



ICJ-Kenya



TRANSPARENCY INTERNATIONAL

Kenya



The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task, your task... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed.

Kofi Annan

VISION 2008

**RIGHT TO INFORMATION, RIGHT TO KNOW,
RIGHT NOW**

**PROPOSED DRAFT FREEDOM OF INFORMATION BILL, 2008
(FOI Bill, 2008)**

The Freedom of Information Bill, 2007 was before the 9th Parliament as the country approached the 2007 general elections however the Bill was not prioritized and thus lapsed. The FOI Network has since then revised the 2007 Bill following comments that came from a clause by clause deliberation of the 2007 Bill by the Energy, Communications and Public Works Parliamentary Committee as well as other comments and recommendations from meetings held with Government Officials and FOI Network members and supporters.

Why the Freedom of Information Bill, 2008 should be prioritized and passed?

There are many reasons why Kenya should pass the FOI Bill. One, it is now internationally recognized that freedom of information is both urgent and necessary. Two, that contrary to the usual fallacy, freedom of information matters most to the poor and the vulnerable. Three, that freedom of information helps countries develop, protect basic rights and reinforces democracy. Finally, that greater freedom of information will erode corruption networks, Kenya's most pressing governance issue.

Wachira Maina, Constitutional Lawyer and Governance-Expert

A fundamental human right!

Freedom of information is a fundamental human right protected in Section 79 of the Constitution of Kenya. At a basic level, for one to protect themselves against violations of their rights or to enforce their rights, they must **KNOW** their rights.

The poor, vulnerable and marginalized suffer more from lack of access to information than anyone else in the society. An orphan or child from a needy family would need to know about bursaries to avail themselves of the opportunity to get one. A people's settlement would need to know of the date of the ward's Local Authorities Service Delivery Plan meeting to avail themselves and contribute to the meeting by highlighting issues affecting them such as poor sanitation or lack of water.

The United Nations since 1948 has argued that *"the right to information underpins all other rights and is the touchstone of all freedoms"*. Thus the right to food depends on the right to access information about food availability and its quality.

For example, in India, NGOs have been able to use the right to information to expose corrupt food distributors who failed to provide government subsidized food to the poor for whom it was meant.

Likewise, the right to education depends on knowledge and information about available opportunities.

In a compelling case from Thailand, a mother whose daughter was denied access to a top school applied to the Information Commissioner and was able to obtain school entrance exams which showed systematic rigging. The children of the rich were being admitted even with very low grades. On the basis of this application, the government ordered schools to admit solely on merit.

Freedom of information supports democracy

"Democracies die behind closed door" USA Judge Damon J Keith, 2002

If government is allowed to function behind closed doors, much that can go wrong usually will. The reason is easy to see. There will always be information asymmetry between governments and citizens. Put differently, governments will always know more than the citizens they govern. Given this, we can expect that government officials will release information only if it makes the government look good. Yet, **"selective information is misinformation!"** One aim of a Freedom of Information law is to make the government always speak truthfully and release as much information as necessary protecting only legitimate aims of secrecy like protection of national security.

Opacity destroys democracy in other ways; voters cannot vote freely and independently if the only information they have is propaganda generated by those seeking their votes.

People need information for everything in their lives: to get a government scholarship for their children; to apply for a job; to know which medical services are available in which towns; to start a business; to register as a voter, to get licenses to open a kiosk and even to collect a pension.

Without information people are robbed "of one of the basic means by which they can become all that they should be."

Post-Election Healing and National Reconstruction

Access to information held by public authorities allows for increased trust in Government; something Kenyans urgently require if any post election healing and national reconstruction plans are to be effective. Lack of transparency and accurate information leaves the citizenry to speculation, rumours and misinformation all of which have contributed to harmful perceptions.

Kenya has been a closed democracy governed under an Official Secrets Act, Cap 187 of the Laws of Kenya. This law curtails free flow of information from the Government and Public Sector to the Citizens; as a consequence we are "governed in darkness".