon a uncertain principles and

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<sup>160</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 68.

<sup>161</sup> *Ibid.*, 75

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> David Banisar, *Freedom of Information and Access to Government Record Laws around the World* [publication online] (freedominfo.org Global Survey 2006, accessed 21 February 2008); available from [http://www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf), Internet.

<sup>165</sup> *Ibid.*

<sup>166</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 94.

provisions.<sup>167</sup> Decisions of administrative officers and public officials are arbitrary and impossible to control” due to the absence of “specific regulations dealing with procedural issues related to freedom of information.” Moreover, the levels of knowledge, comprehension and general awareness are very low in Montenegro.<sup>168</sup>

In Latin America and the Caribbean, the recent phenomenon of access to information legislations comes as a response to decades of government corruption as well as human rights violations. Again the role of international pressures and local civil society is strong. In 1985, Columbia became the first country in the region to adopt a law forcing government to open up access to public agency documents and records.<sup>169</sup> Belize (1994), Trinidad and Tobago (1999) and Jamaica (2002) were the three Commonwealth countries that moved in the same trajectory of change by adopting access of information laws.<sup>170</sup> In 2002, the adoption of access to information laws in Mexico and Peru “marked a new wave of democratic reforms prompted by civil society activity focused on promoting greater government transparency.”<sup>171</sup> In some instances the use of access to information to obtain public records has help outset corrupt political regimes. A good recent example is the work of “The Philippines Centre for Investigative Journalism (PCIJ),” which in The PCIJ's work included painstaking research in areas where the allegations were most likely to be linked to documentary evidence: “the acquisition of real estate and the formation of companies by members of Estrada's family.”<sup>172</sup> Such transactions entail filing papers with various government authorities and although the Philippines does not have an access to information law, the

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<sup>167</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 94.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> Helen Darbishire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 16.



PCIJ was able “to use the combination of existing mechanisms for accessing information and precedents established by litigation under a constitutional guarantee of access.”<sup>173</sup> This eventually led to nation-wide scandals that ended the presidency of Estrada.

In South Africa, the origin and evolution of the freedom of information law has been closely intertwined with its political history. As one scholar notes, “a common property of authoritarian systems is the obsession with secrecy and the need to control information and the apartheid government in South Africa was no exception.”<sup>174</sup> The right to access was written into South Africa’s 1996 Constitution as part of its Bill of Rights. It clearly states; “everyone has the right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights.”<sup>175</sup> In January 2000, the law was passed under the name of the Promotion of Access to Information Act.<sup>176</sup> The Act, influenced by years of human rights violations, delegated to the South African Human Rights Commission (SAHRC) the oversight of the Act implementation.<sup>177</sup> In addition, to ensure that awareness is spread and that citizens would know of the act, the SAHRC is responsible for spreading knowledge on the law through annual reports. However, because the SAHRC remains under-funded, citizen’s ability to utilize the FOIA in South Africa has been problematic. Despite the shortcomings, South Africa remains “an international inspirational example,” with a powerful FOI legislation that extends to the private sector

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<sup>173</sup> Helen Darbishire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 16.

<sup>174</sup> Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information,” (Ph.D. Murdoch University, 2006), 254.

<sup>175</sup> Ibid, 255.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid, 256.

and places the highest priority on citizen's interest.<sup>178</sup> South Africa "plays a vital leadership role," for other African nations.<sup>179</sup> It is now up to African human rights activists as well as the international donor community to emphasize the need for more transparent governments.

During the very first week after the Japanese access law went into effect in 2001, citizens filed more than 4,000 requests.<sup>180</sup> The case of Japan shows a remarkable "20 years of press attention and local activism by Japan's relatively small population of private attorneys."<sup>181</sup> The exciting results showed citizens, lawyers and journalists behaving as "citizen ombudsmen," and achieving impressive successes by "using local access regulations to expose national scandals, such as the billions of yen spent by government officials on food and beverages while entertaining each other," at the expense of taxpayers.<sup>182</sup> As a result of such revelations, "Japan's 47 prefectures cut their food-and-beverage budgets by more than half, saving 12 billion yen."<sup>183</sup> The movement for information disclosure helped create a new political culture in Japan. Not only did Japanese citizens line up by the thousands to file information requests at government offices when the new national law went into effect, but political candidates also vied to outdo each other in pledges of openness. In fact, the newly elected governor of Nagano prefecture moved his office from the third floor to the first, encasing it with windows and adopting an open-door policy.<sup>184</sup> This behavior personified to the Japanese people a new era of the new politics of openness.

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<sup>178</sup> Johan Lidberg, "Keeping the Bastards Honest: The Promise and Practice of Freedom of Information," (Ph.D. Murdoch University, 2006),

<sup>179</sup> *Ibid.*, 256.

<sup>180</sup> Thomas Blanton, "The World's Right to Know," *Foreign Policy*, No. 131 (July-August 2002): 53.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

## **G. Conclusion**

This chapter has provided a comprehensive overview on the evolution of Freedom of Information Acts in the international scene. It has explained how FOI has come to be of utmost importance since 1945 through Article 19 of the United Nations of the International Covenant on Civil and Political Rights. Article 19 is meant to be binding to all member states, but as the chapter has shown, there are deeply entrenched problems that are unique to a country's political culture and system of governance that can either enhance FOI principles or inhibit its implementation. Although most FOI systems display common features, each has its specific problems and shortcomings.

The chapter makes clear that there is large roles for civil society to play in both developed democracies like the US and Sweden, as well as in more recent democracies. The country cases also show that more recently developed laws tend to be more specific and include fewer exceptions from the law; however these countries suffer from problems beyond the legal text to reach social factors and levels of citizen engagement. One could argue from the analysis in this chapter that in the US for example, FOIA has recently been restricted by government officials but that the American civil society is aware of this fact and is nevertheless actively involved in raising awareness on the problem at hand. Whereas in South Africa, the law may be more encompassing, but people lack the knowledge and experience to make the best out of their FOIA. Civil society today has a great opportunity to advocate and raise awareness on FOIA because of its relation to democracy and governance priorities of international and donor organizations. Moreover, where governments lack the experience, civil society may be able to bridge some gaps and empower citizens to use the law through trainings and use of media outlets. Finally, despite the absence of globally agreed upon principles, there seems to be a consensus that FOI legislations should ensure that all citizens have equal

rights of access to information; that public agencies respond in a timely manner and that exclusions from the law are acceptably justified. It may be interesting to note that no Arab country has yet enacted a freedom of information legislation (the thesis will return to this in the chapter on the case of Lebanon). Although further research may be required to identify weaknesses in different various systems; what is for certain is that FOI has become a global trend that is here to stay. Governments around the world will have to undertake measures to share information with their citizens, and the world at large.

In the next chapter we analyze the impact of FOI on good governance. The chapter will address the relation between FOI and development through more responsive government. It will present arguments for the enactment and implementation of FOI worldwide.

## Chapter III

### THE IMPACT OF FREEDOM OF INFORMATION

*“A popular Government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”*  
*James Madison*

#### **A. Introduction**

The aim of the following chapter is to show that a constructive, healthy political culture depends upon an open society. The chapter will present some definitions, articulate the necessity of freedom of information and demonstrate its potential in achieving desired democratic outcomes. A free flow of information that results in the ability of citizens to have access to their government’s records, documents, and past achievements is key to ensuring open and accountable government. This chapter gives the main thrust for the support of Freedom of Information Legislations and rests upon the assumption that without such laws, government can officially resort to secrecy hindering an open policy process in which citizens can participate. Secretive government is nearly always inefficient and the free flow of information is therefore essential if problems are to be identified and resolved.<sup>185</sup> This chapter will highlight significant policy links created from the impact that freedom of information has on government accountability, quality of citizen participation, public policy, and economic development. It focuses on how FOIA can limit politicians’ ability to unilaterally make decisions that affect society at large and how FOIA can actively engage different groups

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<sup>185</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

of the populous in public affairs. The following sections portray the impact of FOI on government's accessibility to its citizens, citizen participation and how this leads to more responsive policy outcomes. Other aspects of information and access are discussed with the aim of highlighting the complex variables that come to play regarding government, information and social engagement in public affairs.

Democracy in the 21st century faces "a valuable but critical moment." Transparency can play a key role in radically shifting the relationship between constituents and their elected officials in a way that is both politically significant and civically productive. The OECD has developed a three stage maturity model for government engagement with citizens:<sup>186</sup>

**Stage 1: Information Stage:**

Government Citizen: a simple one-way relationship in which government delivers information to citizens.

**Stage 2: Consultation Stage:**

Government Citizen: a two-way relationship in which citizens provide feedback on issues defined by government.

**Stage 3: Active Participation Stage:**

Government Citizen: collaboration in which citizens actively shape policy options, but where government retains the responsibility for final decisions.

An efficient freedom of information system establishes the grounds for a Stage 3 type citizen engagement aimed at creating possible means through which the state and civil society at large can collaborate. Only an informed citizenry can effectively

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<sup>186</sup>The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

participate. Freedom of information opens up venues for collaboration through a two-way communication system where citizens are not mere recipients of information inputs from governments but are empowered and capable of voicing their priorities. This chapter discusses the importance and relevance of enacting and effectively implementing a freedom of information law by arguing that FOI is the bedrock of democracy. These arguments will advocate for the ‘right to know.’ As one researcher puts it “We must not let governments convince us that governance essentially involves secrecy. We must oppose the doctrine that national and individual security can only be ensured if the right to information is suspended or substantially inhibited.”<sup>187</sup>

## **B. Access and Information Technology**

An open government is one where “businesses, civil society organizations and citizens can *know things* – obtain relevant and understandable information; *get things* – obtain services from and undertake transactions with the government; and *create things* – take part in decision-making processes.”<sup>188</sup> The debate over information sharing can be characterized as a power struggle. As one researcher puts it, “opening up flows of information changes who can do what.”<sup>189</sup> The global movement towards freedom of information (depicted in the previous chapter) indicates that over the past few decades, citizens in all parts of the world have shown themselves to be increasingly unwilling to tolerate secretive decision making. In fact, one could argue that the power struggle over

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<sup>187</sup> Ann Florini, ed., *The Right to Know: Transparency for an Open World*, (New York: Columbia University Press, 2007), 51.

<sup>188</sup> Organization for Economic Co-operation and Development, *Public Sector Modernization: Open Government* [article online] (OECD, February 2005, accessed on 31 March 2008); available from <http://www.columbia.edu.ezproxy.aub.edu.lb/cgi-bin/dkv/ciao/querystring.pl?rq=0&ht=0&qp=&col=ciao&qc=ciao&qt=administrative+corruption>, Internet.

<sup>189</sup> Ann Florini, ed., *The Right to Know: Transparency for an Open World*, (New York: Columbia University Press, 2007), 1.

information has never been more intense and relevant as it is now. According to Blanton (2002); “Today, as a consequence of globalization, the very concept of freedom of information is expanding from the purely moral stance of an indictment of secrecy to include a more value-neutral meaning—as another form of market regulation, of more efficient administration of government, and as a contributor to economic growth and the development of information industries.”<sup>190</sup>

The media often enters into the discussion of public disclosure of information. Media outlets serve as significant political socialization agents by directly informing citizens, on a daily basis, about the works of their government. The type of information referred to in this thesis is focused mainly on official records and documents that governments are under the obligation to share with citizens. However, media disseminated information constitutes another type of essential information in the form of news and news analysis. “The centrality of the media to democracy, as the primary information source, cannot be overemphasized, and the very fact that democracy requires citizens to be informed if they are to act effectively as citizens, serves as a prima facie justification for regulation within a democratic context.”<sup>191</sup> Although it is beyond the scope of this thesis to discuss in detail the role of the media politics and society, it may be important to bear in mind that the impact of media cannot be ignored in the discussion of citizen’s access to information. Not only can the effect of media outlets not be ignored but in fact “our view of the world is arguably influenced more by the media than our personal experience.”<sup>192</sup> Citizens everywhere rely to a large extent on both the broadcast and printed media as communicators of politics, of culture and of

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<sup>190</sup> Thomas Blanton, “The World’s Right to Know,” *Foreign Policy*, No. 131 (July-August 2002): 51.

<sup>191</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (United Kingdom: Edinburgh University Press, 2006), 5.

<sup>192</sup> *Ibid.*, 4.



information.<sup>193</sup> Despite the fact that this thesis will not analyze and recommend means of media regulation, it does acknowledge that “given the degree of power that the media exercise by providing the informational building blocks to structure views of the world, it is reasonable to expect that they too should be accountable, that their activities should be regulated.”<sup>194</sup>

The main impact of freedom of information is described in terms of its effect on enhancing open government through the participation of citizens and civil society. In the following section, reference to open government covers the following elements:<sup>195</sup>

- Transparency (being exposed to public scrutiny);
- Accessibility (to anyone, anytime, anywhere); and
- Responsiveness (to new ideas and demands).

To better explain the role that free and equal access to public information plays this thesis will present the broad elements that interplay and shape citizens perceptions and information utility. Throughout this research the concept of citizenship is presented “as a key element in the development of a more adequate analysis of the political role of communications institutions and processes;”<sup>196</sup> including government institutions and venues of information communication such as the media and the World Wide Web. Increased trust and government accountability is identified as a major goal of e-

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<sup>193</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (United Kingdom: Edinburgh University Press, 2006), 4.

<sup>194</sup> *Ibid*, 5.

<sup>195</sup> Organization for Economic Co-operation and Development, *Public Sector Modernization: Open Government* [article online] (OECD, February 2005, accessed on 31 March 2008); available from <http://www.columbia.edu.ezproxy.aub.edu.lb/cgi-bin/dkv/ciao/querystring.pl?rq=0&ht=0&qp=&col=ciao&qc=ciao&qt=administrative+corruption>, Internet.

<sup>196</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (United Kingdom: Edinburgh University Press, 2006), 117.

government.<sup>197</sup> This thesis is being written at a time where information technology has transformed the way in which citizens and governments interact around the world. The development of new technologies “has opened up a new sphere of communication and their potential for improving education, participation and democratization is incalculable.”<sup>198</sup> The Internet's earliest physical implementation began as an experiment to enhance the effectiveness of government scientists and engineers promoted by the US Defense Advanced Research Project Agency (DARPA) in the 1960s.<sup>199</sup> DARPA’s motive would fundamentally affect all the networks that followed, and perhaps alter society forever. Pondering what to do during and after a nuclear war, Pentagon officials asked the Rand Corporation to imagine “a transcontinental communication system that might stand the chance of surviving even an atomic cataclysm.” Rand researcher Paul Baran found that such a survivable system was theoretically possible;<sup>200</sup> “a dispersed entity, avoiding all the classic principles of communication infrastructure.”<sup>201</sup> In retrospect the advantages of the Internet are obvious. Still it remains “a wonder that the Pentagon actually went ahead with experiments in decentralized, autonomous message processing.”<sup>202</sup>

The internet and information technology have allowed for governments and citizens to minimize gaps in knowledge and time. In fact, “governments are more

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<sup>197</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

<sup>198</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>199</sup> David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Massachusetts: Addison-Wesley, 1998), 35.

<sup>200</sup> Ibid, 36.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid, 35.

accessible and user-friendly today than they have been at any point in history.”<sup>203</sup> Moreover, “measures to reduce physical, organizational and linguistic barriers; cut through “red tape”; use clearer language and expand online service delivery have all helped.”<sup>204</sup> Indeed, “timely access to information can promote health, education, trade and employment.”<sup>205</sup> During the 1960s public disclosure of information became a common feature of democratic societies. The primary rationale behind promotion of the public information utility in the 1960s was the public's interest in getting information.<sup>206</sup> Large segments of the public typically lacked basic information of relevance to their health and safety. Another reason that information services became important was that “among politically active citizenry, a growing number expect more direct and convenient ways to participate in public affairs and communicate with public officials and agencies.” A survey by the Center for Excellence in Government, a US based research center, found that e-government users have much greater levels of “higher trust” in government compared to non e-government users.<sup>207</sup>

### C. Information and Political Society

Transparency tackles important areas that can be influenced by freedom of information. Governments should encourage information sharing that infuses civil

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<sup>203</sup> Organization for Economic Co-operation and Development, *Public Sector Modernization: Open Government* [article online] (OECD, February 2005, accessed on 31 March 2008); available from <http://www.columbia.edu.ezproxy.aub.edu.lb/cgi-bin/dkv/ciao/querystring.pl?rq=0&ht=0&qp=&col=ciao&qc=ciao&qt=administrative+corruption>, Internet.

<sup>204</sup> Ibid.

<sup>205</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>206</sup> Frederick Williams and John V. Pavik, eds., *The People's Right to Know: Media, Democracy and the Information Highway* (New Jersey: Lawrence Erlbaum Associates, 1994), 133.

<sup>207</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>, Internet.

society “where citizens, NGOs and businesses engage in vibrant public life and play an active role in helping governments meet public challenges.”<sup>208</sup>

Access to government held information is essential if citizens are to have confidence in their public institutions and be assured that they are working as they should. It is often explained that “policies and practices of openness can, of *themselves*, provide much comfort.”<sup>209</sup> In other words, a policy of openness and information sharing will yield intangible results that involve perceptions of trust and confidence in the public sector. The mere enactment of a freedom of information act can show that government has nothing to hide and give people a reason to trust its agencies and civil servants. If our objective is transparent, accountable and honest governance – government we can trust and a private sector that is trustworthy – then clearly the less information that is kept from us, and the greater the confidence we can have in its accuracy, the more likely we are to achieve our aim.<sup>210</sup>

Openness, a main feature of a society that enjoys freedom of information, is considered a crucial pillar of good governance. Good governance refers to the “effectiveness of government” and implies managing public affairs in a transparent, accountable, participatory and equitable manner.<sup>211</sup> It entails “effective participation in public policy-making, the prevalence of the rule of law and an independent judiciary, institutional checks and balances through horizontal and vertical separation of powers,

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<sup>208</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

<sup>209</sup> Jeremy Pope, “Access to Government Information: Whose Right and Whose Information?” [article online] (Global Corruption Report, 2003, accessed on 11 March 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008432.pdf>; Internet.

<sup>210</sup> Ibid.

<sup>211</sup> Carlos Santiso, “Good Governance and Aid Effectiveness: The World Bank and Conditionality,” *The Georgetown Public Policy Review* 7, No. 1 (2001): 3.

and effective oversight agencies.”<sup>212</sup> The freedom of information law itself is considered in this thesis as institutionalized social tool imposing limitations on haphazard decision making and placing policy debates in the public sphere where they belong. There is a great need for a freedom of information tool. Even a constitutional guarantee and judicial affirmation of the right to information will not ensure access to records. Without an official Freedom of Information law, the denial of access to information may continue to remain widespread (as with the case of the Philippines and South Africa).<sup>213</sup> In economics transparency is defined as “a process by which information about existing conditions, decisions and actions is made accessible, visible and understandable.”<sup>214</sup> In the field of security, the UN defines transparency as “involving the systematic provision of information on specific aspects of military activities under informal or formal international arrangements.”<sup>215</sup> A comprehensive study of freedom of information and its evolution in the US, UK, Canada Chile, Bulgaria, Toby Mendel identifies national security as the major excuse used by governments to justify secrecy.<sup>216</sup> For the purpose of this research, transparency will refer to “the degree to which information is available to outsiders that enables them to have informed voices in decisions and/or access the decisions made by insiders.”<sup>217</sup>

Even the national security alibi often used to increase exemptions from the FOI law is an area where knowledge sharing is crucial to citizen participation. The logic employed throughout this research is that informed citizens make informed decisions

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<sup>212</sup> Carlos Santiso, “Good Governance and Aid Effectiveness: The World Bank and Conditionality,” *The Georgetown Public Policy Review* 7, No. 1 (2001): 5.

<sup>213</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Toby Mendel, *National Security and Open Government: Striking the Right Balance* (New York: Campbell Public Affairs Institute, Syracuse University, 2003), 9.

<sup>217</sup> Ann Florini, ed., *The Right to Know: Transparency for an Open World*, (New York: Columbia University Press, 2007), 5.

that enhance the quality of their participation in public life. This applies to matters of national security although the research attests to some extreme cases where information can help protect citizens. In the final analysis, even in severe cases, information may help citizens cope and react better than secrecy. Once we concede that citizens have the right of active participation both at elections and between election cycles, then we also concede that it is a necessity “that the participants require access to information to make their involvement effective and rational.”<sup>218</sup>

In a political culture that is secretive, “the public is likely to treat all government information with skepticism,” this includes skepticism towards public administration, civil servants, education, and health policies.<sup>219</sup> Citizens are then “more likely to be politically malleable, skeptical of government and its intentions, and resistant to change.”<sup>220</sup> The focus of any legislation on access to information is therefore on “changing the culture of a government and society from one that is closed to one that is open.”<sup>221</sup>

According to Webler and Tuler (2000), “one of the key administrative issues confronting decision makers today is how to best involve citizens in public decision making.”<sup>222</sup> Factual information is considered as the “state of affairs” and was noted as a crucial area for citizens to have access to.

A cultural change of this kind is achieved not only by introducing an effective law but also “by a mix of factors – a change to the institutions and practice of

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<sup>218</sup> Anthony S. Matthews, *The Darker Reaches of Government*, (South Africa: Rustica Press, 1978), 5.

<sup>219</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>220</sup> The British Council, *Freedom of Expression and the Media* [article online] (London: Article 19 and the British Council, 2004, accessed on 29 February 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>221</sup> Ibid.

<sup>222</sup> Thomas Webler and Seth Tuler, “Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study.” *Administration & Society*; Nov 2000; 32, 5; 566.

government, increased awareness among civil society and the general public.”<sup>223</sup>

Freedom of information is a major pillar of democracy. Civil rights and freedoms lie at the heart of democracy and there may indeed be two approaches to retain these freedoms: by weakening government itself or by assuring citizens the power to hold government accountable.<sup>224</sup> The ‘accountability approach’ enables the people to retain control over their officials, even during a crisis.<sup>225</sup> Accountability is “the simple notion that governments and civil servants can be held accountable for their actions, processes, and outcomes.”<sup>226</sup>

Theorists of democracy from Aristotle to Bryce have stressed that democracies are maintained by active citizen participation in civic affairs, by a high level of information about public affairs and by a widespread sense of civic responsibility.<sup>227</sup> A more recent observer, Francis Rouke, noted that “nothing could be more axiomatic for democracy than the principle of exposing criticism and scrutiny.”<sup>228</sup> Indeed, FOI exposes government instead of making public affairs a private matter for government insiders alone to deal with and impose orders.

A culture that will monitor and maximize the utility of FOI is one that possesses and practices ‘civic virtue.’ In 1963 Almond & Verba coined the term ‘civic culture.’ Their study at the time suggested that there existed in Britain and the United States a pattern of political attitudes and an underlying set of social attitudes that is

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<sup>223</sup> Thomas Webler and Seth Tuler, “Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study.” *Administration & Society*; Nov 2000; 32, 5; 566.

<sup>224</sup> David Brin, *The Transparent Society: Will Technology Force it to Choose Between Privacy and Freedom?* (Massachusetts: Addison-Wesley, 1998), 198.

<sup>225</sup> Ibid.

<sup>226</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovernment.pdf>; Internet.

<sup>227</sup> Gabriel A. Almond and Sidney Verba, *The Civic Culture* (New Jersey: Princeton University Press, 1963), 10.

<sup>228</sup> Suzanne J. Piotrowski and David H. Rosenbloom, “Non-Mission Based Values in Results-Oriented Public Management: The Case of Freedom of Information,” *Public Administration Review* 67, Issue 1 (February 2007): 649.

supportive of a stable and democratic process.<sup>229</sup> Based on research analysis and practical experiences FOI is supportive of not only open government but of democracy. FOI encourages citizen participation and puts in place a system of checks and balances, supported by an enhanced role for the media. Almond and Verba have said that the common thread in all definitions of democracy is that “ordinary citizens exert a relatively high degree over their leaders.” This view goes beyond participation to the ability to exercise control.<sup>230</sup>

According to Almond and Verba, “A democratic form of participatory political system requires as well a political culture consistent with it.”<sup>231</sup> They continue by explaining that the transfer of the political culture of the Western democratic models to other nations (with non-democratic systems) is faced by serious difficulties. “There are two principal reasons. The first of these concerns the nature of the democratic culture itself. The great ideas of democracy – the freedoms and dignities of the individual, the principle of government by consent of the governed – are elevating and inspiring concepts. They capture the imaginations of many of the leaders of the new states and of the modernizing older ones. But the working principles of the democratic policy and its civic culture – the ways in which political elites make decisions, their norms and attitudes, as well as the norms and attitudes of the ordinary citizens, his relation to government and to his fellow citizens – are subtler cultural components.”<sup>232</sup> What is meant here is that very often notions of reform and democratic development inspire the idea of progress; the idea itself is accepted as desirable. However, the functions of democratic government, like an open policy process, are more tricky components of

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<sup>229</sup> Gabriel A. Almond and Sidney Verba, *The Civic Culture* (New Jersey: Princeton University Press, 1963), preface.

<sup>230</sup> Anthony S. Matthews, *The Darker Reaches of Government*, (South Africa: Rustica Press, 1978), 1.

<sup>231</sup> *Ibid.*, 5.

<sup>232</sup> *Ibid.*



democracy. They are the more difficult notions to capture and sustain. Without a strong command of the functioning of democratic government and without a culture consistent with open government, FOI may remain a useless legal text on paper. It only comes into effect when society at large including civil society and the media use it to increase participation in public policy and to engage in scrutinizing government agencies.

Democracy includes the right to be self-informed. A country whose parliamentary proceedings and administration of justice take place behind closed doors can hardly be called democratic.<sup>233</sup> In essence, democracy is supported by ability of individuals to participate effectively in decision-making that affects their lives.

“Democratic societies have a wide range of participatory mechanisms, ranging from regular elections to citizen oversight bodies, for example of the public educational and/or health services, to mechanisms for commenting on draft policies or laws.”<sup>234</sup>

According to Mendel (2003), “effective participation at all of these levels depends, in fairly obvious ways, on information.”<sup>235</sup> He adds that voting is not simply a technical function. For elections to fulfill the function described under international law as ensuing that “the will of the people shall be the basis of the authority of government” - the electorate must have access to information. The same holds true for effective participation. It is impossible for citizens and organizations to provide useful input to a policy process without access to the policy itself, as well as the reasons it is being proposed. Accountability and good governance can give life and meaning to the democratic process. People have every right “to scrutinize the actions of their leaders and to engage in full and open debate about those actions.”<sup>236</sup> To do so, they must be able to assess the performance of the government and this includes “access to

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<sup>233</sup> Anthony S. Matthews, *The Darker Reaches of Government*, (South Africa: Rustica Press, 1978), 1.

<sup>234</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 12.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

information about the state of the economy, social systems and other matters of public concern.”<sup>237</sup> Indeed, “it is in the process of public communication on public policies that democratic institutions thrive.”<sup>238</sup>

## **D. The Roles of FOI**

*"Although only a few may originate a policy, we are all able to judge it."  
Pericles of Athens*

The roles of FOI refer to the ways in which FOI impacts good governance by giving a chance for citizens participate effectively in public life. This section answers the thesis question pertaining to how FOIA impacts government and society by showing its role in contributing to responsive government, develop and ultimately to democracy.

### ***1. Open Government***

Jimmy Carter once stated that “times have changed. Public awareness about corruption and its corrosive effects has increased substantially.”<sup>239</sup> Informed debate has been one of the most effective ways of improving the quality of governance over time. Good governance can be seen as “an exercise of economic, political, and administrative authority to better manage affairs of a country at all levels.”<sup>240</sup> Information, openness and citizen participation can ensure good governance by bringing in various stakeholders to the management of public affairs. This enhances oversight and the quality of decisions made in the public sector. In India the right to information is widely recognized and various civil society groups often use the information to achieve their

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<sup>237</sup>Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 12.

<sup>238</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (United Kingdom: Edinburgh University Press, 2006), 4.

<sup>239</sup> Laura Neuman, ed, *Access to Information: A Key to Democracy*, (Atlanta: The Carter Center, November 2002), 3.

<sup>240</sup> Michiel Backus, *E-governance in Developing Countries*, (The Netherlands: International Institute for Communication and Development, 2001), 1.

goals. The women's movement for instance in Rajasthan has used it "to demand that the women against whom atrocities have been committed are kept informed of the progress in their case and the details of various medico-legal and forensic reports."<sup>241</sup> Village-based public hearings (jansunwais) have become a powerful tool used to put out in the open a range of policy issues. They are described in India as "dramatic affairs where information and its analysis reveal 'the *who*, the *how* and the *why*' of various misdeeds and gives courage to the exploited to bring their predicament out into the open."<sup>242</sup> It is certain without a doubt that "the principle of open access to administrative information is essential to the full development of democracy."<sup>243</sup>

Transparency is often discussed as a modern concern. In the previous section, it was argued that the move towards freedom of information has begun and that the transformation to open societies is inevitable. A transparent society is "the real issue facing citizens of a new century."<sup>244</sup> The discussion of FOIA falls into the context of differentiating between freedom and secrecy, "the difference between freedom and tyranny is who controls state power."<sup>245</sup> The very same government agencies, bureaucracies and offices can be "brutal or benign," depending on whether they are controlled by the grip of one political class or "supervised and wielded by a diverse, confident and pragmatic citizenry."<sup>246</sup> Access to information and government records allows for a confident and pragmatic citizenry that participates to articulate its interests, to monitor and evaluate policy outcomes. Without such information, what would

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<sup>241</sup> Ann Florini, ed., *The Right to Know: Transparency for an Open World*, (New York: Columbia University Press, 2007), 20.

<sup>242</sup> *Ibid*, 27.

<sup>243</sup> Donald C. Rowat, ed., *Administrative Secrecy in Developed Countries*, (New York: Columbia University Press, 1979), 23.

<sup>244</sup> David Brin, *The Transparent Society: Will Technology Force it to Choose Between Privacy and Freedom?* (Massachusetts: Addison-Wesley, 1998), 9.

<sup>245</sup> *Ibid*, 113.

<sup>246</sup> *Ibid*.

decisions be based on? Information is a great tool for accountability. Tools of accountability “offer citizens increased confidence and control.”<sup>247</sup> By desiring open and transparent government and seeking tools of accountability, one could contend that government is a “potential nest of oppressors.”<sup>248</sup> Accountability refers to answerability for one’s actions or behavior. Freedom of information is an essential tool in combating government corruption. According to Mendel (2003), “investigative journalists and watchdog NGOs can use the right to access information to expose wrongdoing and help root it out.”<sup>249</sup>

Instead of the general principle that all government and administrative information is open to the public, in countries with no FOIA, the rule is “all administrative information is considered to be secret unless the government decides to release it; the government has control over the timing and form of its release.”<sup>250</sup> Elitist democracy rests on the assumption that “the information upon which the governing class acts cannot and should not be shared with the citizenry because the capacity to govern will thereby become debilitated.”<sup>251</sup> Exponents of this theory believe that citizen participation and the sharing of information “presupposes a transfer of the decision-making power from the government to the masses.” However this thesis argues for FOIA as the right to know and not the right to decide. The right to know and influence decisions will still allow for governments to govern, but in the most transparent manner through responsiveness to citizens. The danger that leaders will “acquire the ability to

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<sup>247</sup> David Brin, *The Transparent Society: Will Technology Force it to Choose Between Privacy and Freedom?* (Massachusetts: Addison-Wesley, 1998), 158.

<sup>248</sup> *Ibid.*, 198.

<sup>249</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 13.

<sup>250</sup> Donald C. Rowat, ed., *Administrative Secrecy in Developed Countries*, (New York: Columbia University Press, 1979), 19.

<sup>251</sup> Anthony S. Matthews, *The Darker Reaches of Government*, (South Africa: Rustica Press, 1978), 4.

manufacture the consent upon which their authority is supposed to rest,” can only be countered by a meaningful right of access to information about public administration.”<sup>252</sup>

The existence of open information channels can effectively contribute to transparent government and limit corruption. Similarly, “poor public access to information feeds corruption.” Government secrecy allows “back-room deals to determine public spending in the interests of the few rather than the many.”<sup>253</sup> Access to information is equally critical for citizens’ capacity to exercise their rights and to uphold the responsibilities and accountability of their leaders. Information is power because it enhances citizen’s understanding and raises the quality of citizen’s evaluation of their public officials. The ‘right to know’ is then translated into the ‘right to understand.’ one report states, that “access to information laws allow individuals and groups to *understand* the policies with which the government makes determinations relating to health, education, housing and infrastructure projects and the factual basis form such decisions.”<sup>254</sup> Knowledge arms citizens around the world with the power affect change that and to improve their living standards and better their lives.<sup>255</sup> Increasingly, government and civil society are seeing access to information as an essential ingredient to fighting corruption and an enabler of the public’s capacity to exercise their rights as citizens.

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<sup>252</sup>Anthony S. Matthews, *The Darker Reaches of Government*, (South Africa:Rustica Press, 1978), 9.

<sup>253</sup> Laura Neuman, ed, *Access to Information: A Key to Democracy*, (Atlanta: The Carter Center, November 2002), 5.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

## ***2. Development***

This section will show that the right to know is a basic human right and cannot be excluded from the right to development. The World Conference on Human Rights, held in Vienna in 1993, dealt extensively with the right to development. The 1993 Vienna Declaration and Program of Action recognized that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing, thus signaling an important conceptual change in politics. In the following section, the policy link between the right of development and the right to know is further explained. By considering the “right to know” as a human right, one can begin to draw links on the importance of freedom of information to development. Information access “is necessary for the realization of the basic rights to freedom of opinion and expression that are guaranteed in the United Nations Declaration on Human Rights, subsequent human rights declarations, and many national constitutions.”<sup>256</sup>

Freedom of information is crucial to economic development. Economic policy that is formulated on the basis of fair access to government records has greater chances of success than economic policy formulated in the absence of citizen participation. The UN Millennium Development Goals (MDGs) include eradicating poverty and hunger and establishing a Global Partnership for Development. The Millennium Development Goals originated in the UN Millennium Declaration and provide a set of goals and targets to be achieved by 2015 in order to help achieve a safer world free of poverty. According to Sen (1999), monetary income alone cannot be used as a reliable indicator of substantial freedom. An increase in income might be converted into an increase in substantial freedom, but the conversion is not automatic or equally easy for

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<sup>256</sup> Laura Neuman, ed, *Access to Information: A Key to Democracy*, (Atlanta: The Carter Center, November 2002), 9.

everybody.<sup>257</sup> Sen lists a number of essential freedoms, of which political freedoms are a priority and these include: “the opportunities that people have to determine who should govern and on what principles, and also include the possibility to scrutinize and criticize authorities, to have freedom of political expression and an uncensored press, to enjoy the freedom to choose between different political parties as well as opportunities of political dialogue, dissent and critique as well as voting rights and participatory selection of legislators and executives.”<sup>258</sup> The freedom to scrutinize and critique cannot take place without a law that allows for citizens to access government-held information, in the form of government records or other documents. The concept of fair access goes both ways; governments have the right to defend themselves before citizens by issuing information on past performance, policy priorities and justification for future goals. Information alone can equip citizens with the necessary tools to perform their critique role.

Development agencies, including UN agencies, have sought to put into practice, with uneven success, the integration of human rights and development through the so-called rights-based approach to development.<sup>259</sup> The resulting so-called rights-based approach to development has gained much legitimacy over the next decade and has been the object of a large number of initiatives. The *Human Development Report 2003* which was expressly devoted to the ‘Millennium Development Goals’, explicitly integrates human rights in relation to the Millennium Development Goals. The Report, in particular, notes several of the advantages of linking the Millennium Development Goals to the human rights framework, such as the fact that the policies and institutional

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<sup>257</sup> Amartya Sen, *Development as Freedom*, (New York: Random House, 1999), 16.

<sup>258</sup> Ibid.

<sup>259</sup> Agnes Callamard, Development, Poverty and Freedom of Expression, [article online] (Sri Lanka: UNESCO Conference on Freedom of the Media and Development, 2006, accessed 13 March 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

reforms required to achieve the Goals are clearer in the light of a Human Rights approach and include elements such as participation in public decision-making, protection for vulnerable groups, and elimination of gender discrimination.<sup>260</sup>

According to Callamard (2006); “for a number of developmental agencies, anti-poverty work is about protecting human rights,” of which the right of access to government records is instrumental. This realization has led to a rights-based approach to programming, and it also resulted in the so-called “mainstreaming of human rights” within the United Nations as a whole. However, the World Bank and IMF Development Committee’s Global Monitoring Report 2004 fails to consider and integrate human rights in their review of the progresses made so far towards the achievement of the Millennium Development Goals.<sup>261</sup> Callamard asserts that, “it is hardly surprising that the integration of one particular human right – freedom of expression, and in particular freedom of the press – within the global development agenda and the Millennium Development Goals has been less than satisfactory.”<sup>262</sup> Freedom of expression and freedom of the press are never or rarely mentioned in international development declarations, such as the Declaration on the Right to Development, the Vienna Declaration or the Millennium Development Goals<sup>263</sup>. The policy links between development and open information channels tend to be established in civil society

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<sup>260</sup> UNDP, *Human Development Report*, [report online] (UNDP: 2003, accessed on 12 February 2008); available from <http://hdr.undp.org/en/reports/global/hdr2003/>, Internet.

<sup>261</sup> World Bank and IMF Development Committee, *Global Monitoring Report 2004: Policies and Actions for Achieving the MDGs and Related Outcomes* (Washington, D.C.: World Bank and IMF, 2004); available from [http://siteresources.worldbank.org/INTGLOBALMONITORING/Resources/GMR\\_2004.pdf](http://siteresources.worldbank.org/INTGLOBALMONITORING/Resources/GMR_2004.pdf), Internet.

<sup>262</sup> Agnes Callamard, *Development, Poverty and Freedom of Expression*, [article online] (Sri Lanka: UNESCO Conference on Freedom of the Media and Development, 2006, accessed 13 March 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

<sup>263</sup> *Ibid.*



setting or within the Media themselves, making such links outside the realm of government obligations or simply commitments.<sup>264</sup>

The nature of Article 19 and the wording of the Millennium Development Goals are clear when it comes to civil rights, such as access to information. However this is often neglected and deemphasized. According to Lidberg, it is much easier to promise to adhere to the principles of freedom of information than to implement these principles.<sup>265</sup> The law may often be used as an illusion of conforming to democratic requisites rather than granting independent access to quality of information.

Public disclosure of information is essential to business in the private sector. Commercial users of the FOIA are, in many countries, one of the most significant user groups.<sup>266</sup> Public bodies hold a vast amount of information of all kinds, much of which relate to economic matters and needed to conduct business and operate efficiently in a market. Government should have a direct interest in supporting the private sector and its entrepreneurs by sharing important relevant economic and trade information.<sup>267</sup> Because of the economic impact that open information channels can have governments should embrace the application of these laws.

Development goals may be more effectively achieved when coupled with strengthening mass participation and improving the quality of governance in underdeveloped countries. The knowledge and experience of people living in poverty is often undervalued, and their perspectives on their needs and on solutions to their own problems are often ignored. Poverty eradication entails fundamental reforms to promote

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<sup>264</sup> Agnes Callamard, Development, Poverty and Freedom of Expression, [article online] (Sri Lanka: UNESCO Conference on Freedom of the Media and Development, 2006, accessed 13 March 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

<sup>265</sup> Johan Lidberg, "Keeping the Bastards Honest: The Promise and Practice of Freedom of Information," (Ph.D. Murdoch University, 2006), 15.

<sup>266</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 14.

<sup>267</sup> *Ibid.*

broader political participation, to ensure accountability and transparency of government, and to create a strong role for community groups in policy-making. It also requires ensuring that poor people have access to relevant information to take their own *informed* decisions and realize their rights. It is important to bear in mind that one of the most important issues in providing citizens with information services must be “the development of strategies for bringing these services to the poor.”<sup>268</sup> Numerous studies have demonstrated that increases in the flow of information often widen the gap between the rich and the poor. “The information poor often see very little utility in much of the information that is available to them. Its very complexity is a barrier. Often they fail to see how the use of information systems may improve their situation.”<sup>269</sup> Delivering information to all segments of the population must attest to the fact that “technology is not simply equipment, but also the know-how and expertise involved in using technology.”<sup>270</sup>

The alienation of poor communities from the public sphere prevents them from being able to represent their interests at national level, rendering them vulnerable to misguided policy-making. Information “empowers communities to battle the circumstances in which they find themselves and helps balance the unequal power dynamic between them and their governments.”<sup>271</sup> In a 2004 report issued by the United Nations Development Program on democracy in Latin America, the authors argued that democracy must extend beyond the ballot box and be deepened through an expansion of ‘social citizenship’ and an intensification of efforts to combat poverty and inequality.

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<sup>268</sup> Frederick Williams and John V. Pavik, eds., *The People's Right to Know: Media, Democracy and the Information Highway* (New Jersey: Lawrence Erlbaum Associates, 1994), 144.

<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*, 130.

<sup>271</sup> Agnes Callamard, *Development, Poverty and Freedom of Expression*, [article online] (Sri Lanka: UNESCO Conference on Freedom of the Media and Development, 2006, accessed 13 March 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

Democratic reform should not only be focused on government but also tailored to create the mechanisms necessary for citizens to adopt an active role in public life.<sup>272</sup> To promote development and democracy, recent research has indicated that levels of political knowledge affect the acceptance of democratic principles attitudes towards specific issues and political participation.<sup>273</sup> Competent democratic citizens need not to be policy experts, but there is a level of basic knowledge below which the ability to make a full range of reasoned civic judgments is impaired. All other things being equal, the more knowledge citizens have, the more likely they are to participate and contribute in public matters.<sup>274</sup>

## **E. Conclusion**

The analysis and ideas of this chapter all point to one significant conclusion; “access is essential for persons to realize their basic right to participate in the governing of their country and live under a system built on informed consent of the citizenry.”<sup>275</sup> This chapter addressed the subject matter from the stand point of the concept of citizenship and its relation to government institutions. By presenting research findings from various sources and inferring from content analysis, this chapter has shown that significant policy links exist between freedom of information and a functioning democracy as well as showing that information dissemination is important to development because it opens doors of participation to citizens. Acknowledging the

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<sup>272</sup> Agnes Callamard, Development, Poverty and Freedom of Expression, [article online] (Sri Lanka: UNESCO Conference on Freedom of the Media and Development, 2006, accessed 13 March 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

<sup>273</sup> Ibid.

<sup>274</sup> William A. Galston, “Political Knowledge, Political Engagement and Civic Education,” *Annual Review of Political Science*, vol. 4 (June 2001): 220.

<sup>275</sup> Laura Neuman, ed, *Access to Information: A Key to Democracy*, (Atlanta: The Carter Center, November 2002), 9.

importance of the media is a pillar of democracy and of society at large; this thesis argues that any approach to media regulation must seek to solidify civil society's participation in setting policy agendas and evaluating policy outcomes. Public interest is served by "a regulatory system overtly designed to give effect to furtherance of equality of citizenship as the public interest."<sup>276</sup> Emphasizing citizenship values is stated as being "the constant and meaningful objective," against which regulatory policies should be judged.<sup>277</sup>

Information provision is a form of power sharing and can pose many challenges. It is not surprising that government officials remain hesitant to fully implement law enabling citizens to access public documents. However, the roles that FOI play in politics and society have been proven to include significant roles in development, enhancing participation and contributing to transparent government. These outcomes are conducive to democratic governance when coupled with an active engaged citizenry. Normative democratic theory points to the importance of the informed individual in shaping the governing political system. "A fundamental distinction between democracy and other political systems is the expectation that arises from democracy that power will not be unlimited. Those who exercise political power are expected to be accountable to those who elect them, to their peers, and to the courts, and should be subjected not only to giving an account of their actions, but also be liable to sanction if their behavior exceeds limits established by the constitution. This chapter has shown the importance of information to the rights of citizens to exercise power over their public officials. Information disclosure to the public is a main pillar of democratic governance. However, the thesis concurs that even in the absence of strong a democratic

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<sup>276</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (United Kingdom: Edinburgh University Press, 2006), 123.

<sup>277</sup> *Ibid*, 125.

system, citizens ought to have the right to know and the right to participate. It may be difficult to imagine these rights exercised without the right to freedom of expression. In other words, the nature of autocratic regimes may be antagonistic to the right to access government documents. Yet power is knowledge and access to government records, even when no elections are held, can pave the way for change by allowing citizens the right to evaluate the performance of their public authorities. “Because institutions may have an ingrained *culture of secrecy*, an external mechanism for encouraging compliance with access law is necessary.”<sup>278</sup> Enacting and implementing a law that allows access is an important leap is gaining the trust of citizens and their support for government decisions.

The analysis presented in this chapter has attempted to answer questions regarding how FOI impacts good governance, public policy and citizens’ behavior. In a system where information is shared, the individual tends to preserve an oversight role over government’s institutions and performance. This is necessary in curbing an ‘elitist’ approach to democracy and policy-making. As noted earlier, policies designed by the few will tend to serve the interests of the few. By broadening the number of stakeholders in the policy process, the quality of the outcome is enhanced. Furthermore, by arming the stakeholders with relevant and necessary information, the quality of their participation is improved and their ability to place limits on the power of government is strengthened.

Information disclosure involves various actors that include government institutions, politicians, media, citizens and civil society organizations. Governments increasingly realize that they will not be able to effectively formulate and implement

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<sup>278</sup> Laura Neuman, ed, *Access to Information: A Key to Democracy*, (Atlanta: The Carter Center, November 2002), 12.

policies, however good they are, if citizens and business do not understand and support them. This chapter has provided an explanation of the interplay and the impact of these players on the broader policy process as well as the functioning of the public sector.

The next chapter will present and analyze the case of Lebanon and freedom of information, or lack of. It gives a detailed overview of the Lebanese political system and public administration. The chapter addresses the challenges in enacting and implementing a law that allows for citizens to access government-held information. It concludes with the potential and prospects for the case of Lebanon. The chapter also presents recommendations for implementing and sustaining transparency through disseminating information on all Lebanese government agencies to the public.

## Chapter IV

### Prospects for Freedom of Information in Lebanon

#### A. Introduction

*“Which is the best government? That which teaches us to govern ourselves.”*

Johann Wolfgang von Goethe (1749-1832)

This chapter will discuss the case of Lebanon in the absence of a Freedom of Information Act. Freedom of information has been proven to be closely linked to good governance, development and democratic reforms. Access to information is now recognized as a fundamental right in international and comparative law and jurisprudence because it helps promote the right to participate and the right to be free from corruption.<sup>279</sup>

The absence of FOI constitutes a major obstacle to democratic consolidation and change. The right to know has been presented in this thesis as an unalienable civil right necessary for transparent government and citizen participation. The concept of citizenship will guide the rationale and analysis in this chapter. Information is a citizen’s right and utilizing information available is the duty of citizens at large. This chapter advocates for the full incorporation of this right for Lebanese citizens. A closer look at Lebanon will shed light on the potential role of civil society in bridging the gap between citizen and the state. As was shown throughout in previous chapters the role of civil society is central to the enactment of a law allowing access to public records, implementing the law and maintaining open government. As such, a short section on the

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<sup>279</sup> Helen Darbishire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 1.

efforts of some civil society organizations to advocate for FOI will be included.

Freedom of Information in practice constitutes of three phases: enactment of a law stipulating the right of citizens to access government-held documents, full implementation of the law, and evaluation and improvement in the law. The final phase is one that is ongoing and required continuous efforts to consolidate the practice of FOI. The phase of enactment as well as, monitoring and evaluation should involve all of society's stakeholders. Citizens and civil society must guard against abuses and ensure that government fulfills its promise. Taking into consideration these three phases, the case of Lebanon in this thesis places a special emphasis on the current and potential roles of its civil society. Despite its shortcomings, civil society can and should play the role of an advocate and guardian of FOI principles and practices.

## **B. Background: Lebanon and Good Governance**

The Lebanese system of government is characterized by high degrees of instability. The following section highlights the degrees of instability and how these interfere with daily administrative and legislative proceedings. Including these factors and background on the Lebanese government institutions, helps in showing that enacting a FOI law in Lebanon goes beyond the technical legislative phase to include some deeply rooted political problems that necessitate close oversight for implementation of FOI. Indeed the case of FOI in Lebanon is directly related to debates over the role of the State. Enactment and implementation of such a law can foster a relationship of trust between the state and the Lebanese citizens. Moreover, it can improve the image of public officials and civil servants. The discussion of FOI in Lebanon cannot take place in isolation of the political instability that infiltrates the Lebanese public sector institutions. Despite there being “no consensus on what actually



constitutes good governance,”<sup>280</sup> general indicators of good governance according to the World Bank (2005) have been identified as:<sup>281</sup>

*Voice and accountability (VA)*, the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media

*Political stability and absence of violence (PV)*, perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including political violence and terrorism

*Government effectiveness (GE)*, the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies

*Regulatory quality (RQ)*, the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development

*Rule of law (RL)*, the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence

*Control of corruption (CC)*, the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests.

This thesis argues that Freedom of Information is essential to the realization of all of the above six governance targets. Open government can ensure citizens voice and

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<sup>280</sup>Mick Moore, “Political Underdevelopment; What Causes Bad Governance,” *Public Management Review* 3, no. 3 (September 2001): 386.

<sup>281</sup>Daniel Kaufman and others; “Measuring Governance Using Cross-Country Perceptions Data,” *World Bank Policy Research Working Paper* 4012 (September 2006): 4.

accountability, rule of law and control of corruption. Moreover, through proactive publication of information relating to specific issues “the space in which corruption can occur will increasingly be reduced.”<sup>282</sup> Indicator number two referring to violence and instability may also be lessened by a system of governments where equal rights of accessing government documents can help evaluate performance and maintain stability. The rationale employed throughout this research is reiterated here: citizens will always make better judgment and decisions on public affairs when they are armed with knowledge and information about the performance of their public officials. The absence of factual information from public records leads to a lack of informed debate and action and allows for emotions to dominate actions. Enactment of a law that allows access to public records is a step forward towards a system based on power sharing between the ruling class, civil society and the citizens.

These and other indicators constitute an important framework against which we can measure governance in Lebanon. However, they are not presented here as the end goals that FOI can help advance. These indicators must be coupled with an understanding of the political and cultural elements that are unique to the case of Lebanon. Indeed, there is ample evidence that points to the subjectivity of the study of the quality of governance. Kauffman, Kray and Mastruzzi (2006) assert that “it is important to take into account the inevitable uncertainty associated with estimates of governance.”<sup>283</sup> An attractive feature of the World Bank’s approach to measuring governance is that it allows quantification of the precision or reliability of governance estimates. Quantitative studies and international ratings are a useful tool that shows significant areas that FOI can help improve.

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<sup>282</sup> Helen Darbshire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 13.

<sup>283</sup> Daniel Kaufman and others; “Measuring Governance Using Cross-Country Perceptions Data,” *World Bank Policy Research Working Paper* 4012 (September 2006): 34.

Kauffman, Kraay and Masturzzi (2006) argue that “perceptions matter.” They explain that, for measuring governance, “there are few alternatives to the subjective, experiential data on which we rely.”<sup>284</sup> Even in cases where objective indicators of governance are available, these too have implicit *margins of error*. It is very hard to find data that gives a quantitative measure of the impact freedom of information on levels of corruption. One of the reasons is that “the only real tool for giving a quantitative measure of corruption is the measure of perceptions of corruption.”<sup>285</sup> This thesis focuses more on qualitative analysis to explain the case of Lebanon and present prospects for a Freedom of Information Legislation that can improve the quality of governance by giving citizens a chance to voice their demands through informed participation.

A qualitative assessment of the current state of affairs in Lebanon in relation to citizens’ right to access government-held information will shed light on various social and institutional variables that can open the door for the implementation of FOI. In Lebanon the absence of FOI threatens democratic practices. Without access to government documents the extent to which civil society in Lebanon can impact policy agendas remains minimal. The chapter also explains the role of e-government and the status of e-government in Lebanon today. A brief section on e-government has been included because of the impact it has been proved to have on the following variables:<sup>286</sup>

- Trust and Accountability
- Legitimacy and Understanding
- Citizen Satisfaction and Service

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<sup>284</sup> Daniel Kaufman and others; “Measuring Governance Using Cross-Country Perceptions Data,” *World Bank Policy Research Working Paper* 4012 (September 2006): 36.

<sup>285</sup> Helen Darbishire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 13.

<sup>286</sup> *Ibid.*

- Reach and Equitable Access
- Effective Representation and Decision Making
- Participation through Input and Consultation
- Engagement and Deliberation

It is difficult to imagine an efficient FOIA system without good use of information technology. In Korea an online government portal “provides a venue for public users to engage in forums regarding public policies, to collect opinions, and to conduct e-hearings and e-polls on policy issues.”<sup>287</sup> In many countries today, people can voluntarily form online community clubs among members, after which forum results can be submitted as civil complaints or public proposals. In the United Kingdom, the long tradition of citizens presenting petitions at the door of Number 10 Downing Street, the home of the Prime Minister has been replaced with the virtual practice of E-Petitions that the Prime Minister’s office can respond due much quicker.<sup>288</sup> Another example is in Minnesota where citizens are able to watch the proceedings of the Legislature online at their convenience.<sup>289</sup> Web casts of legislative hearings and floor sessions “allow citizens to follow legislation in real time or at their own convenience.”<sup>290</sup> According to Clift (2003), “every day, another government adds a new online feature designed to bring government and citizens together.”<sup>291</sup> E-government services can enhance transparency and encourage citizen engagement. Single sided information dissemination prohibits active participation in public life. Yet recent developments in the use of e-government should be employed in Lebanon to encourage

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<sup>287</sup> Darlene Meskell, “New Opportunities for Involving Citizens in the Democratic Process,” *U.S. General Services Administration newsletter*, Fall 2007, 12.

<sup>288</sup> *Ibid.*

<sup>289</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*

two-sided information exchange between the citizen and the State.

International donor agencies impose certain measures upon the Lebanese government institutions and call for transparency and open government. This thesis contends that such efforts for more transparency require a public sector organizational culture consistent with these principles as well as a society that can maximize their utility. A Freedom of Information Act that is not put to use is as futile as having no FOIA in the first place.

Today with the experience of over 70 countries to evaluate and benefit from, Lebanon has a unique chance to pioneer the first Freedom of Information Legislation in the Arab world and win back the trust of its citizens by sharing information critical to change and development. Thomas Susman, Chairman of the America Bar Association's Committee on Access to Government Information and Privacy, asserts that "many countries around the world have managed to learn from the mistakes made in the US and built on the lessons learnt. India for example included in their law clauses on allowing disclosure for email correspondences which are not mentioned in the US FOIA. The US has no independent administrative body responsible for oversight; more recent laws have included clauses on an independent Ombudsman."<sup>292</sup> Lebanon today has many lessons to be learnt from the experiences of tens of countries and can build on their shortcomings but adopting a modern law that effectively allows power sharing with citizens through information dissemination.

Although the Lebanese Constitution guarantees through Article 13 the right of freedom of expression and belief, it did not include any provision on access to

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<sup>292</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

information.<sup>293</sup> One study claims that, “despite the efforts made in the post-civil war period, where Lebanon witnessed huge progress in terms of displaying information, access to information is still scant and restricted to the public, thereby limiting the possibility of holding officials accountable.”<sup>294</sup> To begin this section on Lebanon it is important to recall that for starters, good governance requires an efficient executive, a functioning legislature, an independent judiciary and the effective separation and balance of powers which are all constituent elements of a democratic regime.<sup>295</sup> Moreover, according to the World Bank good governance requires guaranteeing the impartial administration of justice and reducing “the opportunities for corruption by cutting back on discretionary authority.”<sup>296</sup> Consequently, good governance is not sustainable without effective democratic institutions, and limits on government’s authority.

### **C. Overview of Lebanese State Institutions**

The aim of the following section is to deepen understanding of the ways in which Lebanon’s institutions and branches of government are shaped. They function based on the consensus of major sectarian groups and political actors. An understanding of these elements sets the grounds for introducing a FOI system that engages all its stakeholders: government, parliament, civil servants, civil society and citizens at large. By explaining the system of checks and balances, advocates of FOI can find the most effective ways of getting government to adopt a law that allows full access to public

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<sup>293</sup> Transparency International, *Transparency International Markets the Right to Know Day* [article online] (Berlin: Transparency International, 2005, accessed 7 April 2008); available from [http://www.transparency.org/news\\_room/in\\_focus/2005/right\\_to\\_know\\_day](http://www.transparency.org/news_room/in_focus/2005/right_to_know_day); Internet.

<sup>294</sup> Ibid.

<sup>295</sup> Carlos Santiso, “Good Governance and Aid Effectiveness: The World Bank Conditionality,” *The Georgetown Public Policy Review* 7, no. 1 (Fall 2001): 16.

<sup>296</sup> Ibid.

information. Currently the Lebanese government branches fall short of a transparent system of checks and balances and it can be argued that introducing FOI is a first step to combat its sectarian nature.

Lebanon is a parliamentary republic. Its political system is based on “the apportionment of parliamentary seats, high political offices, and senior administrative positions among the country’s 17 recognized religious communities.”<sup>297</sup> The first Lebanese Constitution, on which the present one is based, was adopted on May 23, 1926, when the country was still subject to French administration under a League of Nations mandate. In 1943, Lebanon gained its independence from the French. The National Covenant (*Al Mithaq Al Watani*) of 1943 was a ‘*gentlemen’s agreement*’ between Lebanon's first President and its first Prime Minister, which institutionalized the division of power among major Lebanese sects. The 1943 National Pact:<sup>298</sup>

- Allocated political power along confessional lines on the basis of the 1932 census,
- Stipulated that the President must be a Maronite Christian, the Prime Minister a Sunni Muslim, and the Speaker of Parliament a Shi’i Muslim,
- Divided seats in parliament according to a 6-to-5 ratio of Christians to Muslims.

The 1989 Tai’f Accord introduced several changes. The redistribution of power, however, did not change the political system’s essential democratic nature; a Consociational democracy, whereby decision-making takes place through “consultation

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<sup>297</sup> Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms –Lebanon*, [publication online] (Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2008, accessed 6 April 2008); available from [http://www.carnegieendowment.org/files/Lebanon\\_APS.doc](http://www.carnegieendowment.org/files/Lebanon_APS.doc); Internet.

<sup>298</sup> Ibid.

and agreement” of all political and religious groups within the country.<sup>299</sup> The Ta’if Accord, which was enacted in 1990 distributed parliamentary and cabinet seats equally between Christians and Muslims.

The Ta’if Accord stipulated that a higher senate must be created after the first parliamentary elections took place on a national non-sectarian basis. This higher senate according to the Accord would represent the various sects, while the Chamber of Deputies would be a non-confessional body. Although this clause was incorporated into the constitution in 1990, the senate was never set up. The nature of relations and division of power among government agencies and branches is characterized by sectarianism.

The president and head of state is always a Maronite Christian; among his roles is the promulgation of laws passed by the parliament. The President can only issue decrees with the approval of the prime minister or the relevant minister. The only exceptions are the decree appointing the prime minister and the decree accepting the resignation of the government.

The Prime Minister, a Sunni Muslim, is the head of government, appointed by the president in consultation with parliament. The Prime Minister Heads the council of ministers and sets its agenda and must countersign all decrees along with the President.<sup>300</sup> The Council of Ministers is appointed by the prime minister, in consultation with the president and members of parliament and has the prerogative to propose draft laws.

The Council Usually makes its decisions by consensus but if consensus is

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<sup>299</sup> Fares El-Zein and Holly Sims, “Reforming War’s Administrative Rubble in Lebanon,” *Public Administration and Development* 24, no. 4 (October 2004): 280.

<sup>300</sup> Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms –Lebanon*, [publication online] (Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2008, accessed 6 April 2008); available from [http://www.carnegieendowment.org/files/Lebanon\\_APS.doc](http://www.carnegieendowment.org/files/Lebanon_APS.doc); Internet.



impossible, it makes decisions by majority vote of members present at the meeting. The National Assembly is a unicameral legislative body composed of the Chamber of Deputies.<sup>301</sup> Among its duties is the proposal and enactment of legislation.

Lebanon's constitution was written before extensive provisions for judicial bodies became common. The Lebanese Judiciary branch has no detailed provisions. Article 19 calls for the establishment of a Constitutional Council and Article 20 states that "judicial power is to be exercised by the tribunals of various levels and jurisdictions" and provides for an independent judiciary.<sup>302</sup> The 1990 Constitutional amendments also established the Constitutional Council which judges the constitutionality of laws and arbitrates conflicts that arise from presidential and parliamentary elections.<sup>303</sup> Council of State, established in 1924, is empowered to try disputes between individuals and the state. The Supreme Judicial Council is in charge of judicial appointments, transfers, and training. In practice, the Ministry of Justice performs these functions in order to guarantee adequate representation for all confessional groups.

The Sectarian and Confessional nature of the Lebanese State system becomes evident with the review of the shape and role of these institutions. Indeed, no branch is independently isolated from sectarian politics, giving rise to nepotism and to a system that eternally reproduces the same relationship between its institutions and citizens. The relationship can be characterized as one based on dependency on sectarian groups and major confessions in the country. Although this thesis is not directly recommending the abolition of sectarianism in government, it certainly recognizes it as a crucial step for a

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<sup>301</sup> Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms –Lebanon*, [publication online] (Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2008, accessed 6 April 2008); available from [http://www.carnegieendowment.org/files/Lebanon\\_APS.doc](http://www.carnegieendowment.org/files/Lebanon_APS.doc); Internet.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid.

democratic system. In the meantime, FOI can begin to overcome the obstacles of a dangerously closed sectarian and elitist State system. It contributes to replacing sectarian ties with an independent citizen-State link based on factual information on government performance. This can give rise to civil and political claims based on informed demands.

In Lebanon there are overarching political considerations that should be kept in mind when attempting changes of any sort. In the case of FOIA, this legislative act carries the potential not only for greater government responsiveness but for decreasing the type of corrupt practices that result from sectarian nepotism. FOIA implications on government and administration are not in isolation of political considerations.

Prominent scholars as Paul Appleby stressed that “public administration is a part of the political apparatus and that administrative decision-making is intermingled with political decision-making.”<sup>304</sup> Past efforts for reform have made such mistakes as viewing the “administration as a managerial task devoted to maximizing efficiency,” and neglecting the political nature of administrative development.<sup>305</sup> If FOI is ever to be enacted in Lebanon and successfully implemented political considerations must be clearly understood. FOIA has the potential of changing the balance of power by giving more authority to the people through wide information dissemination. As such hesitation from politicians should be expected and handled with care.

Consensus among politicians dictates the ways in which government functions. True democracy rests on the will of the people in electing responsible public officials. The prospects for this in Lebanon is in contradiction with the existing system of

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<sup>304</sup> Fares El-Zein and Holly Sims, “Reforming War’s Administrative Rubble in Lebanon,” *Public Administration and Development* 24, no. 4 (October 2004): 285.

<sup>305</sup> *Ibid.*

governance. According to Choucair, Lebanon is a “confessional oligarchy.”<sup>306</sup> This type of system is leading to “perpetual political and administrative paralysis; where the existing institutions cannot introduce needed reforms for fear that these changes would alter the status quo and the balance of interests among the communities.”<sup>307</sup> Moreover, the lack of a central authority in Lebanon with institutionalized decision-making capabilities poses significant challenges to democratic progress.<sup>308</sup> The geographical location of Lebanon has not helped in bringing about the strongly needed stability that may ensure political modernization. On the contrary, its neighboring countries, namely Israel and Syria, play very divisive roles and are the contributing factors to the ‘recurring collapse’ of the State of Lebanon. The Lebanese case attests to the weakness of confessional-based politics when faced with intense deadlock. Indeed, the Lebanese state withers in the face of conflict and Lebanese politics find space on the streets and opt for violence as a way out.

In their study of political attitudes in five different countries, one of the main conclusions Almond and Verba present is as follows:

*“To say that the civic culture maintains the balance between power and responsibility suggests a further point about democratic politics. It suggests why unresolved political issues of great importance eventually create instability in a democratic political system. The balance between activity and passivity can be maintained only if the issue of politics is relatively mild. If politics becomes intense, and if it remains intense because of some salient issue, then inconsistency between attitude*

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<sup>306</sup> Julia Choucair, “Lebanon: Finding a Path from Deadlock to Democracy,”

*Carnegie Endowment for International Peace*, Carnegie Paper no. 64, (January 2006): 6

<sup>307</sup> Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms –Lebanon*, [publication online] (Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2008, accessed 6 April 2008); available from [http://www.carnegieendowment.org/files/Lebanon\\_APS.doc](http://www.carnegieendowment.org/files/Lebanon_APS.doc); Internet.

<sup>308</sup> Ibid.

*and behavior will become unstable. But any relatively permanent resolution of the inconsistency is likely to have unfortunate consequence.*”<sup>309</sup> Indeed a closer look at the scene in Lebanon, especially over the last three years, attests that Almond and Verba’s proposition is suitable to the case of Lebanon.

Lebanon recently was able to overcome a bloody political deadlock that led to democratic institutions to become dysfunctional. Now is the best time for enacting a FOIA in Lebanon through a revived role for State institutions and Parliament. Since this thesis advocates for FOI and the rights of citizens to participate, the experience of the recent political stalemate attests to how better informed citizens can play a more efficient role in holding their politicians accountable. It may be argued that freedom of information is needed today in Lebanon more than ever to combat government secrecy and lobby for an open dialogue that can resolve the differences between Lebanon’s political factions. Information will contribute to reconciliation and fuel the new generation to focus on facts when holding their politicians accountable.

The Lebanese institutions were paralyzed since a political impasse that began after a series of “National Dialogue” meetings aimed at easing political tensions collapsed on November 11, 2006.<sup>310</sup> Political leaders had begun these talks on March 2, 2006 to discuss pressing issues that have divided the Lebanese political scene since the February 14, 2005 assassination of former Prime Minister Rafiq Hariri.<sup>311</sup> The dialogue faltered and led to a prolonged deadlock among opposition and pro-government leaders. The result culminated in recent violent conflict that finally led to the politicians

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<sup>309</sup> Gabriel A. Almond and Sidney Verba, *The Civic Culture* (New Jersey: Princeton University Press, 1963), 483.

<sup>310</sup> Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms –Lebanon*, [publication online] (Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior, 2008, accessed 6 April 2008); available from [http://www.carnegieendowment.org/files/Lebanon\\_APS.doc](http://www.carnegieendowment.org/files/Lebanon_APS.doc); Internet.

<sup>311</sup> *Ibid.*

convening in Qatar and the election of a President almost six months after the Constitutional deadline.

These events are mentioned in this thesis because they are important within their overall context. Their relevance to the debate over FOI lies in the problems they highlight. Lebanese politics and government are entrenched in understandings and agreements among sectarian elites. When these understandings flourish, they allow for government institutions to function and when they fail, they paralyze almost all of the public agencies. The citizen has little or no knowledge about what happens behind closed doors. As such the thesis advocates for a FOI law that forces all government agencies to abide and that allows citizens to voice informed demands on all policy-related issues.

#### **D. Freedom of Information and Lebanese Public Administration**

*“The society in which individuals do in fact participate in decisions – that is, the democratic society – is likely to be the society in which individuals believe they ought to participate.”<sup>312</sup>*

Legislating the right of citizens to access government records in Lebanon will probably prove to be a challenging task. The enactment of the law itself may just be the simplest phase in the long road towards more government openness. FOI will influence daily administrative proceedings and without proper training it may be faced with resistance by civil servants. In addition, the Lebanese bureaucracy and administrative practices have “to adjust to political realities, since the obverse situation is unlikely,” which makes the implementation of FOIA even more complicated.<sup>313</sup> Bureaucracies are

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<sup>312</sup> Gabriel A. Almond and Sidney Verba, *The Civic Culture* (New Jersey: Princeton University Press, 1963), 179.

<sup>313</sup> Fares El-Zein and Holly Sims, “Reforming War’s Administrative Rubble in Lebanon,” *Public Administration and Development* 24, no. 4 (October 2004): 285.

'by design' prone to avoid rapid change and generally opt for predictability in the work process. This is no different in Lebanon than it is anywhere else in the world. However, in Lebanon a 15-year civil war left a devastating impact on its administration and government apparatus. Introducing FOIA must take into consideration the recipient agency's capacity to absorb and build on its principles and practices.

After the civil war the government's most basic functions and administration to shut down due to lack of staff or poor management.<sup>314</sup> Many professional civil servants fled the country. For 17 years, Lebanon has no recruitment and almost no training for civil service positions. Moreover, "sixty per cent of the posts were vacant, leaving entire departments without management."<sup>315</sup> Not to mention that average civil servant was more than 50 years old. The Lebanese administration was like an old crippled man and it is no wonder that corruption and secrecy were able to prevail for so long. This crippling phase was followed by "a sage of administrative revitalization," spearheaded by the Office of Minister of State for Administrative Reform (OMSAR). Established in 1993, "OMSAR was the key recipient of international aid to coordinate short-term rehabilitation and plan long-term institutional development within the public sector."<sup>316</sup> Indeed when Prime Minister Rafiq Hariri came to office, OMSAR was given a leading role.

Today efforts for reform can build upon previous and existing efforts for good governance. Within the context of the Lebanese public administration, an important lesson can be learned from Minister of State Anwar El-Khalil who was responsible for administrative reform after the civil war. El-Khalil considered that "the success of any plan linked to reconstruction and social development must be based on an

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<sup>314</sup>Fares El-Zein and Holly Sims, "Reforming War's Administrative Rubble in Lebanon," *Public Administration and Development* 24, no. 4 (October 2004): 285.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid, 279.

administration capable enough to carry out such functions and responsibilities.”<sup>317</sup>

Indeed, any initiative for FOI implementation must similarly consider the capabilities of the administration to carry out its goals. After the war the National Administrative Rehabilitation Programme (NARP) was launched “to rehabilitate essential functions of the Lebanese public administration in the short term in order to strengthen long-term capacity to carry out national reconstruction and enhance economic recovery.”<sup>318</sup> Its specific objectives included:<sup>319</sup>

“Restoring the ministries’ and public agencies’ capacity to study, plan, formulate policies and identify and manage activities and projects that might mobilize funds for implementation.

- Developing and upgrading human capacity.
- Carrying out basic policy studies, master plans, surveys, data bases and management information systems.
- Improving the responsiveness of ministries and public agencies to public needs.
- Improving governance systems by activating control agencies and restructuring procedures to strengthen accountability and management by results.

The UNDP offered \$2.4 million as initial funding to “enhance national decision-making capacity and institute a rights-based approach to development.” The overall aim involved “creating modern institutions to support private sector development and mobilize the initiative of civil society.”<sup>320</sup> OMSAR’s overall strategic

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<sup>317</sup> Fares El-Zein and Holly Sims, “Reforming War’s Administrative Rubble in Lebanon,” *Public Administration and Development* 24, no. 4 (October 2004): 281.

<sup>318</sup> *Ibid.*, 285.

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*, 282.

objectives were to:<sup>321</sup>

- eliminate corruption and promote a stronger sense of accountability within the civil service

- widen distance between political and administrative functions;

- secure sufficient resources for the civil service to attract and retain staff to carry out its responsibilities; and

- move from the bureaucratic and control-oriented philosophy of public management to one focused on services and results

In 2001, OMSAR published Citizen's Charters online that inform citizens of their rights and duties regarding specific policies such as taxation, healthcare and education. The approach closely linked citizenship rights and obligations to the law and the government's duty to protect these rights. These online resources may have been the first step in opening up government in Lebanon, but they fall short of securing two-way communication channels where citizens are empowered with knowledge about internal government processes.

The extent to which the Lebanese government will succeed in implementing an effective FOI system may depend on the extent to which it can employ Web-based information services. In today's world citizen input is "not just a matter of convenience anymore; it's become an essential for how democracies work."<sup>322</sup> Citizen input given today's advances in technology can be enhanced through information and communication technology (ICT). ICT is now "a powerful tool for transforming the way governments interact with citizens."<sup>323</sup> According to recent studies, the Internet

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<sup>321</sup> Fares El-Zein and Holly Sims, "Reforming War's Administrative Rubble in Lebanon," *Public Administration and Development* 24, no. 4 (October 2004): 282.

<sup>322</sup> Darlene Meskell, "New Opportunities for Involving Citizens in the Democratic Process," *U.S. General Services Administration newsletter*, Fall 2007, 1.

<sup>323</sup> *Ibid.*



presents infinite new possibilities beyond the traditionally established model of democratic government. In the “pre-Web world, government disseminated information and citizens could only express their views through the postal service, by town hall meeting, or in prescheduled elections.”<sup>324</sup> This process was often more costly, time consuming and less participatory.

The 21<sup>st</sup> century shows the exciting new impact of information technology on democracy. Government entities have now begun to make their own presence online after “because that’s where people are making their voices heard and where decisions are being made.”<sup>325</sup> According to Meskell, “electronic government provides citizens with quicker and easier access to information and services and facilitates decision-making that permits broad grass-roots engagement with the democratic process.”<sup>326</sup> There are countless efforts world-wide to make use of the Internet to disseminate government information and enhance citizen participation.

Lebanon has taken a step forward in recent years towards implementing e-government techniques aimed at reaching out to citizens by providing online information sources. These steps, although for short of establishing means of collaboration on policy issues, are rather promising for the future implementation of freedom of information that is enhanced by the “e-government vision for Lebanon.”<sup>327</sup> E-government in Lebanon can help facilitate FOIA implementation because its objectives can be summarized as follows:<sup>328</sup>

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<sup>324</sup> Darlene Meskell, “New Opportunities for Involving Citizens in the Democratic Process,” *U.S. General Services Administration newsletter*, Fall 2007, 1.

<sup>325</sup> *Ibid.*, 3.

<sup>326</sup> *Ibid.*

<sup>327</sup> OMSAR, *E-government Strategy for Lebanon* [booklet online] (Beirut: 2002, accessed 8 April 2008); available from [http://msib.omsar.gov.lb/NR/rdonlyres/18777CBC-B087-427A-88F8-77258528B827/104/eGov\\_Strategy\\_Full\\_Version\\_En.pdf](http://msib.omsar.gov.lb/NR/rdonlyres/18777CBC-B087-427A-88F8-77258528B827/104/eGov_Strategy_Full_Version_En.pdf); Internet.

<sup>328</sup> *Ibid.*

- Dissemination of all public sector information that a citizen is entitled to through various communication channels – the Internet, via hotlines, through government service centers, etc.

- Fulfillment of all public sector services for citizens online, whether for their individual use or on behalf of an establishment, through any government office or through the Internet regardless of the geographical location of this office or the residence of the citizen.

Provision of a single point of notification for a citizen to use in informing the government of any change in personal or business information. From this point, all concerned government information systems will be updated accordingly.<sup>329</sup>

According to this vision, the government can benefit from e-services through “enhanced operational accountability and transparency, hence less chances of error and forgery.”<sup>330</sup> These objectives may well-serve an efficient FOIA system and widen its accessibility. They are in line with other research findings that point to one conclusion: information sharing benefits all the stakeholders in society and government by enhancing the quality of decision-making through informed participation. With FOI the system works better for everyone. Government can make better decisions with transparency by allowing people to know about plans, priorities and decisions. Thus, decisions become more respected and are likely to be better obeyed by the public because they know more about them. Sharing information gives citizens confidence in government decisions; it makes people obey the laws issued. By contrast, secrecy is inefficient because it spreads the image of untrustworthy government officials.

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<sup>329</sup> OMSAR, *E-government Strategy for Lebanon* [booklet online] (Beirut: 2002, accessed 8 April 2008); available from [http://msib.omsar.gov.lb/NR/rdonlyres/18777CBC-B087-427A-88F8-77258528B827/104/eGov\\_Strategy\\_Full\\_Version\\_En.pdf](http://msib.omsar.gov.lb/NR/rdonlyres/18777CBC-B087-427A-88F8-77258528B827/104/eGov_Strategy_Full_Version_En.pdf); Internet.

<sup>330</sup> Ibid.

In 2002 OMSAR launched the Central Office for Administrative Information, a one-stop information shop consisting of two parts: a phone help line (1700) and an internet website [www.informs.gov.lb](http://www.informs.gov.lb) aimed at disseminating “procedures related to the public that specifies the documents that are required for the submittal of a procedure, its workflow and fees required for its completion as well as related application forms.” The Central Office for Administrative Information is also working towards making e-government a reality by introducing interactive PDF administrative procedure forms. Users are able to fill them up on their PCs and print them out before presenting them to the concerned administration. The online portal, while useful and needed, is merely a first step towards government openness. To understand this better, it may be useful to recall the OECD model of citizen engagement levels.<sup>331</sup>

**Stage 1: Information Stage**

Government Citizen: a simple one-way relationship in which government delivers information to citizens.

**Stage 2: Consultation Stage**

Government Citizen: a two-way relationship in which citizens provide feedback on issues defined by government.

**Stage 3: Active Participation Stage**

Government Citizen: collaboration in which citizens actively shape policy options, but where government retains the responsibility for final decisions.

With this model in mind, one could evaluate recent efforts by the Lebanese government as fulfilling the first stage of citizen engagement. By establishing such

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<sup>331</sup> Darlene Meskell, “New Opportunities for Involving Citizens in the Democratic Process,” *U.S. General Services Administration newsletter*, Fall 2007, 22.

portals ([www.informs.gov.lb](http://www.informs.gov.lb)) it creates a simple one-way relationship based on government delivery of specific types of information to Lebanese citizens. There is a danger in this however, captured in the minimal level of engagement possible within this model. People will only know what the government wants them to know. There are no legal boundaries that enforce the people's right to know nor are there oversight bodies to ensure that all relevant documents are disseminated. In addition, the International Institute for Communication and Development considers that effective citizen engagement takes place through the transition from *passive* information access to *active* citizen participation through the following steps:<sup>332</sup>

- \* Informing the citizen
- \* Representing the citizen
- \* Encouraging the citizen to vote
- \* Consulting the citizen
- \* Involving the citizen

Lebanon is currently at a passive information stage where the information is delivered one way through government portals. Citizen consultation is yet to be institutionalized and the transition to active information services is yet to take place.

OMSAR can be considered the story of potential and promises. By 2000, its restructuring studies had not been implemented in any ministry.<sup>333</sup> These failures were mainly due to OMSAR's approach to reform. By focusing on strictly delineating politics and the administration and focusing solely on managerial doctrines, OMSAR missed an opportunity to tackle reform through increased accountability.<sup>334</sup> Although

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<sup>332</sup> Michiel Backus, E-governance in Developing Countries, (The Netherlands: International Institute for Communication and Development, 2001), 1.

<sup>333</sup> Fares El-Zein and Holly Sims, "Reforming War's Administrative Rubble in Lebanon," *Public Administration and Development* 24, no. 4 (October 2004): 282.

<sup>334</sup> *Ibid.*

NARP's objectives were never really fulfilled, to this day aid continues to flow into Lebanon and there is an existing potential to implement changes, starting by a more open and transparent public policy process. Lebanon's approach to information sharing remains a one-sided attempt to make some procedural details available to the public with the aim of improving government's outreach to its citizens. The information delivered is still on a very superficial level where government communicates to citizens but citizens cannot substantially communicate back.

A real FOIA system can put into place a new covenant between Lebanese citizens and their state based on collaboration through informed debate and policy planning. Moreover, recognizing the value of e-government will allow the public greater access to information.<sup>335</sup> Governments, "as guardians of democracy," need to play a proactive role in the online world. According to Clift (2003), "deepening citizen participation in a democracy is vital to ensuring that governments at all levels can both accommodate the will of their people and more effectively meet public challenges in the information-age."<sup>336</sup> It becomes important then for Lebanon's government to employ the use of ICT when attempting to receive citizen input. In Lebanon, citizens cannot even obtain Parliamentary voting records. How can citizens effectively vote for and monitor candidates without knowing their policy stances? According to Susman, "politicians typically try to divert attention or slow down processes that lead to openness. They typically wish to keep people ignorant when it comes to poor political performance."<sup>337</sup>

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<sup>335</sup> Darlene Meskell, "New Opportunities for Involving Citizens in the Democratic Process," *U.S. General Services Administration newsletter*, Fall 2007, 9.

<sup>336</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

<sup>337</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

There are some basic types of information that citizens are not allowed to obtain in Lebanon. Parliamentary voting records constitute one of the basic categories of information. For civil society to play its effective role, freedom of information should be given a high priority. It is only through information sharing that citizens can be empowered to effectively enter the policy process. In the final analysis, “people tend to participate if they feel their participation makes a difference.”<sup>338</sup> Governments should at least set the stage for people’s participation by informing them not only about procedural matters but also about substantial government goals, achievements and shortcomings.

#### **E. Advocating for Freedom of Information in Lebanon: The Role of NGOs**

Until ten years ago there were not many FOIAs around the world. But the movement towards greater transparency in many parts of the world today is unstoppable. In a modern era, democratic participation both in times of elections and after elections cannot take place without access to government held information. “The case of Lebanon is very *strange*. Without obtaining voting records and committee meeting reports, the Lebanese people have no policy basis to vote on.”<sup>339</sup> According to Clift (2003) the global trend towards transparency is taking place concurrently with a global trend of declined public trust in government.<sup>340</sup> To counter the lack of trust, FOIA can achieve a leap in accountability mechanisms. Opening up information channels enhances transparency by allowing all of society’s stakeholders to influence

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<sup>338</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

<sup>339</sup> Thomas Susman, interview by author, 9 April 2008, Washington DC

<sup>340</sup> Steven L. Clift, *E-government and Democracy: Representation and Citizen Engagement in the Information Age*, [article online] (UNPAN World Public Sector Report, 2003, accessed 12 April 2008); available from <http://www.publicus.net/articles/cliftegovdemocracy.pdf>; Internet.

policy agendas because they have the power to do so through accurate and timely information. Civil society which includes not only non-governmental organizations but also journalists and labor unions is a major player in public affairs. In fact, civil society in Lebanon will be probably the prime beneficiary of FOI legislation. Along with business associations, civil society can play a more influential role by benefiting from access to government-held records and documents. In their study of political systems and civic values, Almond and Verba contended that “democracies are maintained only by, active citizen participation and citizen affairs, a high level of information about public affairs and a high sense of civic responsibility.”<sup>341</sup> Civil society embodies this sense of civic responsibility and can effectively use it to advocate for policies, reforms and evaluate government performance.

The term non-governmental organization or NGO originated in 1945 by a variety of groups that lobbied for maintaining external cooperation with the UN. This resulted in introducing new terminology to cover Economic and Social Council’s (ECOSOC) relationship with these organizations. Under Article 71 “non-governmental organizations could have suitable arrangements for consultation.”<sup>342</sup> The term NGO then passed into popular usage, especially from the 1970s onwards. NGOs around the world today, especially in developing countries and emerging democracies, play a large role in enhancing transparency and creating responsive government. Responsiveness increases as a result of interest articulation and direct lobbying by these groups to influence policy outcomes.

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<sup>341</sup> Gabriel A. Almond and Sydney Verba, *The Civic Culture* (New Jersey: Princeton University Press, 1963), 10.

<sup>342</sup> Peter Willetts, *What is a Non-Governmental Organization?* [article online] (UNESCO: Encyclopaedia of Life Support Systems, 2001, accessed 6 April 2008); available from <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>; Internet.

Various groups and bodies are described as being NGOs. According to Willetts (2001), “there is no generally accepted definition of an NGO and the term carries different connotations in different circumstances.”<sup>343</sup> Nevertheless, there are some fundamental features of NGOs; an NGO must be independent from the direct control of any government. In addition, “an NGO will not be constituted as a political party; it will be non-profit-making and it will be not be a criminal group, in particular it will be non-violent.”<sup>344</sup> Based on research and observations, it is safe to say that there exists and have existed many such organizations in Lebanon. They serve different purposes and have wide-ranging goals. What is important for this research is that they do exist and their role can be consolidated as well as made more efficient through a Freedom of Information Law. According to a recent study, “development can only be achieved through a tripartite partnership between the state, the private sector and civil society.”<sup>345</sup> FOIA can help strengthen and consolidate this significant tripartite relationship.

In the Arabic language, two terms exist to describe civil society, namely *al-mujtama al-ahli* and *al-mujtama al-madani*. The first term *ahli*, implies tribal ‘kinship’ rather than class or social movements which are more enshrined in the term *al-mujtama al-madani*. *Al-mujtama al-madani* “carries a willingness to move away from traditional structures and perceptions.”<sup>346</sup> Traditionally, civil society in Lebanon was more Civil society in of an *ahli* rather than of a *madani* nature. Yet, during and after the civil war of Lebanon (1975-1990), new trends have appeared. Environmental, human rights, women

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<sup>343</sup> Peter Willetts, *What is a Non-Governmental Organization?* [article online] (UNESCO: Encyclopaedia of Life Support Systems, 2001, accessed 6 April 2008); available from <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>; Internet.

<sup>344</sup> Ibid.

<sup>345</sup> UNDP, *Internal Governance for NGOs in Lebanon* (UNDP Beirut: NGO Resource and Support Unit, 2004), 7.

<sup>346</sup> Omar Traboulsi, interview by Qantara.de, 27 April 2005 [article online] (accessed 7 April 2008); available from [http://www.qantara.de/webcom/show\\_article.php/ c-593/ nr-8/ p-1/i.html?PHPSESSID=5](http://www.qantara.de/webcom/show_article.php/ c-593/ nr-8/ p-1/i.html?PHPSESSID=5); Internet.



and certain secular organization were formed that were more of a *madani* nature. In 2000 a study indicated that out of the grand total of 5,000 registered NGOs, approximately 700 are active on a regular and sustained basis.<sup>347</sup>

According to Charles Adwen, Founding Member of the Lebanese Transparency Association (LTA), a Chapter of Transparency International, “the current struggle for freedom of information is happening a very decisive time in Lebanon and the region as a whole.”<sup>348</sup> Pressures for reform and democratization are compelling governments in the Arab world to ‘open up’ and share substantial information with citizens. It is within this context that this thesis is being written and the importance of citizen participation is being highlighted. The ‘right to know’ and access government records has shifted from a conceptual principle that LTA began to call for in 2001 to a fundamental human right in 2004.<sup>349</sup> In August 2005, as part of its awareness campaign LTA published a series of booklets, focusing on the links among transparency and access to information.<sup>350</sup> The main aim of the campaign was to explain that the roots of corruption are directly linked to “vacuums in transparency, access to information, and democracy.”<sup>351</sup> This approach has accompanied the theme of the right to know throughout this research and was used to study the case of Lebanon. Since then LTA has worked to spread awareness on access to information through publications, campaigns and an online portal containing studies on the impact of freedom of

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<sup>347</sup> Omar Traboulsi, interview by Qantara.de, 27 April 2005 [article online] (accessed 7 April 2008); available from [http://www.qantara.de/webcom/show\\_article.php/c-593/nr-8/p-1/i.html?PHPSESSID=5](http://www.qantara.de/webcom/show_article.php/c-593/nr-8/p-1/i.html?PHPSESSID=5); Internet.

<sup>348</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 1.

<sup>349</sup> Ibid.

<sup>350</sup> Transparency International, *Transparency International Marks the Right to Know Day* [article online] (Berlin: Transparency International, 2005, accessed 7 April 2008); available from [http://www.transparency.org/news\\_room/in\\_focus/2005/right\\_to\\_know\\_day](http://www.transparency.org/news_room/in_focus/2005/right_to_know_day); Internet.

<sup>351</sup> Ibid.

information.<sup>352</sup> LTA's activities in Lebanon have been described as "a pioneering effort to contribute to the debate in the Arab Region."<sup>353</sup> In 2007, LTA launched the *Right to Know* Campaign using two strategies high level advocacy and grassroots advocacy, with the following main objectives:<sup>354</sup>

- \* Raising awareness among citizens on Access to Information;
- \* Promote transparency and accountability; and
- \* Encourage decision-makers to promote Access to Information.

There are various reasons that account for the lack of information channels in Lebanon. Some information is categorically and legally considered secret and not allowed to be disseminated to the public; this category includes the minutes and proceedings of parliamentary committee meetings.<sup>355</sup> Undisclosed information by law also include information on wealth and property of public officials.<sup>356</sup> Although this may be crucial in combating corruption and misuse of public funds, the information remains secret because of banking secrecy and immunity of Lebanese Ministers and Members of Parliament.<sup>357</sup> Such information is categorically impossible to obtain even though in a democracy it should be publicized since it is an important corruption monitoring tool. Another reason is lack of documentation; the bureaucracy and civil servants are simply not under the obligation to categorize and archive information although there are no limitations on this category of information being made public.<sup>358</sup>

In other words, there is no legal prohibition on disclosure but there is a lack of

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<sup>352</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 3.

<sup>353</sup> Transparency International, *Transparency International Markets the Right to Know Day* [article online] (Berlin: Transparency International, 2005, accessed 7 April 2008); available from [http://www.transparency.org/news\\_room/in\\_focus/2005/right\\_to\\_know\\_day](http://www.transparency.org/news_room/in_focus/2005/right_to_know_day); Internet.

<sup>354</sup> Lebanese Transparency Association [online] (Beirut: LTA, 2007, accessed 7 April 2008); available from <http://www.transparency-lebanon.org/campaigns-display.php?id=44>; Internet.

<sup>355</sup> Gilbert Doumit, interview by author, 19 April 2009, Beirut

<sup>356</sup> Ibid.

<sup>357</sup> Ibid.

<sup>358</sup> Ibid.

experience in documenting and making some information public. A third reason for lack of existing information is difficulty in accessibility. For although some information may be documented; it is often not centralized in an easily accessible location.<sup>359</sup> Adwen proposes that the right to information in Lebanon should be the rule and exceptions from the law should be kept to the bare minimum.<sup>360</sup> However, it seems that there may be challenges ahead beyond laws and exemptions that reach into the practices of documentation and archiving in the Lebanese public administration. The implementation of such a freedom of information law would translate directly into combating government corruption only if it is followed mechanisms of transparency that put government under the obligation to document, centralize and make available information on all public agencies.

It is important to recall that Article 19 of the Universal Declaration on Human Rights and the Covenant on Civil and Political Rights asserts the following: “Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>361</sup> According to Ziad Baroud, a Lebanese lawyer, Lebanon’s legal institutions provide a framework for enacting FOIA due to the fact that Lebanon ratified the International Covenant on Civil and Political Rights in 1972.<sup>362</sup> Moreover, in the introduction of the 1990 Lebanese Constitution it is stated that Lebanon is an active founding member of the United Nations, and is bound to its articles as well as the Universal Declaration on Human Rights.

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<sup>359</sup> Gilbert Doumit, interview by author, 19 April 2009, Beirut

<sup>360</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 4.

<sup>361</sup> Ibid.

<sup>362</sup> Ibid.

Further hope can be taken from more recent developments in the call for reform through freedom of information in Lebanon. The Lebanese Transparency Association (LTA) is currently carrying out a project for enactment of a freedom of information law in Lebanon. For LTA, Freedom of Information can “redefine the relationship between the citizens and their state.”<sup>363</sup> Khalil Gebara, Co-Executive Director of LTA, noted that the debate on FOI cannot take place in isolation of a general reform agenda for the Lebanese state.<sup>364</sup> LTA views the success of achieving FOI in Lebanon in terms of its impact on improving the livelihood of the Lebanese citizens by empowering them to demand change and effectively engaging them in the change process. The law is one step forward in a series of reforms that the Lebanese government should adopt towards improving the quality of governance in Lebanon. According to Gebara, the political elite in Lebanon are not ready to take these steps and this poses an obstacle towards achieving real freedom of information in Lebanon.<sup>365</sup> In fact, Gebara explains that the political elite have imposed an approach to public affairs that basically goes “against our civil rights” that entail open government; for this reason the debate for FOI in Lebanon takes place within the debate for civil liberties and the rights of participation.<sup>366</sup> LTA is working closely with the Lebanese Parliamentarians against Corruption (the Lebanon Chapter of Arab Parliamentarians against Corruption). This technique enables LTA to have government insiders carrying out the lobbying for reform that begins with a law allowing access to government records. LTA recently launched a project to implement FOI in Lebanon along with a set of anti-corruption reforms (which include a component on public education). Gebara explained that the legal drafting of a FOI law for Lebanon constitutes a very small component of what

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<sup>363</sup> Khalil Gebara, interview by author, 14 April 2008, Beirut

<sup>364</sup> Ibid.

<sup>365</sup> Ibid.

<sup>366</sup> Ibid.

LTA plans to achieve. With the help of the American Bar Association (Rule of Law Initiative), LTA has formed an alliance to lead the transparency and FOIA campaign in Lebanon. This alliance will oversee the steps of the project that seeks to enact a law on FOI in Lebanon, raise awareness on its utility and use it to combat corruption. The alliance constitutes of:

- \* Local NGOs: LTA, Lebanese Youth Shadow Government, Nahwa-el-Muwatiniya, and ADDL (Association pour la Defense des Droits et des Libertes)

- \* Representatives of OMSAR, Ministry of Justice, Ministry of Finance

- \* Representatives of the Syndicate of Lawyers and representatives of the Chamber of Commerce

- \* Representatives from Labor Union, Media and Journalists

- \* Lebanese Parliamentarians against corruption

LTA plans to carry out its plan using three strategies represented by three working groups for this project: Lobbying Group (mainly Members of Parliament lobbying other Members of Parliament for the adoption of the law), Advocacy Group (led by LTA and other NGOs this group along with media representatives) seeking to raise awareness on the law through education, campaigning, training for private sector, and a Legal Drafting Group led by ADDL and other lawyers.

It is interesting to note that the alliance includes a wide range of stakeholders that have direct interest in a new law promoting access to public information. However, the private sector can be argued to be much less represented. Advocacy groups should align themselves with the businesses in the private sector in support of transparency. The NGO world often ignores the fact the businesses are major beneficiaries of government transparency and should be treated as partners.

The law currently being drafted should cover the Lebanese government and all public agencies' past performances.<sup>367</sup> In addition, it will establish an independent oversight agency to oversee regulation and implementation of the law once enacted. Gebara notes that regarding Parliamentary voting records, although they fall under the internal regulations for the Lebanese Parliament, LTA, in partnership with Nahwa-el-Muwatiniya, plans to include such reforms under a new FOI law in Lebanon.<sup>368</sup>

Nahwa el Muwatiniya is a Lebanese NGO that recently launched a project highly relevant to this thesis topic entitled: Lebanese Parliamentary Monitor (LPM). The Lebanese Parliamentary Monitor sought to provide a non-partisan informative platform that disseminates information on the performance of Members of the Lebanese Parliament. According to Gilbert Doumit, Nahwa el Muwatiniya Board Member, the project began because there was a deep need for such information not only to be made available but also to be documented, centralized and made accessible to the public.<sup>369</sup> The Lebanese Parliamentary monitor used secondary sources of information that pointed to policy stances of the Members of Parliament (mainly through media outlets and the Official Gazette).<sup>370</sup> Primary sources of information were obtained through interviews where legislators were asked to answer a questionnaire based on five policy priorities that Nahwa el Muwatiniya listed for them. This method of obtaining information was needed since voting records are not made available to the public. According to Doumit, there are no legal limitations or restrictions on publicizing voting records; they are simply not documented at the time.<sup>371</sup> The public can only find out about the legislator's policy stances through what is available in the media. There are no

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<sup>367</sup> Khalil Gebara, interview by author, 14 April 2008, Beirut

<sup>368</sup> Ibid

<sup>369</sup> Gilbert Doumit, interview by author, 19 April 2009, Beirut

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

legal proceedings that require this type of information to institutionally archived and publicized. Voting records are critical information categories that the public deserves to know. As such, LPM sought to document to make available these policy stances of Lebanese legislators. The project website successfully introduced an important online resource containing this type of information for Lebanese civil society, academics, journalists and private businesses.

Regarding the next steps, Nahwa el Muwatiniya will continue to be involved in any projects to introduce and raise awareness on citizens' right to know. In fact, one of the major objectives of LPM was to create a demand for information and to raise awareness on the right to know. It aimed at "creating a new culture by showing people that they have the right to obtain information and know about the performance of their public officials."<sup>372</sup> Nahwa el Muwatiniya collected and centralized this information because its availability enhances people's capacity to participate more effectively in public affairs. One major aim was to spread awareness on the need for information. In the future, it will be important not only to campaign for legal reforms that increase openness but also to create culture that demands information and is capable of making use of public information. Doumit believes that civil society in Lebanon today may not be effectively geared towards policy changes and effective lobbying but that FOI will establish new ideas for reform among civil society.

Open information about the performance of public officials will induce more NGOs to work on policy-related issues. Once government becomes more open, it widens the chances of participation and advocacy.

Lack of government records and information in Lebanon raises the following questions. What should the Parliament be monitoring as a legislative and oversight

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<sup>372</sup>Gilbert Doumit, interview by author, 19 April 2009, Beirut

body? What basis do citizens vote on? How can civil society effectively lobby for changes? How can citizens pressure their representatives to fulfill demands without an informed opinion on what is happening? The lack of information not only affects voting choices, but also the role of the Lebanese citizen as well as the role of oversight agencies.<sup>373</sup> According to Doumit, without a free flow of information channels, the Lebanese will remain incapable of holding their elected officials accountable.<sup>374</sup> His view is echoed in this thesis. Freedom of Information can ultimately shift the balance of power in Lebanon from sectarian elites to new groups, provided they have the willingness and capacity to employ information in the service of democratic reforms. Civil society in Lebanon embodies the claim for civil and political rights in a political scene governed by narrow sectarian interests. For this reason, NGOs like Nahwa-el-Muwatiniya and LTA have a pressing need to advocate for open information channels that can curb corruption. The policy process in Lebanon must open up to such groups, allow them to be informed of all processes, and demand their input. It is their right as well as the right of all citizens.

## **F. Conclusion**

This chapter began with a background on its state institutions then proceeded to a brief description of current political events. Moving on to a brief overview on the role of civil society, this thesis asserts that there is indeed in Lebanon a ‘market’ for a freedom of information law to be enacted. In other words, despite its absence, the Lebanese need not start from scratch. Calls for government openness have already begun. Moreover, despite the absence of this law and its non-existence in the

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<sup>373</sup> Gilbert Doumit, interview by author, 19 April 2009, Beirut

<sup>374</sup> Ibid.



constitution, the Lebanese system has some important foundations for the enactment of the law.

Implementation and evaluation are separate and will be tackled in the next chapter on recommendations. The chapter has also discussed current practices in the Lebanese public administration and the impact of the civil war on its agencies. In the final analysis the chapter tackled the role of administration reform and the government's effort to use information technology. To keep up with global trends the Lebanese government must undergo a paradigm shift in its approach to information services. The shift should effectively raise the level of citizen engagement to a level of collaboration through two-way communication channels. This chapter included a short section on the current campaign for freedom of information in Lebanon that the Lebanese Transparency Association, along with its partners, is leading.

Beyond enactment of a freedom of information law, the phase of implementation will bring the Lebanese stakeholders face to face with new challenges where larger segments of the population and of civil society will need to get involved in ensuring the law's implementation and utility are being met. However, for the time being, two important legal settings do exist; the fact that Lebanon is a member of the UN and the fact that Lebanon ratified the International Covenant on Civil and Political Rights. Moreover, Mohammad Matar, President of LTA, states another reason for optimism namely "the Lebanese constitution as an appropriate context for enacting legislation on the right to access public records."<sup>375</sup> He adds that the state's hesitance to enact such a law or any such delay contradicts with "the spirit of the constitution and is

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<sup>375</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 12.

antagonistic to the nature of Lebanese coexistence.”<sup>376</sup> Not only does the absence of FOIA in Lebanon violate the international legal order but Matar goes a step beyond and asserts that, in Lebanon, freedom of information is essential to Lebanese coexistence.<sup>377</sup> Indeed FOIA in Lebanon can help create a non-partisan space for debate and policy dialogue based on facts and records in a country that is driven by confessional politics.

There is a wide gap that exists in Lebanon between the state and its citizen. Lack of openness, information sharing and communication channels largely accounts for this gap. Civil society is at a risk of remaining unable to articulate its demands and priorities because it remains uninformed on crucial aspects of government performance. For instance, although the public budget is published, Lebanese citizens are unable to obtain details on the budgets of each Ministry.<sup>378</sup> Moreover, although final Ministerial decrees or legislative outcomes are made public, citizens and civil society are unable to track the process of policy formulation because parliamentary committee meetings are secret as well as the processes of executive decrees. The incapacity to track changes and amendments in such laws truly inhibits effective participation.<sup>379</sup> The case of Lebanon shows that there are three levels for reform and freedom of information legislation that ought to be taken into consideration. The three levels result from the types of undisclosed information: information that is currently undisclosed according to law (secret information), information that is not being documented and information that may be documented but that is not yet accessible.<sup>380</sup> Enactment of a freedom of information law in Lebanon should consider these three types of information absent from the Lebanese public arena. This chapter has shown a deep need for this law to exist,

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<sup>376</sup> Lebanese Transparency Association, *The Right to Access Information* (Lebanon: Lebanese Transparency Association, 2004), 13.

<sup>377</sup> Gilbert Doumit, interview by author, 19 April 2009, Beirut

<sup>378</sup> Ibid.

<sup>379</sup> Ibid.

<sup>380</sup> Ibid.

provided it is coupled with close vigilance and commitment to the principles of open government. FOI in Lebanon is a mechanism of accountability that is highly needed. What is missing is political will and commitment to the principles of FOI.

The final section of this thesis will present more specific policy recommendations on campaigning for, enacting and implementing a freedom of information legislation in Lebanon. It builds upon previous chapters and research findings to draw conclusions relevant to the case of Lebanon. In order to maximize the prospects for Freedom of Information in Lebanon, the next chapter shows the need to involve all stakeholders in the entire process and ensure the law adopts principles of openness, fairness and participation.

## CHAPTER V

### CONCLUSION AND RECOMMENDATIONS

*"Democracy is never a thing done. Democracy is always something that a nation must be doing."*

Archibald MacLeish (1892-1982)

#### **A. Recapitulation: The Implications of Freedom of Information**

The thesis began by posing questions on the nature, implications and effect of Freedom of Information. Previous chapters sought to answer these questions and draw links between an effective FOI system and a participatory system of governance. FOI is a tool for accountability and citizen engagement in public policy. Opening up the process and performance of government is a complex issue requiring a balance of various and often competing interests involving the individual and the state. Open Government is argued for on the basis of accountability, good governance and democratic participation.

Some argue that openness may sometimes sacrifice legitimate interests within government and may jeopardize other social values such as individual privacy and national security. Despite information sharing being controversial and involving stakeholders with different interests it is uncontestable that democratic government must make efforts to remain largely open and that citizens must meet this with efforts to hold public officials accountable. Information empowers and provides opportunities for change and improvement at all levels of the accountability and participation process.

David Brin describes the right to information and knowledge about government by recalling a Greek myth about Akademos. Akademos, a mortal, did a favor for the sun

god and in return was granted a garden wherein he could say anything he wishes, even criticism of the mighty Olympians, without retribution. “There were only two ways Akademos could truly be protected. First, Apollo might set up impenetrable walls around the glade, so dense that even keen eyes Hermes could not peer or listen. Alas, the garden would have few visitors to talk to. The alternative was to empower Akademos somehow to enforce god’s promise. The equalizing factor could only be knowledge.”<sup>381</sup> This legend has permeated Western thought on democracy and government. During the days of Pericles, free citizens of Athens used to gather at the Academy, named after that same garden of Akademos where individuals would freely debate issues of the day. For as long as Pericles was around, he was able to remind Athenians of the contract they had made; a pact of openness.<sup>382</sup> Today accountability in our world’s boundaryless academy is the only defense of freedom and the only guarantee of good government, in “a garden that stands proudly with no walls.”<sup>383</sup> Freedom of information is a main pillar of support to this academy. Coupled with the ability to debate freely and openly, an informed citizen is empowered by the ability to participate and ultimately influence government thereby making it more responsive.

A free academy where individuals participate and engage in acquiring information and in sharing knowledge is synonymous to an open society maintained by democratic governance. This thesis has introduced the principle and practice of freedom of information laws that allow citizens to access public records. It has shown how an informed citizenry is crucial to the public policy process and how the “right to know” is an inalienable human right that governments ought to respect. Previous chapters seek to answer the initial thesis question as to how FOI impacts good governance and

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<sup>381</sup> David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Massachusetts: Addison-Wesley, 1998), 326.

<sup>382</sup> Ibid.

<sup>383</sup> Ibid, 327.

democracy. In the final analysis the right to access information is inalienable from the right to participate and to have a government in service of the people. The enactment and implementation of FOI laws is the only way to show that governments understand and respect this right.

These laws are “grounded in the recognition that knowledge about the government’s actions is the necessary first step in oversight and accountability.”<sup>384</sup> “The position that a ruling body adopts towards the provision of information about its activities to a representative chamber or to the civil society at large will inevitably be colored by considerations about the proper role of government, as well as sheer political expedience.”<sup>385</sup> A policy of open transparent and responsive government can be effectively implemented when such laws stipulate how citizens and civil society organizations can be engaged in the policy process. Such laws effectively allow for policy makers to account for public input when reaching decisions, and to be accountable for the decisions reached.<sup>386</sup>

This thesis has analyzed FOI from a rights-based approach arguing that this is a fundamental right and a requisite for open and accountable government. A rights-based approach to development and democracy has evolved from a myriad of social, political and cultural struggles in the past decades encouraging international organizations like the UN to adopt a holistic approach to development where the people’s right to participate is considered sacred.<sup>387</sup> This allows for local citizen action to contribute to

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<sup>384</sup> David Banisar, “Government Secrecy: Decisions without Democracy,” (Washington DC: People for the American Way, 2007), 1.

<sup>385</sup> Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (London: Weidenfeld and Nicolson, 1988), 14.

<sup>386</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 10.

<sup>387</sup> IDS Policy Briefing, *The Rise of Rights: Rights-based Approaches to International Developments*, (Sussex: Institute of Development Studies, 2003), 3.

shaping future international standards.<sup>388</sup> It is within this context that the thesis advocates for freedom of information in Lebanon, assuming that local action will be taken to pressure government to conform to international regulations.

This last chapter will recapitulate on the research provided about global FOI systems, the implications of FOI (on openness and accountability) and the prospects for FOI implementation in Lebanon. In doing so, this chapter reflects on the theories and principles presented in the previous sections regarding the advance of freedom of information as a worldwide movement as well as its role in democratic governance and development. The chapter will conclude with the centrality of citizen's right to know and the need to take such an initiative in Lebanon. The major contribution of this thesis will be a section on policy recommendations for Lebanon to be carried out by government agencies, parliament, civil society and media. The recommendations will be presented in the form of an action plan centering on short term, medium term and long term goals for the enactment and implementation of a freedom of information legislation in Lebanon.

## **B. Significance of Thesis Topic and what can be Concluded**

This chapter is divided into several parts. First it presents the major findings of this research and the important pillars of freedom of information including its legal bases. The second part will focus on policy recommendations for the case of Lebanon. Finally, the third part draws conclusions and suggestions for future research. The aim is to recapitulate on major research findings that constitute the basis for policy recommendations.

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<sup>388</sup> IDS Policy Briefing, *The Rise of Rights: Rights-based Approaches to International Developments*, (Sussex: Institute of Development Studies, 2003), 4.

This thesis has shown that commitment to information sharing is crucial because it is a form of power sharing that governments almost always tend to monopolize. Secrecy is the enemy of accountability and yet true open government is difficult to maintain. It requires a long-lasting commitment to the principles of freedom of information and diligent oversight on the practice of information dissemination to the public. It also requires that recipients of information utilize it for the public interest by relying on this information to increase the quality of their participation in public policy. Change towards effective participation and responsive government occurs on more than one level (the recommendations will address these levels and social dimensions). In recent years there has been a great shift in perception on the right to participate. Today it is viewed as a right in itself and not only as an instrument or an enabling right.<sup>389</sup> Openness by government is the most significant way of reducing corruption and ensuring that rights, such as the right to participate, are respected and protected.<sup>390</sup>

### **C. Legal Bases for Freedom of Information**

Article 19 of the United Nations states, “ Everyone shall have the right to freedom of expression; this right shall include *freedom to seek, receive and impart information* and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>391</sup> The application of Article 19 allows people to articulate demands based on informed perspectives making electoral democracy meaningful and building public trust in government

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<sup>389</sup> IDS Policy Briefing, *The Rise of Rights: Rights-based Approaches to International Developments*, (Sussex: Institute of Development Studies, 2003), 4.

<sup>390</sup> David Banisar, “Government Secrecy: Decisions without Democracy,” (Washington DC: People for the American Way, 2007), 7.

<sup>391</sup> United Nations, Universal Declaration of Human Rights, (UN, accessed on 10 January 2008); available from <http://www.un.org/Overview/rights.html>, Internet.



administration.<sup>392</sup> The UN recognizes freedom of information as a fundamental right.<sup>393</sup> In 1946, during its first session, the UN General Assembly adopted resolution 59(1) which stated: “Freedom of Information is a fundamental human right and...the touchstone of all the freedoms to which the UN is consecrated.”<sup>394</sup> According to Mendel (2000), more should be done by the UN to emphasize the right to obtain government held records for example “the adoption of a stronger declaration on FOI by the UN would go some way to addressing this problem and would help to provide an impetus for the adoption of national legislation.”<sup>395</sup> The wording of Article 19 of the UN does not explicitly enforce the right of citizens to enjoy a free flow of information and communication channels. As Mendel points out, there is much to be done on the level of international organizations to enforce and recognize this fundamental right.<sup>396</sup> The ambiguous wording of Article 19 has led to arbitrary interpretation of the clause by member states, leaving some countries like Lebanon, without the legislated right of citizens to access public records.

There are ten general principles that any freedom of information system must embrace and the absence of any of these principles constitutes a flaw in the system:<sup>397</sup>

\* **Access to information is a right of everyone** (regardless of nationality or profession).

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<sup>392</sup> Agnes Callamard, *Development, Poverty and Freedom of Expression* [publication online] (Sri Lanka: UNESCO 2006, Conference on Freedom of the Media and Development, accessed 11 February 2008); available from <http://www.article19.org/pdfs/publications/development-poverty-and-freedom-of-expression.pdf>, Internet.

<sup>393</sup> Article 19 & The British Council, *Access to Information Booklet*, [publication online] (British Council 2004, accessed 12 January 2008); available from <http://www.britishcouncil.org/governance-foe-booklet.doc>, Internet.

<sup>394</sup> *Ibid.*

<sup>395</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, (India: UNESCO, 2003), 42.

<sup>396</sup> Helen Darbishire, “The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective,” *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 4.

<sup>397</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 27.

\* **Access is the rule – secrecy is the exception!**

\* **The right applies to all public bodies** (all institutions funded by the public and private bodies performing public functions).

\* **Making requests should be simple, speedy, and free.**

\* **Officials have a duty to assist requestors.**

\* **Refusals must be justified** (evidence of demonstrable harm to legitimate interests, such as national security or privacy should be specifically defined by law and refusals must clearly state the reasons for withholding the information).

\* **The public interest takes precedence over secrecy** (information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information).

\* **Everyone has the right to appeal an adverse decision.**

\* **Public bodies should proactively publish core information** (information should be current, clear, and in plain language).

\* **The right should be guaranteed by an independent body** (an independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information).

The case studies presented on the experiences of the US, Sweden and South Africa provided evidence that embracing these principles through lip-service is insufficient. Institutional guarantees and top political commitment are crucial in implementing laws that bring to life principles of equal and fair access to timely and accurate information. Fairness refers to “the opportunity for all interested or affected parties to assume any legitimate role in the decision-making process.”<sup>398</sup>

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<sup>398</sup> Thomas Webler and Seth Tuler, "Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study." *Administration & Society*; Nov 2000; 32, 5; 568.

According to a study by Webler and Tuler (2000), “one of the key administrative issues confronting decision makers today is how to best involve citizens in public decision making.”<sup>399</sup> In their study of administrative procedures and policy processes they propose a model of citizen participation and point out that the challenge is “to design a participatory decision-making process that produces effective policy outputs.”<sup>400</sup> In addition, “fair participation in agenda setting and rule making means that all have the same opportunity to take part in these activities. Fairness in the discussion and debates refers to making sure that everyone has an equal chance to make their voice heard and to shape the final decision.”<sup>401</sup> Therefore, it is reasonable to add another principle of an effective FOI system: it must be followed by mechanisms for citizens and civil society to make use of the information such as open debates, public hearings and consultations. In Lebanon, it is fair to conclude that there is fertile soil for such initiatives. Future efforts should build on current and previous campaigns to solidify demands for open policy processes that allow greater participation.

#### **D. Recommendations for Lebanon**

This thesis traced the origins of the right to access information and argued for the implementation of a FOI regime in Lebanon in a way that enhances responsive government and encourages citizen participation. A need for openness occurs once a person understands the connection between an open society and lack of corruption. OECD statistics show that countries with well-developed legislation on openness have

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<sup>399</sup> Thomas Webler and Seth Tuler, "Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study." *Administration & Society*; Nov 2000; 32, 5; 566.

<sup>400</sup> *Ibid*, 568.

<sup>401</sup> *Ibid*, 570.

the tools needed to keep corruption at its lowest levels.<sup>402</sup> Information is power. The very fact that anyone can demand information from government gives a sense of power. Government officials will almost always feel discomfort at sharing information; this is obvious by continuous efforts to withhold information from the public. Information initiates change by replacing feelings of confusion and helplessness with knowledge and truth. It can effectively build trust between citizens and their public officials.

In Lebanon, there is a great need to steer away from an elite-based policy process where only the few enjoy access and only a few have influence over policy outcomes. Informed citizens act as a check on government's decisions. Lebanese officials have always tended to promise one thing and do another thing or nothing at all, and people have few means of holding them accountable in the absence of accurate and timely information. Without the check of an informed citizenry, "government officials are more likely to make decisions contrary to the public interest, abuse their authority and engage in corrupt activities."<sup>403</sup> The study showed that Lebanon's Constitution and democratic institutions pose no legal threat to the enactment of a freedom of information law. What is needed is the political will to change and 'open up' which can come about from civil society pressure and demand for greater openness. The foundations have been laid through previous and current campaigns. Indeed awareness to the need for information sharing between the citizen and state has already begun to surface. However, state institutional guarantees remain missing. In addition, the thesis poses the question of whether Lebanese citizens are ready to utilize information once it is released. This thesis is being written at a time where the prolonged political deadlock

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<sup>402</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 89.

<sup>403</sup> David Banisar, "Government Secrecy: Decisions without Democracy," (Washington DC: People for the American Way, 2007), 3.

has resulted in violence and incited sectarian tensions. Where is the Lebanese civil society that this thesis refers to?

It is the contention of this researcher that once information about government performance is released it will initiate civil society activity. The reason why there may be a current absence of participation in some areas may not be because the Lebanese are unwilling but because they are incapable of effective participation in all policy areas. Much secrecy and 'behind-the-door' policies are not conducive to a civic culture. Civic culture by nature is one where people are free to participate. This thesis argues that due to the absence of access to critical government records, such as Parliamentary voting records, the Lebanese remain inhibited in the ability to democratically hold their politicians accountable. "Openness is something that must be learned, and also something one "learns to want."<sup>404</sup> By enacting a freedom of information law in Lebanon, the State would have taken a step towards citizens learning to want openness and learning to demand participation. Continued secrecy on the other hand prolongs the cycle of corruption and under-development. Lebanon is part of the international community which has now embraced the right of citizens to access public information. Indeed the global movement towards information sharing is the context within which Lebanon exists today and must adapt to.

The right to access government records is not a cure for all government problems nor does it guarantee that citizens will improve policy processes. However, the free flow of information about government activities is a crucial prerequisite to an engaged citizenry and a responsive State. The case of Lebanon presents opportunities as well as challenges for initiating a freedom of information system. One could argue

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<sup>404</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 89.

however that the challenges are not overbearing nor should they stop efforts towards the enactment and implementation of a FOI law that respects the values of citizen's rights and duties. In other words, the challenges are not impossible to overcome given political commitment and civil society involvement. Lebanon is a party to all major human rights statutes touching upon the right to know, including the International Covenant on Civil and Political Rights as well as the Universal Declaration on Human Rights. The following section presents a list of policy and action recommendations addressed to the respective stakeholders. These recommendations are presented in a format aligned with the three phases in any FOI system (enactment, implementation and monitoring):

### ***1. Phase One: Enactment of a Freedom of Information Law***

#### ***(Recommendations on the Short-term):***

This phase is critical to the existence of an effective FOI system because it is during this phase that legal substance is discussed, regulations are agreed upon and the legislative body officially passes the law. Key issues to consider in assessing whether legislation provides for effective exercise of the right to FOI include “exceptions and exclusions, secrecy laws and the right of appeal.”<sup>405</sup> Lebanon is ‘lucky’ to have decades of world-wide experience in FOI laws to rely on. Indeed, the Lebanese stakeholders would benefit a great deal from understanding the strengths and weaknesses of laws enacted in the past and draw lessons from them.

Mistakes and shortcomings that were highlighted in this thesis mainly centered upon the role of government officials; top political commitment is crucial. In addition, experiences in India, Mexico and Eastern Europe emphasize the role of an active civil

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<sup>405</sup> Mendel, Toby. *Freedom of Information Legislation: Progress, Concerns and Standards* [article online] (Global Corruption: 2002, accessed 10 February 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008438.pdf>, Internet.

society that demands and utilizes information. The role of media and e-government services also help ensure that information reaches the greatest number of people possible. Lebanese actors must ground the new law in these previous experiences. Lebanese civil society would benefit from building upon the work of LTA and Nahwa el Muwatiniya in the initial stages. Demand for information should come from both the people and from public officials. The Lebanese Parliament is the elected body of representatives that must stress the interests of their constituencies in obtaining public records. Accurate information is a highly needed vehicle for change in the relationship between the citizen and public officials in Lebanon.

Parliament and all other government agencies must immediately engage with civil society groups and the media to shed light on critical information areas that there is a need for (such as security and public budgeting). The Lebanese Parliamentary Monitor team set up focus groups with various civil society organizations and set out surveys in order to highlight priority policy areas for civil society.<sup>406</sup> Surveys and focus groups can help shape the final content of the law. These discussions help answer questions such as what public bodies should be covered in the law. The Campaign for Freedom of Information must form a coalition large enough to include organizations and individuals from all Lebanese regions, backgrounds and affiliations. According to McDermott, the best way to maintain a coalition is to focus efforts on one area of common interest for everyone. A coalition may find great benefit in putting aside their differences and working towards one common goal that everyone shares: the need for information.<sup>407</sup> This common interest must guide their advocacy and lobbying efforts. It is useful to highlight that the effectiveness of civil society in all its components is a function of

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<sup>406</sup> Gilbert Doumit, phone interview by author, 19 April 2009, Washington D.C. (to Lebanon)

<sup>407</sup> Patrice McDermott, interview by author, 31 March 2008, Washington D.C.

access to information and knowledge and therefore uniting efforts in a campaign for the right to know is necessary.

After consultations with government agencies, the Campaign must propose a draft law. The draft law must adhere to the following principles and practices:

Equal rights of all citizens to access information

All government agencies must be included in the law (dissemination must cover information about the financial management of state; including budgetary information and information about all stages of public procurement processes. In many countries the Judiciary branch is exempted. However if FOI is to be used as a tool for better governance, it is imperative that access to judicial information is included in its scope)<sup>408</sup>

The right to appeal to an independent body must be mentioned in the law; it should include clear mechanisms and transparent procedures for appealing to the Courts regarding decisions on information dissemination.

All correspondences among public officials must be included in the law (correspondences pertaining to public affairs is not a private matter, it is the public's right to know how discussions are headed and how decisions are reached)

Exemptions from the law must be reached through consultation with stakeholders and by a commitment of keeping exemptions to the bare minimum (establish a Public Harm test may be useful to ensure that exemptions are only in the case of severe threats to national security)

Officials and civil servants must be forced to archive all correspondences as well as detailed policy processes that lead to final decisions

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<sup>408</sup> Helen Darbishire, "The Rights of Access to Information in Fighting Corruption –A Human Rights Perspective," *International Council on Human Rights Policy Working Paper* (Geneva: July 2007): 15.



Agencies must respond in a timely manner (the law should set a time limit no longer than 30 days)

The creation of the Office of the Independent Information Commissioner that reports directly to Parliament (an Ombudsman that acts as a link between the people's demand for information and their representatives)

Access to information laws and implementation regulations should state clearly that the failure of public officials to respond to requests for information is a violation of the public's right to access public information.<sup>409</sup>

Journalists and civil servants must enjoy 'whistle-blower' protection. This should be balanced and assessed according to the same logic of the Public Interest Test.

The creation of an independent committee responsible for oversight composed of: NGO representatives, journalists, academics and activists. The committee's role is to research and report to the Commissioner from the perspective of the information recipient and to raise complaints on cases that would not otherwise reach the Commissioner's office.

Indeed, LTA has translated a draft FOI law and included it as part of their recommendations. This thesis will not recommend a particular law but suggest that laws should be tailored to the Lebanese context, culture and society. The legal text itself must start with definitions of key terms including: "public official," "public agency," "personal information," "commissioner," "private body" and "publish."<sup>410</sup> It is for this reason that the campaign for FOI must reach out to academic institutions as well as NGOs across the nation for their input and must carry out an information-needs-

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<sup>409</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* (New York: Open Society Institute, 2006), 17.

<sup>410</sup> World Bank, *A Model Freedom Of Information Law* [Article Online] (Washington Dc: The World Bank 2007, Accessed 29 April 2008); Available From [Http://www1.worldbank.org/publicsector/legal/modelfoiaw.doc](http://www1.worldbank.org/publicsector/legal/modelfoiaw.doc); Internet.

assessment prior to proposing a draft law to Parliament. It is also necessary to make clear to government agencies that publicizing information must not be viewed as a threat but rather as an opportunity to engage with the public and acquire new input. Openness promotes trust between the citizen and the state officials; it reduces corruption and promotes rights under the rule of law. This thesis has shown that greater information sharing can effectively curb corruption and encourage participation aimed at ensuring responsive government.

The campaign for FOI in Lebanon would benefit from raising awareness on the links between better governance and the right of citizen access. Awareness must include empowering citizens on the use of information. They must be told how information helps them shed light on problems in their communities, checking whether authorities are doing enough to solve it, and finally evaluating the impact of policies, government spending as well as the process of decision making. As such conducting public hearings in the five Muhafazat (North, South, Beirut, Mount Lebanon and Bekaa) would be useful in delivering the message. Public hearings should bring together citizen groups, Members of Parliament as well as journalists to discuss ways in which to maximize the utility of the FOI law. The process of enactment must be linked to how these stakeholders envision its implementation and the critical areas in which government must open up and share information with the public.

In addition to the public hearings the campaign must make widely available a Citizen's Guide at low cost to anyone who has an interest in obtaining government held documents. A Citizen's Guide must include details on the rights and duties of individuals accessing these documents and how they must expect public servants to react. Citizen engagement emphasizes "engagement vehicles" that essentially are

extensions of the arms of government.<sup>411</sup> Citizen participation should be organized around vehicles that maximize efficiency in information exchange by placing limits on agenda setting and ensuring that the relationship is that of consultation and exchange of ideas with non-government groups.<sup>412</sup> In Lebanon, these vehicles begin by reaching out to community-based groups in need of information to enhance the quality of participation and their relations to government officials, starting from their legislative representatives.

Beyond the content of the law itself, Lebanon must undergo reforms pertaining to the internal regulations of the Lebanese Parliament. The research attests to the fact that the absence of voting records is an impediment to effective citizen engagement. This area of information must be given priority and mentioned within a new law. For it is only informed individuals and groups that can effectively demand change and make demands based on knowledge of past experiences. Making competent judgments about the performance of their representatives is an important key to the process of accountability that requires “foremost that all parties have access to information that they feel is relevant.”<sup>413</sup> Access includes access to the process of deliberation as well as access to adequate information analysis.

## ***2. Phase Two: Implementation (Medium Term Recommendations)***

Lebanon faces a critical period where change needs to be aimed strengthening its state institutions are to maintain its democracy. Efforts must be directed towards improving its quality of governance and FOI is one important step in this direction.

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<sup>411</sup> Mark A. Glaser and others, “Involving Citizens in the Decisions of Government and Community: Neighborhood Based vs. Government-Based Citizen Engagement,” *Public Administration Quarterly* 30, Issue 2, 179.

<sup>412</sup> Ibid.

<sup>413</sup> Thomas Webler and Seth Tuler, "Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study." *Administration & Society*; Nov 2000; 32, 5; 583.

According to Bolongaita (2005), “post-conflict settings are marked by governance environments that are worse than before the onset of conflict.”<sup>414</sup> This is largely because “post-conflict environments present extraordinarily high opportunities and low punitive risks for corrupt activity.”<sup>415</sup> An effective Freedom of Information Law entails punitive consequences through independent oversight and increased participation. The obligation to publish records, documents and correspondences is a strong tool and guarantee against abuse of public funds. It is also an important step towards involving the Lebanese public in setting future policy agendas and keeping a watchful eye on the workings of their public officials. This enactment and implementation of this law can be argued to be needed today more than ever.

People will always tend to participate if they feel that their participation makes a difference. The mere enactment of a freedom of information act can show that government has nothing to hide and give people a reason to trust its agencies and civil servants. It shows that government’s intentions are for openness and knowledge sharing. Clearly the less information that is kept from citizens, and the greater the confidence they can have in its accuracy, the more likely they are able to sustain their demands.<sup>416</sup> However, a truly effective FOI system can only exist through a thorough and efficient implementation system. The responsibility for implementation is three-fold: government must disseminate timely and accurate information; citizens must utilize information to enhance their participation, and a third party Commissioner must oversee the process

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<sup>414</sup> Emil Bolongaita, *Controlling Corruption in Post-Conflict Countries* [article online] (Indiana: Kroc Institute for International Peace Studies, 2005, accessed 15 May 2008); available from <http://www.ciaonet.org.ezproxy.aub.edu.lb/wps/boe01/boe01.pdf>, Internet.

<sup>414</sup> United Nations, Universal Declaration of Human Rights, (UN, accessed on 10 January 2008); available from <http://www.un.org/Overview/rights.html>, Internet.

<sup>415</sup> Emil Bolongaita, *Controlling Corruption in Post-Conflict Countries* [article online] (Indiana: Kroc Institute for International Peace Studies, 2005, accessed 15 May 2008); available from <http://www.ciaonet.org.ezproxy.aub.edu.lb/wps/boe01/boe01.pdf>, Internet.

<sup>416</sup> Jeremy Pope, “Access to Government Information: Whose Right and Whose Information?” [article online] (Global Corruption Report, 2003, accessed on 11 March 2008); available from <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008432.pdf>, Internet.

and act as a judge. The following recommendations serve to guide the process of implementation; keeping in mind that this is a process that involves continuous efforts towards improvement and that enactment is not an end-state in itself.

The task of ‘opening up’ government activities and public policy processes is not an easy one. There are several issues at hand that need to be considered in the case of Lebanon. Based on previous experiences of other countries, it is common to expect that civil servants will resist the new principles and practices the FOI law introduces. According to Webler and Tuler (2000), “involvement through granting access to the public can place a burden for people in administrative decision making roles.”<sup>417</sup> Freedom of information and the public’s right to access to policy deliberation processes forces public bodies to make more justifications about their decisions and activities.<sup>418</sup> The availability of information on the daily activities and proceedings of government creates opportunities for new groups to be formed, new demands to rise and more accountability to be demanded. This may be received with hesitation by bureaucrats that are accustomed to a more closed system.

Awareness at all levels of the hierarchy supported by top political commitment to FOI is the key to the implementation process. This has to be met with a vigilant Lebanese civil society, able and willing to maximize on information, file for requests, carry out appeals and raise awareness to the general public on the benefits of access. Indeed, advances in public administration and public participation theory and practice have emphasized the positive impact that such participation can create (including a major advantage for those in power expressed in enhanced quality of decisions made

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<sup>417</sup> Thomas Webler and Seth Tuler, "Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study." *Administration & Society*; Nov 2000; 32, 5; 588.

<sup>418</sup> Ibid.

and a decrease in citizens backlash of government policies).<sup>419</sup> This should be the guiding ethos in Lebanon: information benefits both sides and all three sectors (the public sector, the private sector, and civil society). The following activities must be undertaken to ensure an effective implementation strategy:

- Training: Once the campaign takes off and partnerships are established that include Members of Parliament as well as the Ministry of Information training should begin for all bureaucrats in public bodies. Firstly, Public bodies should be trained to respond to requests for information in a consistent manner. Transparency in internal systems, reporting and archiving is essential to information storage and dissemination. Training for civil servants should aim at reaching an understanding of the dynamics and implementation mechanisms of information dissemination. It can help eliminate resistance to change and ensure that all public records are made available to those requesting it.

- Empowering users of the law through training for journalists and civil society organizations on how to use the law and diffuse information

- Establishing Citizens Information Centers: these need not be permanent but are essential for the transition phase to government openness. Citizen Information Centers have been used in several developing countries to ensure reach-out to constituencies, provide information services through hearings, and provide legal assistance on information requests and the right to appeal.<sup>420</sup>

- Using advocacy to promote other reforms that access to information may initiate the need for.

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<sup>419</sup> Thomas Webler and Seth Tuler, "Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study." *Administration & Society*; Nov 2000; 32, 5; 588.

<sup>420</sup> Organization for Economic Cooperation and Development, *Open Government: Fostering Dialogue with Civil Society* (France: OECD, 2003), 12.

### ***3. Phase Three: Monitoring and Evaluation (long-term recommendations):***

The experiences of Sweden and the US clearly show that maintaining freedom of information and ensuring the application of the core principles of access to public information is an ongoing struggle. In other words, there simply cannot be “too much government openness.” It is something that democratic societies continue to strive for and it is always in progress. For this reason, monitoring and evaluation are a long-term endeavor involving all stakeholders in the process of ensuring dissemination of all records, documents and correspondences. This is crucial to maintaining the democratic system itself. Democracy in Lebanon can only be strengthened when its citizenry can effectively articulate their demands and hold their public servants accountable.

The enactment of a Whistleblower Act by decree: intended to protect civil servants from being punished when they make a disclosure of information relating to violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuses of authority, or substantial dangers to public health. Public agencies must be prohibited from discriminating against such individuals by penalizing them through appointments, transfers, promotions, pay or benefits. Instead civil servants must regard it as part of their duty to share with the public any mismanagement by public officials and guard public interest through information dissemination.

Employing Information and Communication Technology (ICT) to expand on information outreach and citizen participation: all Ministries must create web-portals that ensure a two-way communication is possible.

Human resources need to be reinforced at the government level through training and recruitment of support staff to the Information Commissioner.

The Office of the Independent Information Commissioner must work to ensure the right to appeal is preserved. The Commissioner must act as an independent third

party when giving input on cases of information requests. The Commissioner's input will be respected to the extent that it is non-partisan and to the extent that it adheres to the principles of freedom of information put forth by law.

Employing the latest in Information and Communication Technology to enhance the efficiency of government services. In addition, maximizing on government outreach through online portals with the aim of involving the Lebanese diaspora in participating in government decision making.

Incorporating FOI principles and practices in the civic education curriculum for students between the 8<sup>th</sup> and 12<sup>th</sup> grade with the aim of raising awareness on the importance and relevance of public records to democracy. It is crucial for the next generation to be aware of their rights to access these documents as well as their duties to utilize factual information when demanding accountability. Lebanon can increase its chances of steering away from its elite-based approach to public policy by incorporating the right to know and the right to participate in education.

In conclusion, this research shows the importance of access to public records to development and democratic governance. The research provides foundations for more in-depth studies on the nature of the UN's commitment to civil and political rights, of which the right to access government records remains cardinal. Although the Global Movement towards freedom of information shows no signs of slowing down, much work still needs to be done in the international community. According to Darbshire (2007), "Clarifying and establishing international standards on the information which must always be made available, generally proactively, with an emphasis not just on the general need for information but the detailed standards on which information should be revealed.

Much of the literature points to the need for a more assertive UN when it



comes to ensuring the rights and liberties of individual citizens. Future research must look into the impact that Freedom of Information can have on public officials and not only citizens, and the applicability of such a law to developing and underdeveloped countries. The wording in UN Article 19 leaves room for ambiguity and much room for interpretation when it comes to implementation by member states leaving windows of opportunity for exclusions and non-conformity to the principles of FOI. The vagueness in some UN articles and declarations, making it possible for governments of member states to distort their obligations towards their citizens. The Vienna Declaration is very clear and the Millennium Development Goals back this up in a solid manner. What is needed is a new vision for development integrated with human rights, including the “right to know and access public information.” Only an internationally legitimate organization with the capacity to implement Freedom of Information and Development projects all around the world can integrate the human rights approach to economic stability. Access to information forces governments to act in a more transparent manner and hence with increased accountability. The UN is the most qualified entity to achieve this link and ensure the guarantee for democracy and development – informed and engaged citizens. Information effectively promotes development because it gives a voice to marginalized groups in society and allows interest articulation. Not only does the existence of accurate information improve the quality of participation, it also forces public officials to know that the public is ‘keeping a close eye’ and curbs corruption. For this reason, this thesis proposes that more work be done and efforts put into this area by international organizations.

## **E. Implications for Future Research**

The main theme of this thesis has been the right to access all government

records by any interested entity, be in an individual or a group. The thesis argued that this right is based in legal statutes and grounded in democratic theory. In addition, public administration and civil servants must work to support further openness and information sharing because great participation leads to policy outputs that serve the public. This is grounded in public administration and political literature. The main research problem was stated as the absence of information in Lebanon. This inhibits transparent governance and undermines citizens' ability to voice their demands. The Lebanese public cannot hold its political representatives accountable in the absence of critical information about their performance. The thesis having answered the originally stated question also presented recommendations for the advent of Freedom of Information in Lebanon.

The right to freedom of information is “founded on the idea that public bodies hold information not for themselves but on behalf of the public.”<sup>421</sup> This thesis argued that information is a powerful resources and a potential vehicle for change and as such “individuals should be able to access all such information unless there is an overriding public interest in keeping it secret.”<sup>422</sup> The particular choice of the three surveyed countries was intended to shed light on different relevant variables. First in the case of Sweden (that has the earliest FOI law in the world), it is evident that FOI contributed to government transparency. More importantly, the case of Sweden testifies to the fact that democracy is ‘never a thing done.’ The concept of constant progression, learning, improvement and evaluation of government openness also applies to information and its impact on citizen’s perceptions of the State. Second, the case of the United States helped shed light on the importance of civil society vigilance even after decades of

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<sup>421</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (India: UNESCO, 2003), 135.

<sup>422</sup> *Ibid.*

implementing a FOI system. Opportunities for public access using the internet are immense in the US. However, recent experience has shown the importance of top political commitment to FOIA otherwise its principles are overridden with secrecy practices. In South Africa, the incorporation of equal rights of access to government records is protected by Constitution. In a country that emerged from decades of internal conflict, South Africa today is a successful example in joint efforts between government and civil society to monitor and implement freedom of information.

Lebanon can benefit greatly from these experiences and many others in seeking to enact a modern freedom of information law that takes into account advances in information and communication technology.

The main findings in this thesis have been reached through qualitative analysis, a review of available literature as well as an in-dept exploration into the case of Lebanon. Interviews conducted provided significant insights to the workings of civil society coalitions, Courts, legislative bodies and government with regards to information sharing. There is no doubt that the availability of accurate and timely information on the workings of government and government officials, helps enhance the democratic system. A human rights approach was employed in sections of this thesis; arguing that the right to access government records is a fundamental and enabling human right. It is fundamental because government information belongs to the public and it is enabling because it enables the pursuit of other civil and political rights. More specifically, access to information empowers individuals and societies to pursue their right to development, participation, and their right to hold their officials accountable. This is the essence of the 'civic culture.' Main Findings of thesis: linking information to maintaining democracies, the importance of the individual, a human rights and civil rights approach to public administration and management of government affairs.

Lebanon's prospects towards freedom of information are rather promising. Despite this practice being absent from Lebanese government, parliament and public administration, civil society groups today have begun to demand change. Their demands do not end at merely voicing their desires to obtain government records. The Lebanese Transparency Association along with a coalition of NGOs have launched a campaign that engages public officials in the debate about FOI and advocates for more government openness through adoption of this law. Indeed the only hope for change in Lebanon may lie in the prospects of overcoming the failing traditional model of sectarian elites and replacing it with a true a citizen-based democracy. If that is ever to happen or even come close, information sharing is an essential prerequisite. How else are citizens supposed to participate? If the assumptions, decisions, practices, behavior and attitudes are not based on information about current and past performance, then what are they based on? Future research in this area should look at the extent to which sectarian ties and communal interests replace state-owned information. In addition, this thesis has pointed out the need for further commitment from the international community but future research must look at ways in which international bodies can ensure commitment among states to the principles and practices of FOI. The advance of freedom of information would be strengthened when more international standards are published and shared around the world. In the final analysis, only knowledgeable and informed citizens about public affairs can truly make a difference.

It may be true that the availability of information without people maximizing on its use remains ineffective to make policy changes. A true civic culture is one that will employ all its resources, including information, to take decisions, participate and demand reform. In Lebanon, change must include efforts in media regulation, education policy, economic policy and find ways to consolidate civil society in general. The

challenge in the near future is to create platforms where citizens can participate in informative debates, voice their demands and articulate their interests. Only then can freedom of information play a role in shaping a government that is more responsive and a citizenry that is more engaged. Although the road for reform is long, the good news is that freedom of information consolidates every step along the way. It contributes to positive engagement in public affairs. The mere existence of information on all public bodies (including parliament and ministries) would ignite the formation of new civil society organizations and make their role more effective. Freedom of information is the backbone of democracy. If the Lebanese aspire to true democracy, open government and informed citizen participation is a major step towards that goal. Pressure on the Parliament to pass a law on freedom of information that ensures equal access to government-held records is essential. Every concerned citizen has a role to play in the process of enactment, implementation and continual evaluation of government's information practices.

Governing requires much more beyond the consent of people to be governed. It requires their active participation in overall policy and government proceedings. Lebanon lacks independent channels where citizens can express their concerns, voice their priorities and hold their representatives accountable. Lebanese public policy is knit by the few elite groups with access to their sect. Sectarian considerations dominate who wins in elections and who occupies public offices. Yet the implications go beyond who sits in public office. Sectarian considerations inhibit true citizenship based on equal rights to participate and the duty to hold public officials accountable. Freedom of Information is the most important first step because it enables other rights. Citizenship in Lebanon today remains of the uniformed type inhibiting true calls for reform. The call for information is not an end in itself though. A greater awakening is required to

ensure oversight and implementation of its principles. True self-determination is the ability to continue to be part of the system that governs. If the Lebanese are to form independent institutions, they must be aware of their duties to continue to be part of these institutions through informed debate, informed choices and enhanced participation. This requires a change of mindset. For Lebanon, the change will ultimately involve a shift from sectarianism towards a democratic civic culture.

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