

Acknowledgments

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Table of Contents

Introduction	3
Research Process	7
Research Findings	7
Definition of Freedom of Information	8
On Freedom of Information Legislation in Namibia	9
Citizens' Sufficient Knowledge on Namibian Issues	10
The Rights of Citizens to Know	12
Accessibility of Government Held Information	14
Obstacles in the Pursuit of Information	16
Information Government Still Needs to Provide	17
Analysis	18
Bibliography.....	23

1.0. Introduction

Knowledge and information are often perceived as abstract concepts; however, their potency at improving or destroying lives is immense. Those who control its flow and access have power. Those who do not are left to suffer, often in a veil of ignorance. On the international level, Freedom of Information is increasingly acknowledged as a fundamental human right. Countries all over the world have begun recognizing Freedom of Information in domestic laws in the past few decades. More than 80 countries have entrenched Freedom of Information in their constitutions, close to 70 have Freedom of Information legislation, and another 50 have bills waiting to be passed (Banisar 2006). Government officials realize that Freedom of Information laws foster transparency, create public trust, and fight corruption. Citizens, and increasingly the poor, use Freedom of Information to improve their lives and to boost other political and economic rights (Banisar 2006).

As the drive for Freedom of Information picks up speed, Namibia's legislation is in limbo. The Office of the Prime Minister was directed to create Freedom of Information legislation in 1999. Eight years later, despite advocacy work by civil society organizations, a draft legislation does not even exist. The purpose of this research is to uncover the level of understanding Namibians have on Freedom of Information. This study will hopefully provide a basis on which organizations, like the Media Institute of Southern Africa (MISA), can use to sharpen tactics and ultimately achieve effective Freedom of Information regimes in Namibia.

So the question remains: What is Freedom of Information?

Freedom of Information, also known as the Right to Information or Right to Know, is simply the call to make information, held by public institutions, available and accessible to citizens. The Right to Information is not merely a call for government records, but for more transparency and accountability in the governance process. It is the Right to Information that takes democracy from rhetoric to reality. Freedom of Information laws set out guidelines, procedures and parameters on how individuals can access information from public, as well as private, institutions (Kangwa-Wilkie 2006).

Freedom of Information operates under the principles of:

1. Maximum disclosure, where public bodies must disseminate information relevant to public interest;
2. Minimum exemptions, where reasons for secrecy must be clearly and narrowly defined by laws;
3. Public interest override, where information must be released if it threatens, among others; human rights, public health the environment or reveals corruption
4. Simple, affordable and quick access procedures, where information is provided at a minimum cost or no cost in order to facilitate its free flow;
5. Effective enforcement, where Freedom of Information is administered by an independent oversight body with mechanisms for appeal (CHRI 2003, OSI 2006)

These principles are affirmed by the African Commission on Human and People's Rights (ACHPR). The ACHPR passed the 2002 *Declaration of Principles on Freedom of Expression in Africa*, which

specifically states that “public bodies hold information not for themselves, but as custodians of the public good” (Sec. IV, art. 2). The Declaration further mandates the eradication of secrecy laws and the release of information that affects public health, safety or the environment (2002). Namibia has ratified and adopted this declaration; but the government has done nothing to implement it.

One will then ask: Why Freedom of Information? Why is it necessary at all?

First, Freedom of Information protects other democratic rights and freedoms. The UN’s 1946 Resolution 59(1) states that Freedom of Information is also “the touch-stone of all the freedoms” and the foundation of democracy (Puddephatt 2004, p. 8). It facilitates the social and political participation of individuals. For example, during elections and referendums, citizens only become informed voters if they have adequate information about candidates, parties and platforms (Banisar 2006).

Second, information not only empowers the average citizen, but protects the poor. “Knowledge is power...giving vulnerable people the right information helps them begin to take back their destiny into their own hands” (Walter 2006, p. 3). In India, impoverished citizens used Freedom of Information to expose vendors who were depriving the poor of government-subsidized food. Today, a new regime guarantees sustenance for those in poverty while providing adequate compensation for vendors (Banisar 2006). Organizations in Namibia also recognize the power of Freedom of Information to eradicate poverty. The Namibian Economic Policy Research Unit (2006) says poverty alleviation can only be achieved with “educating the masses to

increase their access to information” and making certain that government programs “established to protect the poor do exactly that” (Adongo & Deen-Swarray, p. 7).

Third, Freedom of Information is not only a right, but a potent tool to achieve government transparency. The UN, the International Monetary Fund (IMF) and the African Union, in which Namibia is a member, all recognize Freedom of Information as an “important guard against abuses, mismanagement and corruption” (Banisar 2006, p. 6). This function of Freedom of Information laws is important in new democratic states like Namibia. According to Hans-Erik Staby’s article in *Tackling Corruption* (2007), fraud and patronage are prevalent in Namibia’s government and public institutions. Police files disappear; perpetrators escape unscathed. Thus, without Freedom of Information, all attempts to eliminate corruption become “meaningless verbal acrobatics” (Staby 2007, p. 14).

MISA-Namibia conducted the ASK Campaign in 2005 to investigate the state of Freedom of Information in the country. The study concluded that the government’s programs to disseminate information are inadequate. There is no effective articulation of societal needs or demands. As well, the media in Namibia shoulders responsibility to circulate information; however, it does so at the whims of political masters (MISA-Namibia 2006).

With government controlling flow and dragging its feet to create Freedom of Information legislation, citizens can often only access a mere trickle of vital information. More ominous, conclusions of this study reveal that more than 90 per cent of Namibians do not fully understand the concept of Freedom of Information. Namibians do

not know it is their right to demand, or the government's duty to actively disclose public information. Proactive steps need to be taken on both sides to create a more open, transparent and democratic society.

2.0. Research Process

The purpose of this mini or pilot research was to assess Namibians' understandings of Freedom of Information. Fifty-eight respondents took part from a sampling frame representing politicians, journalists, university students (law and media studies), non-profit organizations, donors, lecturers, legislation drafters, and the general public. Information was collected through questionnaires.

The research was conducted in Windhoek - Namibia's political, social and economic capital. Although pilot, confined to the city and targeted at specific groups, the results cannot be ignored and maybe indicative of patterns across the country. Namibians from rural communities have less access to media and government institutions; thus, they are expected to be further deprived of information.

The study asked respondents to define Freedom of Information, and to list Namibian laws that guarantee this right. Respondents were then questioned on their right to access public information that ranged from salaries of politicians, military strategy, to the sexual orientation of public officials.

3.0. Research Findings

At 67 per cent, the majority of respondents were male. The ages of all respondents were between 19 and 55. At 47 per cent, the largest age group ranged from 20 to 34.

3.1. Definition of Freedom of Information

All respondents were questioned on their understanding of the Freedom of Information. 91 per cent of respondents had an incorrect or vague understanding. Only two per cent was able to define Freedom of Information as a right of citizens and a duty of government.

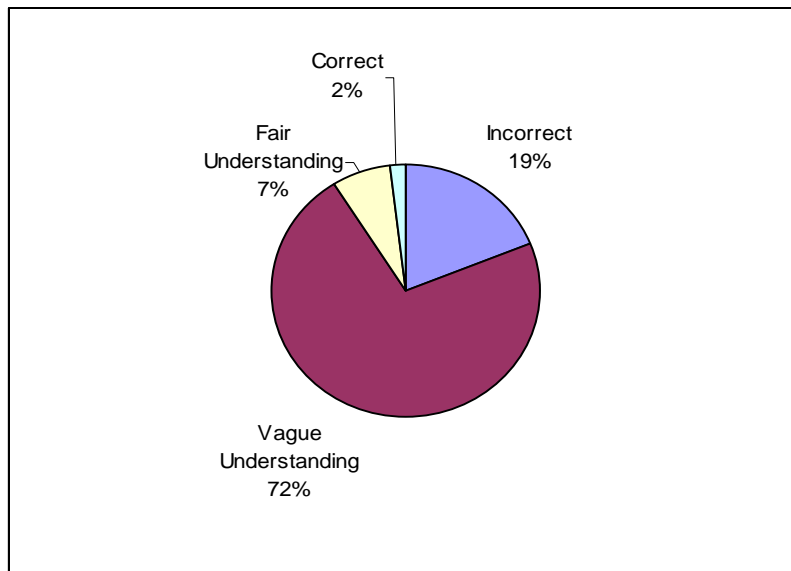


Figure 1 – **Respondent Definitions of Freedom of Information**

3.1.1. *Lack of Understanding*

Of all journalists who responded, 75 per cent had a vague or incorrect understanding of Freedom of Information. A television journalist from the state-owned broadcaster incorrectly wrote that Freedom of

Information is “free access...either through print or electronic media.” Only one journalist, from a current affairs magazine, was correct by mentioning public interest and that *all* information must be in the public domain.

The understanding of Freedom of Information with Members of Parliament (MP) in Namibia’s National Council is even more dismal than that of journalists. 100 per cent of MPs wrote vague or incorrect definitions. None mentioned his proactive duty, as a government official, to disseminate information. The most meager definition given was one word – “Access”.

The general public, and law and media students at the University of Namibia did not fare better. Almost 95 per cent of answers were incorrect or vague. One respondent thought Freedom of Information was access to libraries, politics and schools. Another thought it was access to media services only. One media student did not even mention access, but merely stated: “When people are free to give information.”

3.2. On Freedom of Information Legislation in Namibia

When asked to cite Namibian legislation that guaranteed Freedom of Information, nearly 70 per cent of respondents were incorrect. Namibia currently has no Freedom of Information laws. However, most cited the *Namibian Constitution*, specifically Article 21(1)(a): “All persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media” (1990). The respondents seemed to confuse Freedom of Expression with Freedom of Information, which are two distinct freedoms. The

Namibian Constitution guarantees Freedom of Expression and *not* Freedom of Information. As one journalist poignantly wrote: “unfortunately, the writers of our *Constitution* missed it out.” The journalist then mentioned that Namibia is a signatory to international conventions that guarantee Freedom of Information, but none has been adapted or recognized in domestic law.

Three-quarters of MPs questioned were also mistaken by citing Article 21(1) of the *Namibian Constitution*. One MP merely stated “Guaranteed” with no further explanation. Even a drafter of Namibia’s information policy, a precursor to a draft bill, erroneously cited the Article 21(1). International donor organizations were equally misguided in their responses. All cited Freedom of Expression provisions in domestic and international documents as implicating Freedom of Information.

The general confusion between Freedom of Expression and Freedom of Information is reflected in a follow-up question. When asked to compare both types of fundamental freedoms, almost 85 per cent incorrectly believed both were synonymous, or had vague notions of their differences. One respondent wrote: “Freedom of Expression is the way I feel. Freedom of Information is the way it is.

3.3. Citizens’ Sufficient Knowledge on Important Namibian Issues

A series of questions were given to respondents on specific issues in Namibia: such as tax allocation, the amount of development aid to Namibia, and the name of the Attorney General. The questions determined whether citizens believed they were getting sufficient information from public officials. Respondents were instructed to answer ‘yes’ or ‘no’. Below is a detailed breakdown of the results.

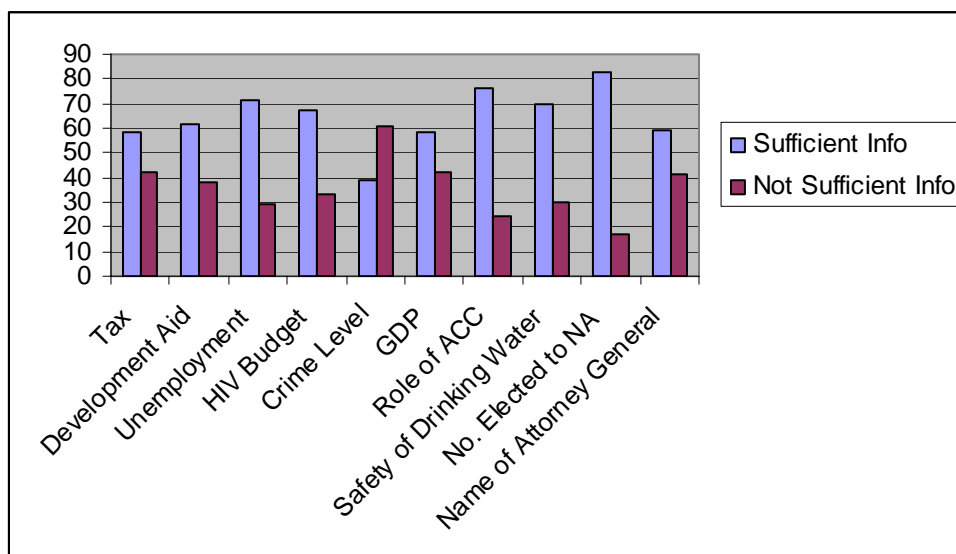


Figure 2 – Sufficient Information on Namibian Issues

Over 75 per cent of respondents said they knew the role of Namibia’s Anti-Corruption Commission. More than 60 per cent were insecure about their knowledge of crime levels in their neighbourhoods. Nearly 60 per cent said they knew how tax dollars were allocated; and another 70 per cent knew the annual government budget for HIV/AIDS. Ironically, when respondents were later asked what they wanted to know most from the government, a majority demanded information on tax distribution and health budgets. On the whole, respondents indicated they had sufficient information on the safety of their drinking water, and the level of unemployment in Namibia.

3.4. The Rights of Citizens to Know

Respondents were asked whether Namibians had the right to know or access specific information from the government. The following is a breakdown of the issues and the responses.

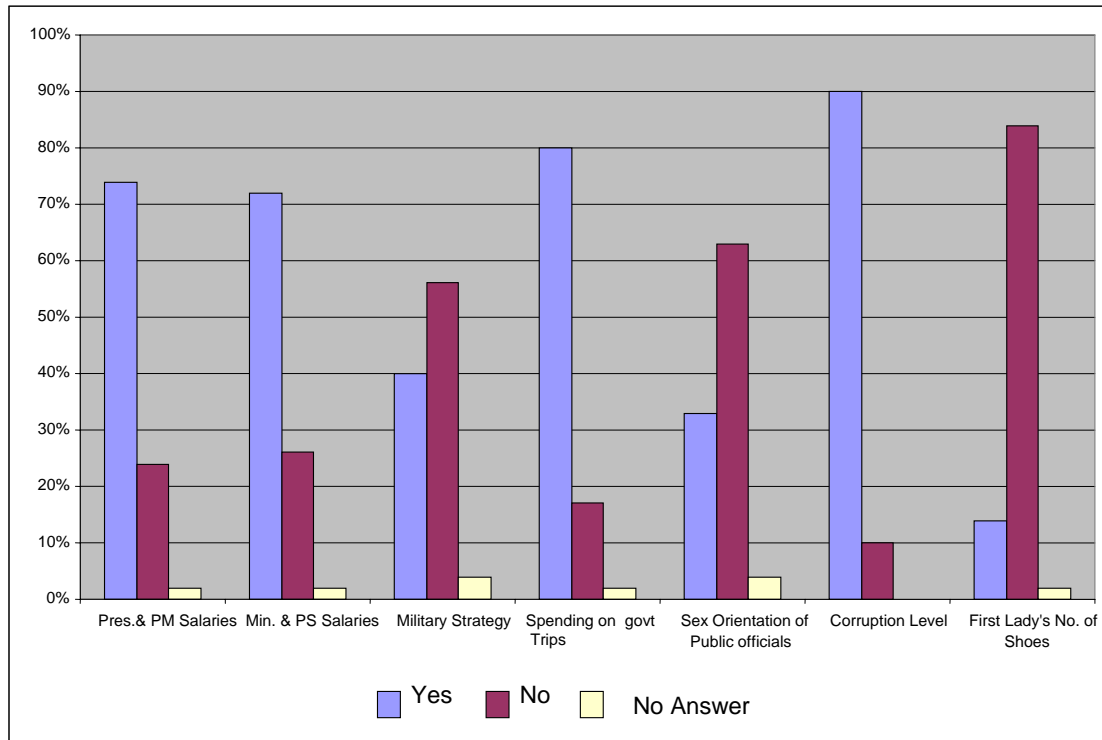


Figure 3 –**What Citizens Should Have the Right to Know**

The majority of respondents believe that Namibian citizens have the right to know salaries of the President, the Prime Minister, Ministers and Permanent Secretaries. A drafter of the information policy agreed and said “in Namibia this is no secret, except how the Minister, President, and PM use their allowances, credit cards...” Namibia’s Prime Minister, Nahas Angula, contradicted this respondent in *Insight Namibia* magazine’s May 2007 issue. He said government officials have the discretion to disclose or conceal their own salaries.

Angula initially refused to disclose his own earnings, but in a later issue of *Insight*, the Prime Minister admitted his paycheque reached N\$606, 040 per year (*Insight* June 2007).

This deliberate control of information is an antithesis to what Namibians demand. 90 per cent of respondents, including MPs, said citizens have the right to know the level of government corruption. Another 80 per cent also believe government has the duty to disclose official travel expenses. Respondents, however, were more reserved with military strategy. Close to 60 per cent said citizens had no right to know. Even respondents who said the right to know existed felt compelled to qualify their answers: "...except in a war situation where the security of the forces and the country are at risk."

When asked about revealing the sexual orientation of public officials and the number of shoes the First Lady owns, most respondents believed citizens had no right to know. On the topic of shoes, a respondent from an NGO wrote: "A woman's wardrobe is her haven!" However, one third of respondents wanted to know the sexual orientation of officials, and nearly 15 per cent thought there was a right to look inside on the First Lady's closet. The main reason cited was "public interest". One journalist said there is a right to know "if it is established that a Minister who issues homophobic statements is having a homosexual relationship"; or if the First Lady "is using public money to buy her shoes or go on shopping trips."

While this journalist used public interest to justify total disclosure, a journalist from the state-owned broadcaster refused to answer all questions: "I'm in between." Another respondent from the same institution said journalists self-censor themselves, and are expected to

“tow the line of the ruling party...which controls everything”. This journalist said producers who are appointed by the government are “so much afraid of what the Minister is going to say” if journalists investigated government officials.

3.5. Accessibility of Government Held Information

3.5.1 *Information on Government Website*

When asked to write down the government website (<http://www.grnnet.gov.na>), 100 per cent of university students and the general public were incorrect.

When asked to rate the accessibility of information on the website, 75 per cent of journalists said there was no access or very little useful information. One journalist wrote: “to be honest, the last time I had to look at a government website (the election commission); I was not impressed at all. And there was nothing that has made me return again to their site.” Another said: “The main government website is very limited in scope. Perhaps the best, although it is badly designed, is the Ministry of Finance – since at least the budget documents are now available online.” According to one journalist, working for the state-owned broadcaster, there was no concrete or updated information on the state website. A colleague, however, said there was total access: “all government ministries and institutions have created websites whereby every citizen or any other person ... can have access.”

3.5.2 Information in the Public Domain

Respondents were questioned on the overall openness of the government at providing information sought. Please refer to Figure 4 for total respondent ratings.

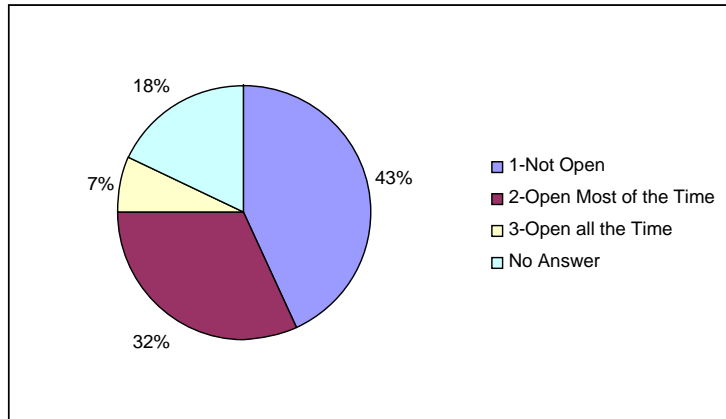


Figure 4 – **Level of Openness with Government Held Information**

Almost 45 per cent of respondents found the government inaccessible for information. More than half of NGOs who responded rated the government at one – not open. MPs answered differently. 50 per cent of politicians rated Namibia’s government as accessible most of the time. The other half refused to give a numerical rating, but left written comments. Below are responses exactly as they appeared, in responding to the openness of government.

“More than the federal governt of the USA!”

“Information in Namibia is not hiden at all, they are debated openly in parliament and national chat shows.”

“In my view, information is *always* available apart from some sensitive info which may be revealed with time.”

3.6. Obstacles in the Pursuit of Information

90 per cent of journalists said obstacles existed when seeking information from the government. Respondents cited, among others, delay and bureaucracy as primary barriers to accessing information. One reporter also added that “official reports are often kept away from journalists through a mixture of secretiveness and incompetence”.

Another problem: the government’s tight grip on resources and editorial content. According to a recent article in *Tackling Corruption*, Namibia’s state-owned broadcaster once ran an investigative show where journalists pursued stories without fear of government backlash. However, ruling politicians were opposed to the program and cut resources (Amupadhi 2007). There is now a lack of funding, equipment, skills, man-power and experience. A respondent from the state-owned broadcaster agreed with the article. He said the current investigative program is filled with repeats or “half-cooked...human interest stories.” Without resources and investigative skills, the respondent saw nothing but futility, even if Freedom of Information legislation existed.

The sentiment was the same with NGOs; 86 per cent said obstacles existed. One respondent from a human rights advocacy group said public officials are “often hesitant caused by public security,” or by fear of negative consequences for leaking government information. Only a respondent from an HIV/AIDS organization found no

difficulties, but then qualified by saying: “always it depends on the approach used to seek the required information.”

When asked if they had sought information from government institutions, 40 per cent of university students and the general public did not. Their reasons ranged from ignorance, apathy, lack of awareness of institutions, the “fear of being turned away”, rude government officials, and the fact that “most information can be attained from the media or organizations like MISA.”

3.7. Information the Government Still Needs to Provide

University students and the general public wanted more information on how public officials got their jobs, and the level of corruption within public institutions: patronage in the police force and secrecy with commission inquiries. MPs believed the government should provide more resources on employment opportunities, campaigns on HIV/AIDS, crime level in Namibia, tax/budget allocation, and the people’s rights. 50 per cent of MPs were not as forthcoming on the government’s shortfalls. One bluntly wrote: “Nothing, no two more things needed in this country”.

And when asked if the government had a duty to actively disseminate information, a drafter said yes because government works with public funds. As well, politicians were elected by the people to ensure development in the interest of their constituents. The majority of MPs agreed. One politician, however, had a misguided concept of this duty, a fundamental principle of Freedom of Information. The politician replied: “Yes, State run media in place!”

4.0. Analysis

The overall conclusion of this study is that Namibians have very little knowledge of Freedom of Information, its significance or its purpose. This general misunderstanding plagues a vast faction of society: politicians, drafters, students of law and media, NGOs, the general public, and journalists. These groups were highlighted because of their vital roles in potentially creating a transparent, accountable and participatory democratic system in the fledgling country that is the Republic of Namibia.

The fact that journalists do not understand the scope of or know how to exercise their right to access information is menacing. For a vigorous democratic system, in which the public holds ultimate power, the media acts as watchdog over public and private institutions, and as the eyes and ears of citizens. It is a journalist's job to extract classified information from public and private sources that affect the health, social, economic and political well-being of the people. Without knowing the power of Freedom of Information, or demanding the right to have access, journalists censor their voices and depend on the capricious kindness of political masters – as is happening in Namibia's state-owned broadcaster. The media becomes a watchdog without teeth. Journalists cannot openly or confidently scrutinize state leaders, institutions, their officials or the private sector. Neither can the media empower citizens to effectively exercise freedoms of expression and participate in political and social debates.

It is equally problematic that those in government, MPs and drafters, believe Freedom of Information already exists in Freedom of Expression provisions of Namibia's *Constitution*. This understanding

by politicians and civil servants is erroneous and dangerous for a number of reasons. First, it substantiates that government officials do not fully comprehend Freedom of Information and confuse it with Freedom of Expression. It is true that both are interdependent – effective expression in social and political debates necessitate access to information. However, both concepts are distinct. Freedom of Information extends into other legal, political and economic rights of citizens. How is it that Namibia has ratified and adopted the ACHPR’s principles of Freedom of Information, yet officials have no sense of what this right represents? Second, government officials do not see Freedom of Information as a fundamental human right that affects the economic, political and physical well-being of its citizens. Third, if government officials believe Freedom of Information exists implicitly, they might argue that further legislation is superfluous.

In a society without a clear and intelligible legal framework for Freedom of Information, the rule of law, transparency and democracy are all crippled by political and bureaucratic discretion. There is nothing to limit the government’s control over information and access, and nothing to hold officials accountable to the public. The culture of secrecy would continue to thrive, and would eventually lead to corruption. According to an article in *Tackling Corruption* (2007), this has already happened: “the cancer of corruption has infested the entire Namibian society” (Staby 2007, p. 13). Without an effective remedy – Freedom of Information legislation – the public is left powerless without knowledge and constantly suspicious of government actions.

The public's distrust of political decisions is found in responses about the level of government openness. A majority of the public, students, NGOs, and journalists said there is minimal or no openness. MPs, on the other hand, zealously defended the government as being generally accessible. Politicians deflected scrutiny by targeting other countries like the United States of America. This defensive stance is an obstacle to seeing the government's own flaws and to improving accountability.

Under a Freedom of Information regime, the government has the duty to proactively and routinely maintain and release certain types of information to the public: statistics on crime, statutes, government structures, officials' job descriptions, salaries, qualifications, health, safety and budgets. The government is "required to ensure that information is not outdated, inaccurate or misleading" (Banisar 2006, p. 25). As seen from opinions of respondents, Namibia's government failed to fulfill this duty. Public institutions use delay and bureaucratic tactics to deny access. Respondents also know officials clamp up because they fear repercussions from leaders above. This is why 40 per cent of respondents do not bother going to government for information – they go to the media.

As stated before, if the media acts as mouth-piece for the government, it has no independence or confidence to criticize its masters. Furthermore, journalists and media organizations are not without political or social biases. Citizens must access accurate information from numerous reliable sources to be truly informed. It is problematic that respondents from the general public to MPs see access to information as synonymous with state media.

Government information should also be available online. A few months ago, Namibia's government website fell far below the standards of Freedom of Information. Ministerial data had not been updated since 2002. Hyperlinks did not work. And according to the President's website, Sam Nujoma, the former President, was still in office. From the site, apparently the last elections did not happen and the current President Hifikepunye Pohamba did not exist (Robberts 2007). It is not surprising that none of the respondents could accurately provide the government URL. A government official, who also gave the wrong website, complained that computer systems and standards are set by Western democracies. Thus, they cannot be applied directly to the Namibian context. Namibia lags behind North American and European countries in Information Technology skills. Less than one per cent of citizens in Namibia have access to the internet (MISA-Namibia 2006). Despite these shortcomings, today, the government site has much improved. Yet, it still lacks, among others, concrete statistics, job descriptions, salaries, or qualifications of officials. As well, some government budgets and ministry expenditures, although accessible, are convoluted and can be confusing to the general public.

If Freedom of Information is ever to be passed as a Namibian law, lobbyists like MISA, must first clear the nebulous confusion. Campaigns should breakdown intangible rhetoric and rebuild Freedom of Information as a concrete legal tool: a tool that empowers citizens, eliminates secrecy, and exterminates corruption. The campaign must be grounded in issues that affect the daily lives and survival of Namibians: the shortage of HIV/AIDS medication for rural communities; or the lack of textbooks for school children.

All members of Namibian society, regardless of class, occupation, gender, race, or level of schooling must be educated on this fundamental human right. Politicians must be made aware of international covenants that Namibia has signed and their duty to disseminate information. Media practitioners must know their right to access information, and know the significance that Freedom of Information plays in their role as watchdogs in a democratic society. For citizens, concepts of Freedom of Information should be implanted early on in school. Civic courses should train students to question those in power and demand information in the public domain – especially if it affects their physical, social or economic welfare.

As a young democracy, Namibia can potentially mature into the transparent and responsible state that the UN helped inaugurate in March 21, 1990. However, with crawling bureaucracy, unchecked corruption, and self-censoring media, Namibia, merely 17 years-old, can easily rebel into an oppressive society where leaders govern in secrecy and continue to keep citizens ignorant. A once promising democracy would inch backwards to autocracy. To stop this, the public must take back control, and citizens can only do so with information. As one respondent said: “the government is not leaders, but any Namibian person who speaks out to be heard and who contributes to the vision of this country. I believe I’m the government in my own right...”

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