

# Freedom of Information and the Developing World The citizen, the state and models of openness

Colin Darch and Peter G. Underwood



### Freedom of Information and the Developing World

#### CHANDOS INFORMATION PROFESSIONAL SERIES

Series Editor: Ruth Rikowski (email: Rikowskigr@aol.com)

Chandos' new series of books are aimed at the busy information professional. They have been specially commissioned to provide the reader with an authoritative view of current thinking. They are designed to provide easy-to-read and (most importantly) practical coverage of topics that are of interest to librarians and other information professionals. If you would like a full listing of current and forthcoming titles, please visit our web site www.chandospublishing.com or email info@chandospublishing.com or telephone +44 (0) 1223 891358.

**New authors:** we are always pleased to receive ideas for new titles; if you would like to write a book for Chandos, please contact Dr Glyn Jones on email gjones@chandospublishing.com or telephone number +44 (0) 1993 848726.

**Bulk orders:** some organisations buy a number of copies of our books. If you are interested in doing this, we would be pleased to discuss a discount. Please email info@chandospublishing.com or telephone +44 (0) 1223 891358.

## Freedom of Information and the Developing World

The citizen, the state and models of openness

COLIN DARCH
AND
PETER G. UNDERWOOD



Chandos Publishing
TBAC Business Centre
Avenue 4
Station Lane
Witney
Oxford OX28 4BN
UK
Tel: +44 (0) 1993 848726
Email: info@chandospublishing.com

www.chandospublishing.com

Chandos Publishing is an imprint of Woodhead Publishing Limited

Woodhead Publishing Limited
Abington Hall
Granta Park
Great Abington
Cambridge CB21 6AH
UK
www.woodheadpublishing.com

First published in 2010

ISBN: 978 1 84334 147 5

© C. Darch and P. G. Underwood, 2010

British Library Cataloguing-in-Publication Data. A catalogue record for this book is available from the British Library.

All rights reserved. No part of this publication may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form, or by any means (electronic, mechanical, photocopying, recording or otherwise) without the prior written permission of the Publishers. This publication may not be lent, resold, hired out or otherwise disposed of by way of trade in any form of binding or cover other than that in which it is published without the prior consent of the Publishers. Any person who does any unauthorised act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The Publishers make no representation, express or implied, with regard to the accuracy of the information contained in this publication and cannot accept any legal responsibility or liability for any errors or omissions.

The material contained in this publication constitutes general guidelines only and does not represent to be advice on any particular matter. No reader or purchaser should act on the basis of material contained in this publication without first taking professional advice appropriate to their particular circumstances. All screenshots in this publication are the copyright of the website owner(s), unless indicated otherwise.

Typeset by Domex e-Data Pvt. Ltd. Printed in the UK and USA.

#### **Contents**

List	of figures and tables	ix
Abo	out the authors	X
Ack	nowledgements	xii
List	of acronyms and abbreviations	XV
1	Introduction	1
2	Developing countries and freedom of information	13
	The claims for freedom of information	13
	Freedom of information and economic development	15
	Freedom of information and its impact on democratic practice	25
	Freedom of information and the elimination of corruption	35
	The protection of other rights	43
3	The diffusion problem and the semantic shift	47
	Introduction: the dynamic of diffusion	47
	The diffusion of social and legal norms	56
	Historicising freedom of information: Anders Chydenius and the Swedish Age of Liberty	64
	Historicising freedom of information: Article 19 and semantic shift	72
	Information access rights in the wider context	85
4	Compliance and the impulse to secrecy	91
	Bureaucracy, information and power	91
	Sociological accounts of bureaucracy	93
	Surveillance and privacy	98
	Politicians, bureaucracy and ignorance	104

	Material and ideological pre-conditions	109
	Are models of compliance useful?	114
	Covering the tracks: pre-emptive destruction	122
5	Freedom of information as a human right	127
	The 'rights' nature of access to information	127
	The object of the freedom of information claim	130
	Characteristics of human rights	134
	Form and function in a freedom of information right	137
	Ideology and struggle in rights discourse	142
	The Claude Reyes case: a turning point?	146
	The state's duty to respect, protect and fulfil	150
6	Struggles for freedom of information in countries in transition	155
	The relationship between access rights and other virtues	155
	The Philippines: case law and access to information	163
	Transparency to stimulate investment: Guangzhou and Shanghai	171
	Freedom of information in a different America: Guatemala, Bolivia and Brazil	182
	Russia: access rights in a transitional authoritarian society	197
	Conclusion	203
7	Struggles for freedom of information in Africa	205
	Zimbabwe: through the looking glass	210
	A prolonged struggle: secrecy and corruption in Nigeria	215
	Oil, secrecy and law in Angola	221
	Mozambique: the development of 'informal' access rights	226
	South Africa: an incomplete transformation	233
	African countries are not 'basket cases'	243
8	From adversarialism to Fol 2.0	247
	The way we live now	247
	Direct action against authoritarian states	251

	Contents
Developing a culture of access: 'Fol 2.0'	254
Information warfare as a threat to Fol 2.0	257
List of sources	261
Index	307

This page intentionally left blank

#### List of figures and tables

#### **Figure**

3.1	Molecular diagram of freedom of information relations	141
Tab	les	
2.1	Developing countries with freedom of information legislation: scores and rankings on other freedom measures, 2006–2009	19–20
4.1	The Roberts-Snell compliance categories expanded	119
5.1	Hohfeldian rights and duties	138
6.1	Freedom of information legislation in Africa, Asia and the Americas, 2009	157
6.2	Developing countries in the process of adopting freedom of information (FoI) legislation in 2006	162
7.1	African countries and the adoption of freedom of information legislation, as of September 2008	208

This page intentionally left blank

#### About the authors

Colin Darch has been a senior information specialist in the African Studies Library at the University of Cape Town since October 2000. He was university librarian at the University of the Western Cape from 1992 to 1997.

Over the past four decades, he has worked variously as a librarian, lecturer and researcher at academic institutions in Ethiopia, Tanzania, Mozambique, Zimbabwe and Brazil. He has published extensively in both English and Portuguese on information issues as well as African history and bibliography.

He has a Ph.D. in social and economic analysis from the University of Bradford. His current research interests include the political economy of intellectual property, and he was a founder member of the CopySouth research network, in which he remains active. He may be contacted at *colin.darch@gmail.com*.

**Peter G. Underwood** is Professor of Librarianship at the University of Cape Town, having occupied this position since 1992. Prior to this he spent 20 years as lecturer in the Department of Information Studies, University College of Wales, Aberystwyth, United Kingdom.

He is the author of Managing Change in Libraries and Information Services: A Systems Approach and Soft Systems Analysis and the Management of Libraries, Information Services and Resource Centres, and co-author of Basics of Data Management for Information Services.

He is a graduate of the Cranfield School of Management, having completed an MBA there in 1980, and a Fellow of the Chartered Institute of Library and Information Professionals (CILIP). He is also a member of the Library and Information Association of South Africa and of the Association of Southern Africa Indexers and Bibliographers. He may be contacted at *Peter.Underwood@uct.ac.za*.

This page intentionally left blank

#### **Acknowledgements**

Authors never really work alone, but usually build on the work of earlier commentators and, most importantly, always rely on the support of their communities, whether intellectual, social, familial or even virtual. We are no exception, and we happily acknowledge that we owe a huge debt of gratitude to colleagues, friends and relatives who have helped us through the researching and writing of this book in many different ways. They have read and criticised multiple drafts of different chapters, they have helped us to track down obscure references, and they have generously provided us with copies of hard-to-find works, including a film, from around the world. They have suggested new ideas and concepts, and corrected some of the more glaring factual errors. They deserve a significant part of the credit for such virtues as this book may possess.

We should therefore like to gratefully acknowledge the varied contributions that the following people have made to the creation of this text: Patricia Alvarez; Luís de Brito (for his critique of the section on Mozambique); Richard Calland (for reading a late draft and for his helpful comments on the importance of the Claude Reyes decision); Paola Carrasco; Father Andrew Cox (for guiding us towards the significance of the hermeneutics of suspicion); Tayamikila Darch; Ajira Darch-Sharp; Karin de Jager (for her critical reading of several chapters); Jacques Depelchin; Georgi Derluguian (for several concrete and theoretical suggestions); Archie Dick; Irina Filatova (for her critique of the section on Russia); Joe Hanlon (for his critique of the section on Mozambique); Iudith Head (for her always sharply critical editorial eye); Pertti Hyttinen (for generous help with our account of Chydenius); Al Kagan (for his critique, especially of the African case studies); Lisa Kane; Jonathan Klaaren (for his critique of our foray into legal analysis); Mary Lennox (for compiling the index); Fatima Lesay (for correcting some of our misconceptions about the Philippines); Lawrence Liang (for help with Indian sources); Gary Littlejohn (for reading early draft chapters); Nadja Manghezi (for help with Danish sources); Mary-Ann Mbewe; Marcelo Mosse (for his critique

of the section on Mozambique); Christina Murray; Laura Neuman; Luis Oporto Ordóñez (for his critique, and for invaluable assistance in identifying information on Bolivia); Gargy Sen (for donating a film); Sandy Shell; and Wendy Simmons (for reading early draft chapters).

Rick Snell of the University of Tasmania, and his graduate students Rhys Stubbs and Xiao Weibing, went to extraordinary lengths to provide us with a detailed and supportive critique of the penultimate draft. Anita Visser and the staff of the Inter-Library Loans Department at the University of Cape Town libraries (Rosie Watson, Russel Williams, Mogamat Philemon and Zukile Vusani) were models of efficiency in obtaining sources of all kinds for us, and we thank them warmly.

We also thank our publisher, Dr Glyn Jones of Chandos Publishing (Oxford), who was both patient and unflaggingly supportive as deadlines regularly arrived – and just as regularly went. Gay O'Casey, copy editor, has drawn our attention to the many inconsistencies and errors that build up in the course of a long writing project: we are grateful for her eagle eyes and gentle sense of humour. Our partners, Agnes and Jennie, supported us in myriad ways – both intellectual and domestic – throughout the entire project, for which we are and will always remain deeply thankful.

All errors, defects and omissions are of course entirely and completely our own joint responsibility.

Colin Darch and Peter Underwood Cape Town, 3 July 2009

#### List of acronyms and abbreviations

A2I Access to Information

A2K Access to Knowledge

AGSAEMP Archivos Generales y Servicios de Apoyo a la Presidencia

de la República del Estado Mayor Presidencial (Guatemala)

AIDS Acquired Immune Deficiency Syndrome

AIPPA Access to Information and Privacy Protection Act (Zimbabwe)

ANC African National Congress (South Africa)

ATIN Access to Information Network (The Philippines)

BBC British Broadcasting Corporation

BC Before Christ

BCE Before the Common Era

BP British Petroleum

CD Compact Disc

CDDRL Centre on Democracy, Development, and the Rule of

Law (United States of America)

CDR Call Detail Record

CE Common Era

CEA Centro de Estudos Africanos (Mozambique)

CEGES Centre d'Études et de Documentation «Guerre et Sociétés

Contemporaines» (Belgium)

CHRI Commonwealth Human Rights Initiative

CIA Central Intelligence Agency (United States of America)

CIE Comité de Inversiones Estranjeras (Chile)

CLO Civil Liberties Organisation (Nigeria)

CPRC Chronic Poverty Research Centre (United Kingdom)

CPTech Consumer Project on Technology (United States of America)

CSVR Centre for the Study of Violence and Reconciliation

(South Africa)

DVD Digital Video (or Versatile) Disc

EEB European Environmental Bureau

EFW Economic Freedom of the World

EITI Extractive Industries Transparency Initiative

EMP Estado Mayor Presidencial (Mexico)

EU European Union

FBI Federal Bureau of Investigation (United States of America)

fMRI functional Magnetic Resonance Imaging

FoI Freedom of Information

FOIA Freedom of Information Act

FW Freedom in the World

FXI Freedom of Expression Institute (South Africa)

GDF Glasnost Defence Foundation (Russian Federation)

GDP Gross Domestic Product

GMA Global Media Arts

GNI Gross National Income

HDI Human Development Indicator

HIV Human Immunodeficiency Virus

HRC Human Rights Commission

IEF Index of Economic Freedom

IFI International Financial Institutions

IIFD Institute for Information Freedom Development

IMF International Monetary Fund