ARTICLE 19

Asia Disclosed: A Review of the Right to Information across Asia

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Executive summary

In the past 20 years, the global shift towards the free flow of information has swept Asia, particularly the desires and demands of civil society.

This report explains how far the region has come in recognising the right to information. It outlines the international and regional standards applicable to Asian states, and reviews the laws and their implementation in 11 countries.

Countries of all sizes, economic and political systems have adopted right to information legislation, ranging from India and China to the Maldives and the Cook Islands.

This is partly due to the difference in governments' reasons for legislating. Some countries see the right to information as a fundamental part of democracy. Some see it as a useful tool to tackle corruption. Others regard it as a critical tool for development and to encourage participation.

In some countries, such as China and Japan, national legislation was born from local laws created by progressive local governments. In others, public demand was so significant that the national government legislated first.

Right to information legislation in Asia includes a huge cross sample in regards to quality, from the best in the world to the worst. Implementation and demand also vary dramatically from country to country.

Some Asian countries, such as India and Indonesia, lead the world in right to information legislation. Such countries have created progressive mechanisms for access and enforcement.

Some, such as Japan and Thailand, were early adopters and leaders in the right to information, but have now got significantly outdated legislation that desperately need updating.

Others, such as the Philippines and Sri Lanka, have been discussing, promising and drafting right to information laws for many years, but still hold out against them.

Finally, there are those like Lao, Malaysia, Myanmar and Vietnam which retain a strong grip on government-held information, regarding it as government property and refusing to empower the people to access it.

Legislating alone is not enough though. Implementation is vital and civil society engagement and empowerment is key.

In India, which has one of the world's best laws, civil society regularly uses the right to information to get their other rights fulfilled. In Indonesia, civil society's use of the right to information is just starting to take off.

Implementation in other countries remains problematic. Transparency during disasters has been particularly poor, from Japan's nuclear meltdown and the following cover-up, to the Nepali government's response to the 2015 earthquake.

Across South and Southeast Asia, information on development issues and the aid being allocated to solve them has also been generally lacking too.

Secrecy in the name of national security has also proven a barrier to the free flow of information across Asia. Archaic colonial as well as more modern laws exist region-wide, such as on sedition in Malaysia or Official Secrets in India, or "state security" as in China and Japan.

In some countries, public awareness of the law is low and the government does little to publicise the right to information. Officials often resist all attempts to share information. Violence towards those who request information has increased significantly, with several information requesters being killed for their efforts to establish the truth.

Despite the lack of awareness of the law, demand for information has increased more generally, spurred on by civil society's use of digital technologies. Governments are increasingly forced into defending themselves, and countries such as Japan and South Korea have responded with investment in ICT-based solutions to make information easily accessible by the masses.

Open Data initiatives relating to budgets, environmental hazards and other important information have been established to help civil society. Regional efforts are also growing, such as the E-ASEAN Framework Agreement, which contemplates the need to use ICTs to enhance transparency.

Asian countries are at a critical point in time. The pressure by Asian governments to increase national security, prevent terrorism and hide corruption has never been higher.

However, civil society demands for more and deeper participation in their government and in governance has increased in parallel to the government crackdown, encouraged by the new opportunities available to talk, share and campaign online.

Other publications

Alongside this report, ARTICLE 19 has also published the updated Right to Information Principles. The publication examines the principles that all right to information laws should follow. They are in effect the international standards relevant to right to information laws. The Right to Information Principles are available on the ARTICLE 19 website at www.article19.org in the following languages for the Asia region:

- English
- Burmese
- Chinese
- Khmer
- Malaysia Bahasa
- Sinhala
- Vietnamese.

Introduction

The transparency of government bodies is now recognised as an essential part of any modern government. It empowers individuals and communities to be able to engage and participate in decisions that affect their fundamental human rights, civil and political as well as social, economic and cultural rights. It has been widely recognised worldwide as a fundamental human right, as well as an important tool for enforcing the rule of law, fighting corruption and ensuring other rights.

Over 100 countries have adopted comprehensive right to information (RTI) laws.[1] They range from the largest countries (China, India, USA, Indonesia, Brazil, and Nigeria) to some of the smallest (Cook Islands, St Vincent and the Grenadines), covering over 80 per cent of the world's population.

The laws are substantially similar but contain significant differences in the structures and effects of the laws, reflecting the countries' different legal heritages. The right to information has also been recognised by all major international and regional inter-governmental human rights bodies.

The legal right to information is not limited to these comprehensive laws. Every country has a web of legislation including laws on archives, environmental protection, whistle-blower protection, data protection and privacy, state secrets, and media, all of which can affect access both positively and negatively.

The adoption of these laws is not the end of the story. Implementation is a substantial challenge. And like all other legislation, the laws and their implementation need to be periodically reviewed to ensure that they are working in an effective manner and take into account changes in government practices, legislation, technology and society.

The benefits of right to information

There is general agreement that a properly implemented and working right to information regime provides as many benefits to government departments as it does to the people they administer over. A 2003 World Bank study found that, *"more transparent governments govern better for a wide variety of governance indicators such as government effectiveness, regulatory burden, corruption, voice and accountability, the rule of law, bureaucratic efficiency, contract repudiation, expropriation risk and [a combined transparency corruption index]."*[2]

Democratic participation and understanding

The public is better able to participate in the democratic process when they have information about the activities and policies of their government. Public awareness of the reasons behind decisions can improve support and reduce misunderstandings and dissatisfaction. Individual members of parliament are also better able to conduct oversight. The New Zealand Danks Committee found *"greater freedom of information could not be expected to end all differences of opinion within the community or to resolve major political issues. If applied systematically, however, with due regard for the balance between divergent issues [the changes] should help narrow differences of opinion, increase the effectiveness of policies adopted and strengthen public confidence in the system."*[3]

Improved decision making processes

Decisions that will eventually be made public are more likely to be based on objective and justifiable reasons. Confidence in the government is improved if it is known that the decisions will be predictable. The Australian Law Reform Commission and Administrative Review Council found the Freedom of Information (FOI) Act *"has had a marked impact on the way agencies make decisions and the way they record information…[it] has focused decision-makers' minds on the need to base decisions on relevant factors and to record the decision making process. The knowledge that decisions and processes are open to scrutiny, including under the FOI Act, imposes a constant discipline on the public sector."*[4] The New Zealand Law Commission found that *"the assumption that policy advice will eventually be released under the Act has in our view improved the quality and transparency of that advice."*[5] The Canadian Access to Information Review Commission found that *"central agency records improved in the quality of their content and narrative over time."*

Improved government records management

The adoption of RTI legislation has been found to improve the record keeping practices of public bodies. This is both due to revised record keeping systems to meet the new legal requirements of access but also as noted above to ensure that decisions would appear to be based on rational processes. Some governments have used it as an opportunity to rewrite manuals and other documents. Others keep more information on the decisions. Some progressive RTI laws have also included provisions on better record keeping.

Improved Internal Efficiency

RTI can also improve the flow of information inside governments. Excessive secrecy reduces the ability of government departments to share information and reduces their efficiency.[6] Many jurisdictions have reported that enacting RTI laws improved coordination and policy development.

Anti-corruption

RTI is considered a key tool in anti-corruption measures as reasons for awarding contracts and other financial transactions must be documented and justified.[7] The UN Convention Against Corruption and regional conventions in Europe, the Americas and Africa all require governments to adopt laws to make available information available to the public.

Redressing Past Harms

In countries that have recently made the transition to democracy, RTI laws allow governments to break with the past and allow society to better understand what happened, and support the victims and their families of abuses to learn what happened. In Central Europe, most countries adopted laws allowing for access to the files of their former secret police. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the European and Inter-American courts of human rights have all emphasised the importance of public access to information in promoting the right to truth.

Alternative to Regulations

Governments collect large amounts of information on the activities of the private sector. Information disclosure by government bodies can also be used as an alternative method of regulation.[8] Public release of information can move private actors to improve their behaviours to avoid criticism and losses in the marketplace. Over 50 countries around the world including Japan and Australia publish information about pollutants released by industry as a means of informing the communities about the potential dangers while China has set

up registers on air pollution. In Europe, over 30 countries and the European Union have ratified the 2003 UNECE Protocol on Pollutant Release and Transfer Registers.[9] In the US, the Toxic Release Inventory is considered to have successfully reduced the amount of toxic materials released in the US by nearly half.[10]. Regional registers now exist for both Europe and North America[11] while in Asia, there is a regional register on air quality.[12]

Evaluating the Benefits of Freedom of Information in India

The Indian Central Information Commission emphasised in its annual report approaching the ten-year anniversary of the adoption of the RTI Act, that the act was *"a landmark legislation that has transformed the relationship between the citizen and the state."*[13] Namely, it has created the possibility for every citizen to hold the government accountable on a day-to-day basis. The Indian Government has characterised the RTI Act as *"one of the biggest achievements of Indian democracy."*[14] It has empowered the citizens to participate in nation building by promoting transparency and accountability in the working of every public authority.

Developing a Culture of Openness

In countries with long histories of access to information, the established mind-set is on providing information. Withholding is considered unusual. In Sweden, access to government records is described as a "self-evident civil right".

The adoption of RTI laws also generally leads to more openness in government activities beyond what is required by law. Bodies realise that the release of most information does not harm their jobs, and they increasingly make it available outside the parameters of the law to satisfy public demands. With an established tradition of RTI requests and the jurisprudence of the oversight bodies and courts, many of the documents, produced by public bodies is prepared on the assumption that they may be made public in the near or far future.[15]

The trends in the area of proactive transparency have shown an enormous impact in developing the culture of openness. As some important categories of information become available proactively, including information on functions, competencies, structure, budget and decision-making processes, this brings the government closer to people. Public authorities are increasingly seen as working for the people if the processes and logic of their work is known and contact information is available so that anyone - without discrimination - can contact a particular body. In the last decade, the authorities in most Asian countries have made an effort to increase the number and the quality of information that is published on the internet. This has been done within comprehensive provisions of RTI legislation, prescribing the categories of information to be offered to the public proactively and also by equipping the oversight bodies with the powers to order publication of information online. However, the region still struggles with low levels of actual implementation of these provisions[16] and a culture of openness is developing at a slow pace.

International standards

International law

The right to information is well established as a human right in international law. [17] The primary source is found in Article 19 of the International Covenant on Civil and Political Rights with provides that: *"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."*

In General Comment No. 34 adopted in 2011, the UN Human Rights Committee offered authoritative interpretation on the scope and limits of freedom of information under Article 19 of the International Covenant on Civil and Political Rights. The Comment affirmed that Article 19 of the ICCPR protects the right to information held by public bodies and requires the proactive dissemination of information in the public interest. The Comment also states that Article 19 of the ICCPR requires the enactment of "necessary procedures" such as legislation in order to give effect to the right to information.

The Human Rights Committee further elaborated on the inclusion of the right to information in Article 19 in the case of a Kyrgyz civil society request on the use of the death penalty:[18] *"the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State."*

The right has also been recognised by other UN bodies including the Human Rights Commission[19], Human Rights Council,[20] several Special Rapporteurs on Freedom of Opinion and Expression,[21] and the Special Rapporteurs on Health,[22] Water,[23] and Environment,[24] as well as in joint declarations by the international freedom of expression rapporteurs from the UN, OAS, AU and OSCE.[25]

There are also other important international agreements which recognise the right of access to information. Article 13 of the UN Convention against Corruption (UNCAC) requires that States should *"[ensure] that the public has effective access to information"*. It also requires the implementation of whistle-blower protections. The UNCAC has been signed and ratified by nearly every country in Asia.[26]

Regional instruments

Compared to other regions, there are limited regional instruments in Asia, including relating to the right to information.

The 2012 ASEAN Human Rights Declaration mostly follows the model of the language of the Universal Declaration and the ICCPR in its recognition of Freedom of Expression and the right to information. Article 23 states that *"Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice."* However, it does not include the language found in the ICCPR that the right exists "regardless of frontiers".

The right to information is included in major regional efforts on corruption. Of significant note is that the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The initiative created an action plan with a specific provision on access to information calling for states to *"Ensure that the general public and the media have freedom to receive and impart public information…through… Implementation of measures providing for a meaningful public right of access to appropriate information."* It also called for ensuring public participation and protection of whistleblowers. The plan has been endorsed by 31 jurisdictions.

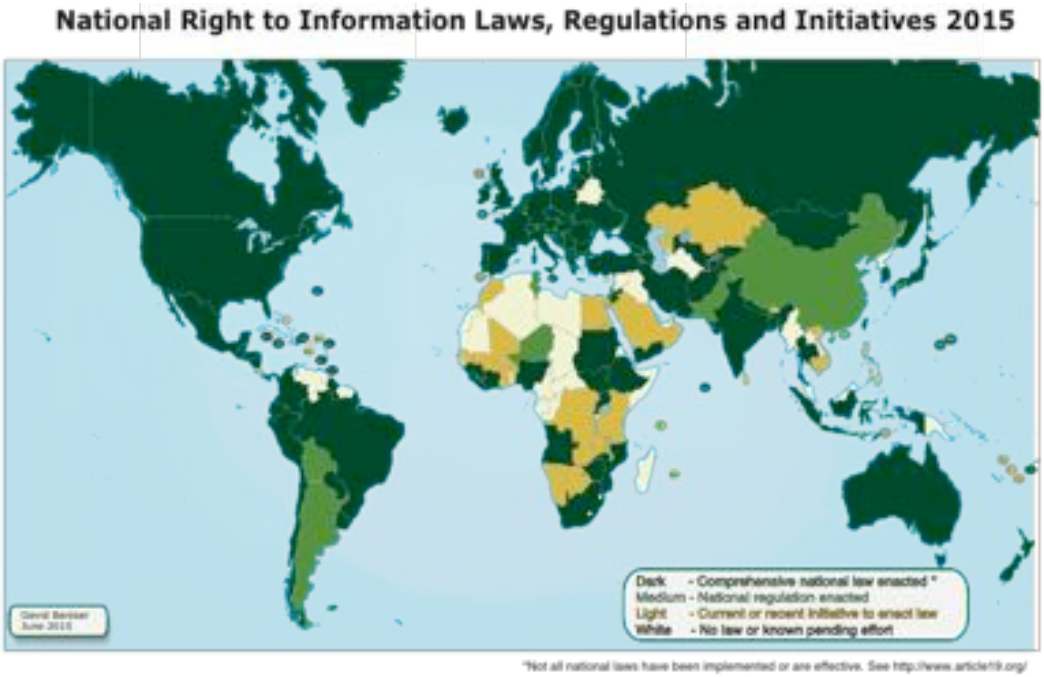
The issue of transparency has also been incorporated in other ASEAN discussions including the E-ASEAN Framework Agreement, declarations on the environment and the Declaration on Strengthening Social Protection.

The Asia-Pacific Economic Cooperation (APEC) has lead on initiatives to promote transparency in anti-corruption efforts including relating to public procurement and asset disclosures of public officials. The 2014 Declaration on Strengthening Social Protection also calls for protecting whistleblowers.

Less impressively, the South Asian Association for Regional Cooperation (SAARC) did not refer to access to information or transparency in its Charter of Democracy but noted their *"strong commitment to ensure good governance for sustainable development by promoting accountability, transparency, the rule of law and people's participation at all levels of governance"* in their 2014 Kathmandu Declaration.

Further information

The international and regional standards applicable to the right to information are identified and explained in the appendix of this report.



Regional overview

In the Asia-Pacific region, there has been extensive adoption of laws relating to the right to information. Today, 16 countries[27] from the Cook Islands to China, India and Indonesia have adopted comprehensive laws or regulations that provide for the right to access to information. At the constitutional level, some countries, such as Indonesia, Mongolia and Nepal include an explicit right to information in the text of their Constitutions. In other cases, the Constitutional Courts have interpreted their constitutional "freedom of expression" provision as entailing the right to information (India, Japan, Pakistan, South Korea) or the legislator has made a specific reference in the RTI law to that effect (Bangladesh).[28]

Additionally, at the time of writing, discussions on adopting a right to information law were on-going in Cambodia, Malaysia, Philippines and Sri Lanka among others.

Australia and New Zealand were the first countries in the region to adopt RTI legislation as early as 1982, although Australia more recently amended the law to adopt best practices in the field of freedom of information.[29] Korea followed in 1996, Thailand in 1997 and Japan in 1999. The majority of counties in Asia adopted RTI laws after 2000, following the new wave of right to information movement that emerged after the 1990s. India adopted its widely praised RTI law in 2005, which has served as either a model for other laws that have been adopted later (e.g. Bangladesh) or as a benchmark used by NGOs who push for amendments or adoption of their national laws. Some countries have adopted RTI legislation that hardly meets international standards, and many of them are in the second half of the countries ranked based on their RTI legislation (Afghanistan, Japan, Mongolia, Pakistan, South Korea, Taiwan, Thailand, China, Cook Islands all rank below 51st place out of 102 countries ranked).[30] Some of those countries have showed efforts to amend their legislation, such as Pakistan with its RTI bill currently pending before parliament. Some federal states also have state and provincial RTI laws which may be more or less progressive than the federal legislation (Shanghai in China[31] and two provincial RTI laws in Pakistan[32]), but may at times create confusion as to which law applies. The recent adoption of secrecy legislation is threatening some existing RTI laws, namely in Japan[33] and China.[34]

Common questions when reviewing right to information legislation

	Is it a fundamental right?	Does it apply to everyone?	Does it include all information?	Does it apply to all parts of the government?	Does it apply to publicly funded agencies and NGOs?	Do the exceptions fulfill international standards?	Can you access information without a reason?	Are the procedures simple and clear?	Are public officials expected to help you apply?	How long do they have to respond? (In days)	Is the appeal body independent of government?	Are there sanctions for information holders who fail to provide?
India				½	½					30		
Mongolia				½	½	½			½	7		
Nepal					½			½	½	15		
Bangladesh				½		½				20		
Japan				½						30		
Thailand		½				½				15		½
South Korea					½			½		15		½
Indonesia					½	½				10	½	
Taiwan		½			½	½				15		½
Pakistan			½	½		½				21	½	½
China			½	½				½		15		½

Regional challenges and best practices

In the last 10 years, especially since the adoption of some of the regions' and world's most progressive RTI laws, civil society in Asia has been relatively active in pursuing the right to information. The practice of using RTI laws has made it possible to identify best practices and also challenges that impede the free flow of information. Those challenges or negative trends are likely to trigger demands from the users of RTI legislation to eliminate such obstacles, either through better implementation efforts or attempts to change the laws. Countries that have not yet passed a RTI law have much to learn from these findings and make sure they do not follow the approaches that have proven ineffective or contrary to the best practices in the field.

A country such as Pakistan is a good example of the change in the political climate in a country in relation to RTI legislation. While the federal RTI law is severely flawed and does not come near to international standards, the two provincial laws adopted in 2013 are very progressive and have apparently triggered the response of the federal government. The new RTI bill that has been tabled has been described as one of the most progressive RTI bills in the world. Changes for the better are therefore possible and even likely in the light of the developing of international best practices.

Justifying requests and limiting the use of information

Many laws in the region still demand that requesters specify a "legitimate" purpose for obtaining information held by the authorities. Such a requirement is at odds with international standards. The Indian RTI Act encapsulates the best practice approach regarding this issue and prohibits the authorities to demand from requestors any reasons for requesting the information. However, the RTI laws and regulations in China, Indonesia, Nepal, South Korea, Taiwan and Pakistan require such justifications.

Worse still, using information for purposes other than those declared to the state may be sanctioned in Nepal, while Indonesian RTI law prescribes fines for using the information contrary to the law.

Over-prescriptive identification requirements

The right to information should be available to all persons, and not just citizens (as is the case in the majority of Asian laws), equally without discrimination. The nature of RTI laws worldwide is to enable access to information regardless of who the requester is. Once the information is "cleared" for the public it should not matter who requests it. Therefore, demanding from the requester more information about his/her identity than is absolutely necessary is contrary to this principle. The Indian RTI law adopts a best practice approach, prohibiting the authorities from demanding from the requestor any personal details except those that may be necessary for contacting them. On the other hand, some laws and regulations, such as Pakistan's Freedom of Information Rules 2004 and Mongolia's law, require a vast amount of personal details from the requestor, including name, address, phone number, national identity number and, in the case of Pakistan, father's name and even a photocopy of the national identity card. Usually, only name (if at all) and address for delivery should be required.

Excluding bodies or branches from RTI

Newer RTI laws in Asia tend to include all branches of the government under the scope of the law. Many laws also include non-governmental organisations (NGOs), publicly funded private organisations and bodies owned and/or controlled by the government. In Indonesia and India even political parties fall within the scope of the RTI law. Nevertheless, some RTI laws explicitly or implicitly exclude whole branches of the government. In China and Japan, the RTI law does not cover the legislative and judicial branches, and the South Korean law does not mention the judiciary. The Thai law includes the judiciary, but only as it relates to matters not associated with trial and adjudication of cases. In Mongolia and Pakistan, only the secretariat of the parliament is included, but not the parliament itself.

The majority of Asia's RTI laws, even if they in principle include all branches of the government, expressly exclude security and intelligence services from their scope (Bangladesh, India, Bangladesh and South Korea). This is bad practice as it is based on exclusion of public oversight, even if the information sought would be in public interest and/or is not classified as a state secret, or otherwise deserves to be withdrawn from the public eye. Indian and Bangladeshi laws at least provide for a safeguard: if information sought relates to human rights abuses or corruption, security and intelligence services do fall within the scope of the law.

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Sanctions

Monetary sanctions are a necessary part of efforts to successfully implement any RTI law, but they should be reserved only for the public officials or authorities that unjustly violate the right to information. However, some laws, such as Nepali and Indonesian, also prescribe sanctions against individuals that use the information contrary to the law, which severely limits their constitutionally-guaranteed right to information. Moreover, there are laws that foresee sanctions against public officials for revealing more information than they were allowed (in China). This is even more endemic for secrecy legislation; in many countries state secrets laws prescribe imprisonment for revealing state secrets, most often without a public interest clause. Indonesian and South Korean laws, for example, include severe prison sentences for revealing state secrets, although the latter did enact a comprehensive whistle-blower protection law that protects and supports individuals that report violations of the public interest.

Non-existent or ineffective oversight bodies

Every progressive RTI law foresees an external oversight body, competent to review the decisions (or lack of response) of public authorities. In practice, not all laws in the region include such an oversight body in their RTI system. In China and Taiwan the possibility of external review exists. Other laws foresee either the establishment of an Information Commission

(Bangladesh, India, Indonesia, Nepal and Thailand) or the oversight functions are bestowed upon an Ombudsman (in Pakistan and Mongolia).

One of the key elements of a strong oversight body is its ability to issue binding decisions, although this is only the case in Bangladesh, India, Indonesia and Nepal. Without this ability, the implementation of the decision is more or less discretionary and left to the culture of abiding by the recommendations of superior bodies. Competencies of oversight bodies vary; the Indian RTI law represents best practice, as the Central Information Commission has all the necessary powers to perform its functions: it may inspect documents, issue different procedural orders, its decisions are binding and it may issue fines and order other measures for violating the RTI law.

Another key aspect of an effective complaints mechanism is the independence of the oversight body and sufficient human and financial resources to perform its role. However, nearly all national implementation reports in the region emphasise that a lack of resources is a major factor hindering the successful work of oversight bodies (for more details see the point below on Challenges with implementation).

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Aid transparency and disaster relief information

Aid transparency and access to information in the context of disasters is vital in order to ensure the effectiveness of aid and disaster relief. Without transparency it is impossible to coordinate humanitarian efforts; decision-makers are not able to take decisions and adopt measures without accurate, timely and comprehensive information on who needs help; where help is needed; what kind of help; and what aid or resources have already been given to a specific area.[35] Some Asian countries are members of the International Aid Transparency Initiative (IATI) as partner countries, namely Bangladesh, Indonesia, Myanmar, Nepal and Vietnam. The IATI is a multi-stakeholder initiative that aims to improve *"the transparency of aid, development, and humanitarian resources in order to increase their effectiveness"* in receiving countries by facilitating access, use and understanding information on aid spending.[36]

After the April 2015 deadly earthquake in Nepal, civil society demonstrated that there is a dire need for disaster relief transparency, namely for up-to-date, quality and easily accessible information in post- and pre-disaster situations. In post-disaster Nepal, the flow of information that could save lives, make distribution of aid possible and make reconstruction efforts effective, was slow. Civil society insisted that the state should adopt robust national mechanisms and policies, including pre-disaster information management systems, and proactively distribute information important during rescue, relief, rehabilitation, reconstruction and management.[37]

Challenges with implementation

Lack of awareness among the public

In most countries in Asia, civil society organisations and NGOs report low levels of awareness among the public about RTI legislation.[38] As a result, there are low numbers of requests (a weak demand side), and consequently there is not an extensive pressure towards authorities to improve their request handling practices and open up their information for the public. India has one of the most active civil societies focusing on RTI in Asia and there have been many awareness-raising campaigns conducted by a governmental agency. Even there, however, awareness among the public is low particularly in rural areas, which helps maintain a gap between rural and urban levels of participation in decision-making. Moreover, there have been reports that requestors face harassment from public officials especially in rural areas of India. Similarly, in Japan a scandal broke out when the Defence Agency compiled a list of requestors and conducted a background investigation on them. In Indonesia, there is sometimes a need to bribe public officials to gain access. In Mongolia, widespread corruption and nepotism dissuades people from requesting information from the government.[39] Recently, however, the number of requests and appeals has sharply increased in some countries; for example, the number of requests doubled in South Korea and the number of complaints rose by 250 percent in Thailand since 2013.

Awareness among the public is low particularly in rural areas, which helps maintain a gap between rural and urban levels of participation in decision-making

Problems within public authorities

The majority of problems with implementation emerge at the level of public authorities that receive information requests. A problem that persists in many countries is the lack of awareness of public bodies and officials about their obligations under the RTI law. One of the reasons for this is the lack of training for public officials, which is prevalent in the majority of Asian countries. In Pakistan, for example, a majority of surveyed public authorities at the federal level admitted they were not even aware of the RTI legislation.[40] Additionally, resources for the implementation of the RTI legislation and for meeting the records management requirements are scarce and this may lead to delays in responding to requests.[41] Nevertheless, it seems that the lack of training and minimal resources are only part of the problem and that public officials are often not interested in learning about their RTI obligations. A survey in Bangladesh has revealed that NGOs in their capacity as bodies liable under the RTI law are better aware of their statutory duties.[42] Long delays in responding to requests can be found in the majority if not all the countries, making it one of the biggest obstacles to successful implementation. In Nepal, a large number of authorities have not appointed public information officers.[43]

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Interpretation of exemptions

Overbroad interpretation of secrecy legislation or other exemptions in RTI laws is another common implementation problem. For example, this has been reported in China, where public officials may be sanctioned for revealing information that they should not have revealed. In Indonesia, NGOs reported that national security and foreign relations exemptions are defined too broadly in the law.[44] In Japan, civil society reports that the public interest test is seldom used, while the data protection exemption is often applied to deny access to information about public officials. In South Korea, the "national security" exemption is often interpreted widely and the reasons for refusal of disclosure are not properly explained.[45]

In China, public officials may be sanctioned for revealing information that they should not have revealed.

Problems within oversight bodies

The problems of implementation of RTI also appear in relation to the functioning of oversight bodies. Often, they are under-staffed and under-resourced. In India, the average waiting period for a Central Information Commission decision is 6.2 months and 30 percent of information commissioners' places are vacant.[46] In Nepal, the National Information Commission is also under-staffed and under-resourced, but it also lacks actual powers to enforce its decisions or monitor their implementation.[47] A problem that appears in Pakistan is that access to the Federal Ombudsman in Islamabad is difficult for the rural population.[48] There are difficulties in enforcing decisions of the tribunals in Thailand due to overlapping laws and there is a lack of responsibility of those in charge of implementing the law.[49]

Proactive disclosure

The majority of RTI laws in Asia include comprehensive provisions on proactive disclosure of information. However, implementation reports show that in practice, public authorities do not regularly publish information that they are obliged to under RTI legislation. Despite progressive provisions on proactive disclosure in Indonesia, a study showed that information is not sufficiently available proactively, largely due to inefficient information management systems and a lack of capacities and skills in the public bodies.[50] With similarly progressive provisions on proactive disclosure, the implementation has been weak in Nepal and none of the surveyed public authorities published all required information on their websites.[51] In the aftermath of the deadly earthquake in Nepal in April 2015, NGOs warned about the lack of efforts to proactively disseminate information of public importance, especially in emergency situations. Pakistan and South Korea are both countries with weak or vague provisions on proactive disclosure and, implementation has been unsatisfactory. In Pakistan, many public bodies do not publish rules and regulations proactively.[52] In South Korea, many public institutions failed to disclose relevant information about their activities and a list of available information on their websites.[53] On a positive note, the Chinese government has reportedly stepped up its efforts on providing proactive disclosure of increasingly large pools of information.[54] Similarly, countries in Asia have started establishing their open data portals; India, Indonesia, Japan, Nepal, Pakistan, South Korea and Taiwan launched their open data portals recently.

In the aftermath of the deadly earthquake in Nepal in April 2015, NGOs warned about the lack of efforts to proactively disseminate information of public importance, especially in emergency situations.

Elements of a Right to Information Law

Basic Elements of RTI Laws

Most RTI laws are very similar in structure and function. There are common elements found in RTI laws in countries around the world:

- Right of Access - a right of an individual, organisation or legal entity to be able to demand information from public bodies without having to show a legal interest. Some laws provide for specific provisions on principles (e.g. a principle of maximum disclosure) and some regulate the relationship with other laws, such as secrecy laws;
- Definitions - laws usually frame the rights and obligations with a set of definitions on who is considered a public authority or other liable body, what is meant by public information, who is an information officer etc. in order to enable a broad right to information, the definitions must not be restrictive.
- Duty to Provide Information - a duty imposed on public bodies to respond and provide information. This includes mechanisms for handling requests and set time limits for responding to requests;
- Exemptions - to allow withholding of certain categories of information. These typically require that some harm to the interest defined by the category must be shown before it can be withheld. A public interest test may be prescribed to allow access to exempt information for the greater benefit;
- Appeals - internal appeals mechanisms to allow the requestor to challenge refusals to disclose;
- External Appeals and Oversight - external review of decisions. Typically, RTI laws either create an external body known as an information commission or allow the complaints to be heard by an existing ombudsman or the court system. The body also reviews implementation.
- Proactive Publication - requirement for government bodies to affirmatively publish some types of information about their activities.
- Sanctions - for officials who unlawfully destroy, modify, or refuse to release information, and for bodies that fail to comply with the orders of the external review system.
- Promotional measures and reporting - some laws envisage a body, competent for promoting the right to information. Often, public bodies and/or oversight authorities must (publicly) report on their activities.

Principles of RTI legislation

Relationship with other laws

When adopting a new RTI law, countries must consider what needs to be done with existing laws. In many cases, hundreds of laws might affect the right to information.

Some countries have attempted to comprehensively review existing laws to determine if they are overly restrictive. However, this proved to be too burdensome in Australia and Canada. The better approach is to override all existing and future legislation by adding a provision in the RTI law itself explicitly saying so. This was done in the Bangladeshi and Indian RTI laws, which stipulate that any provision of another law that is inconsistent or creates impediments to the right to information shall be superseded by the RTI law. China, Mongolia, South Korea and Taiwan, on the other hand, take a reverse approach and their RTI laws refer to other laws which may create further obstacles to the right to information. In Nepal, the law states that *"other matters shall be dealt in accordance with prevalent laws"* which suggests the latter approach.

The better approach is to override all existing and future legislation by adding a provision in the RTI law itself explicitly saying so.

Even if a law protecting a certain class of information is nullified by the right to information law, the information does not become public unless it is released by the body either proactively or reactively in response to a request and in either circumstance, the official must analyse if the information is exempt under the exemptions laid down in the RTI law.

Purposes and Justification for Requesting Information

Some laws limit the right to information to requesters who are able to demonstrate they have a "direct interest" in the information. Under such a "direct interest" requirement, most of the primary users of the law, including journalists, environmental, anti-corruption and other civil society groups, would be barred from using it. The provision effectively changes the purpose of the law to that of an administrative procedures law, where an individual demands information relating to a particular service that he or she has been denied rather than a law which purports to implement a fundamental human right, namely the right to information. International standards on RTI prohibit this demand and it has been rightly rejected worldwide in national laws.

However, some restrictive RTI laws prescribe that information may only be obtained for specific reasons ("legitimate" purposes) or require a person states his/her interest in the information. Chinese law prescribes that a person may obtain information only if they show a "special interest", stemming from particular production, life, research and other needs. Other legislation, such as the Indonesian, Nepali, South Korean and Taiwanese laws, explicitly require the requesters to state a reason or purpose for their request. While the Pakistani law is silent on this matter, the official request form requires not only that the requester describes the purpose, but also that he/she pledges to use the information only for the declared purposes.

The Indian Right to Information Act specifically states that "An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him."

A good practice, and one used in many laws in the world including Asia specifically prevent public bodies from asking the requester the purpose of their request. For example, the Indian Right to Information Act specifically states that *"An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him."*[55] A similar provision is found in the Mongolian law, while the laws in Bangladesh, Japan and Thailand do not have a specific provision on this, but neither do they require the expression of purpose.

Scope of RTI Laws

Who Can Make a Request?

International law states that the human right of information is available to all persons. Under Article 19 of the Universal Declaration on Human Rights and the ICCPR, everyone, that is all persons, have an equal right to information. Article 13 of the UN Convention against Corruption (UNCAC) provides that all state parties must take measures *"[e]nsuring that the public has effective access to information"*. In particular, the Convention specifically promotes the importance of civil society having access to information.

It is best practice in RTI law making that every person or organisation should have the right to request information, be it a citizen, a foreigner, an organisation established in the country or abroad. In Asia, most countries only grant the right to information to citizens and some include legal persons as well (e.g. China, India and Taiwan; Indonesia specifies that legal persons must be "national"). Only a handful of RTI laws extend this right to all people, namely Japan and South Korea. In Thailand foreigners have the right to information subject to Ministerial Regulation, and Taiwanese law is based on reciprocity: if their citizens are granted this right in a foreign country, then the citizens of that specific country are entitled to seek information in Taiwan.

It is best practice in RTI law making that every person or organisation should have the right to request information, be it a citizen, a foreigner, an organisation established in the country or abroad.

Including or excluding legal persons in the right to request information can create confusion regarding the rights of legal persons, including companies, media and non-governmental organisations, as well as unincorporated community and citizens groups, which often request information as entities, rather than as individuals. This is important in an organisational setting where the demand for information should not be lost in cases where the employee departs.

Defining Public Bodies

Most RTI laws focus on the administrative and executive bodies that make up the modern bureaucratic state. This includes ministries or agencies that provide for health, the environment, law enforcement, military, communications and transportation on the national level and their related local bodies. Best practice, however, is to provide in the law a broad definition of public bodies to include any body that is exercising public authority according to the law, not only the executive branch. More recently adopted RTI laws take this approach which builds in the flexibility for the coverage of the law to develop as particular institutions evolve.

However, many countries use a schedule in the act to create a positive list of bodies that are covered. This provides for a clear list of which bodies are covered and which are not. However, this approach often requires that each time a body is created, changes its name, or modifies its purpose or structure, that the schedule must be updated, either by parliament or through regulation, both of which can be slow and time consuming. This can also raise problems when the government refuses to include new bodies. In Ireland for example, the police are still not covered, although they will be partially included from October 2015 onwards.

In Asia some good practices can be observed. In Bangladesh, India, Indonesia, Mongolia and Nepal, all branches of the government (except for some expressly excluded authorities) fall within the RTI regime. These countries also oblige organisations with substantial public funding and NGOs to abide by the RTI laws. Bangladeshi, Indonesian and Nepali RTI laws also include organisations with substantial foreign funding, such as international NGOs and international organisations. Following the most progressive RTI regimes, many Asian countries include state enterprises, i.e. bodies owned and/or controlled by the government, such as in Bangladesh, India, Indonesia, and Nepal. In Pakistan, private bodies funded by the government or performing public functions are not included in the RTI regime.

Exclusion of Certain Bodies or Branches

Some countries specifically exclude certain bodies that handle sensitive information. In Bangladesh, India and South Korea the security and intelligence services are excluded from the scope of the RTI law. The problem with excluding bodies is that while some of the information that the body might hold can be quite sensitive, excluding all aspects of bodies' activities removes a necessary oversight mechanism to prevent corruption or the misuse of power, or information such as environmental hazards that might have been created by the body in their activities. In addition, much of the information that they maintain is quite mundane, such as procurement, the use of credit cards or official cars. The better approach is to include the body and to use exemptions from the right to ensure that sensitive information is protected where necessary. Indian and Bangladeshi RTI laws partially remedy this by requiring that information relating to corruption and violations of human rights held by the bodies are not exempted.

Indonesian and Nepali laws do not explicitly exclude any authority from their scope and their definition of public bodies is very broad, making them an exemplary RTI regulation in this respect.

Local Governments

In federated or decentralised systems where there are states or provinces, it is often necessary for sub-national jurisdictions to enact separate laws for those areas where they hold sole jurisdiction over the information. Often, these laws are adopted before the enactment of national laws and incorporate progressive provisions that are tried out and later adopted by national laws. Nearly 3,000 local jurisdictions in Japan have adopted RTI laws since 1982, as well as 30 provinces in China. It was these laws that led to the enactment of the national law. Other jurisdictions such as New Zealand and the UK have adopted separate national laws to provide access to information held by local entities.[56] In Pakistan, two provinces have adopted weak RTI laws, while the two remaining provinces adopted laws in 2013 incorporating nearly all best examples in the field.

Private Companies and Non-Governmental Organisations

Modern governments are often provided by an amalgamation of national bodies, quasi-governmental organisations and private organisations. As government bodies are privatised or functions contracted out to private bodies, many RTI laws have been extended to include non-governmental bodies such as publicly owned companies, private companies and non-government organisations that receive public money to conduct public projects or make decisions that affect the public. The Indian RTI law includes NGOs that are *"substantially financed, directly or indirectly by funds provided by the appropriate Government"*. Similar provisions are found in Bangladeshi, Indian, Indonesian, Mongolian and Nepali RTI laws.

There is also a limited right in most countries to access information held by private bodies that are not conducting public business. Privacy and data protection laws in nearly 100

countries mandate a right of access and correction by individuals to their own files held by any public or private body.[57] Environmental protection laws in most countries require companies to publish information about potential threats to the environment and public health. In South Africa, the Promotion of Access to Information Act allows individuals and government bodies to demand information from private entities if it is necessary to enforce any other right. In Rwanda, private bodies are covered under the new Law on Access to Information if their "activities are in connection with public interest, human rights and freedoms".

In South Africa, the Promotion of Access to Information Act allows individuals and government bodies to demand information from private entities if it is necessary to enforce any other right

Political Parties

Transparency in governing political parties, their spending and decision-making has become increasingly important in combating corruption and improving democratic processes. Many countries in the world have started including political parties in some sort of a transparency regime, either in separate legislation or, for some countries, in their RTI laws. In Indonesia, for example, political parties fall within the system of proactive disclosure and they are obliged to publish a set of information, including on their use of public funds, their decisions and activities. In Nepal, political parties fall within the full scope of the law and are defined as "public agencies." Although not explicitly mentioned in the Indian RTI Act, the Central Information Commission decided in a 2013 landmark ruling that political parties fall within the scope of the Act.[58] However, due to political conflicts, this has not yet been implemented.

Commercial Documents

Care should also be taken that information that is created for a public purpose is not withheld in the name of commercial confidentiality. Public authorities can limit this problem by explicitly refusing to sign contracts relating to public services that contain excessive secrecy clauses. In addition, many laws such as the UK RTI law override such clauses if it is in the public interest to release the information.

Care should also be taken that information that is created for a public purpose is not withheld in the name of commercial confidentiality.

Defining Access: Documents, Information and Access

National RTI laws use different terminology to describe what information individuals have the right to access. Older laws typically refer to the right to access records, official documents, or files, while newer laws often refer to a right to information. In practice, there is generally not much difference as most laws now broadly define the right to include all information, no matter the medium it is stored on. The best practice is to provide that the right to information is broadly defined, neutral with regard to the media used to record it, and flexible enough to ensure that as new technologies are developed it automatically applies without requiring an amendment as was necessary in many laws when electronic records became commonplace.

Generally the right only applies to information that has already been recorded at the time of the request. This can leave gaps as certain information that may have been orally transmitted (such as in a meeting) may have been used in making a decision. A better practice is to require that all known information is available. In New Zealand, the right to information has been interpreted to mean that information which is known to the agency but not yet recorded must be recorded if it is relevant to the request. This practice is also beneficial to future reviews of decision-making as it limits the ability of officials to omit information to avoid disclosure and therefore encourages better file creation and recordkeeping. This coincides with the public servants' duty to ensure that their decisions are adequately justified.

Information that falls within the scope of the law is not necessarily a "final document", something that will never change. Documents in preparation or drafts not used in the final decision are included in the RTI regime in the majority of national laws, although exemptions to such documents may apply. Nevertheless, some countries such as Sweden frame the right to information around the term "official documents" and do not include preparatory works or drafts, thereby removing large swaths of information from the scope of the law.

The right can also include any other materials held by public bodies it is not limited to documents. The Indian RTI law includes access to samples held by public bodies. This would facilitate a review of whether proper materials were used in a building site for example. All other laws in Asia follow this formula; not only written documents but information in any form may be requested. Japan excludes archival information and information meant for broader distribution (such as official gazettes, books etc.), but otherwise includes all types of information. The definition of the Nepali law leans on various functions of information: information is any "written document, material or information related to the functions, proceedings thereof or decisions of public importance made by the public agencies."

The right can also include any other materials held by public bodies it is not limited to documents.

It is also important that not only information created by the authority but also information received by other authorities falls within the scope of a RTI law. A comprehensive definition may be found in the Indonesian RTI law which states that public information means information in any form that is produced, stored, managed, sent and/or received by a public agency relating to functioning of the state and other public authorities. The Taiwanese definition of information also emphasises that information subject to disclosure is one that is "produced or acquired" by the public authority. The Pakistani RTI law is restrictive and defines "record" as information in any form "used for official purpose by the public body which holds the record" and thereby seemingly excludes information only received by other bodies but not officially used by the authority that is in possession of the information. In Japan, the authorities that received the information request may, after consultations, transfer such a request to a body that prepared the documents.

Procedures for Requests

Form of Requests

In most countries, the law requires that a request should be in written form and describes the information desired. A few countries further require that the request is on an official form designed by the government body. It is common to also accept electronic and faxed requests. Not all countries set strict procedures, while some laws are overly restrictive. Nepali and Thai laws, for example, are silent on the matter of how

information may be requested, which is problematic as it may create a divergence of practices between different bodies. In the spirit of the widest possible access, the interpretation should be broad and the authorities allow any form of request.

Oral Requests

Many countries also accept oral requests, a practice especially important in countries with lower literacy rates, but also as a good practice of keeping the access procedures as prescriptive as possible. This is also required for access to environmental information under the UNECE treaty. In the region, India and China include provisions where oral requests are possible, but only if the request may not be submitted in writing (for example for illiteracy reasons). Bangladesh, South Korea and Taiwan do not allow requests submitted in oral form.

Many countries also accept oral requests, a practice especially important in countries with lower literacy rates.

Electronic Requests

Many laws provide for requesters to be able to request information using email or web-based forms. In Mexico and Chile, the *Sistema de Solicitudes de Información* system run by the national transparency oversight bodies provide for electronic filing of requests for government bodies.[59] All requests are entered into the system even if made orally or in writing which allows for easy automated monitoring of the processing of requests by the Commission as well as by the requestor and to allow the bodies themselves a simple way to monitor their performance. In 18 countries including Australia and New Zealand, NGOs are using the open-source Alaveteli system to allow people to easily send requests to public bodies and then automatically publish the responses online.[60] In Asia, Mongolia and India have the most straightforward provisions on allowing electronic requests. China also allows requests in "digital document form", while Bangladesh only allows email requests if the officially prescribed form is not available.

Prescribed Form

In Bangladesh and Pakistan the request must be supplied in a prescribed form. Bangladesh eases this prescription by allowing the requestor may request information by writing it down on a white piece of paper or in an email if the form is for some reason not available.

Substance of the RTI Request

Identification of requestors

The majority of RTI laws require some form of identification or address of the requestors. More advanced laws however do not require any other information from the requestors than those strictly necessary, because if the right to information is to be afforded to all persons equally and without showing a legal interest, it should not matter who the requestor is. UK Minister Baroness Ashton put it succinctly, *"The issue is not who the inquirer is but whether the information should be in the public domain. So if m-mouse@btinternet.com sends in a request for a piece of information that could and should and can be in the public domain, then it should go into the public domain through m-mouse@btinternet.com."*[61] Some laws such as Finland's and the Mexican Infomex system specifically encourage anonymity to ensure that all requesters are treated equally.

"The issue is not who the inquirer is but whether the information should be in the public domain. So if m-mouse@btinternet.com sends in a request for a piece of information that could and should and can be in the public domain, then it should go into the public domain through m-mouse@btinternet.com."

Therefore, the more identifying information the law requires, the more restrictive the access regime may be seen as. Nevertheless, requiring contact details from the requestor (be it email for electronic documents or a physical address for receiving photocopies) may be necessary so that the authority may send the requested information. Another reason for requiring the address may be when a (partially) negative decision must be served following an administrative or similar procedure.

In some cases, identification may be necessary to ensure that access is granted to those requesters that are authorised to see personal or commercially sensitive information. In such cases, it may be necessary to set up systems for identification such as digital signatures. It should be highlighted, however, that such a regime is not considered as a RTI regime. Similarly, systems need to be set up for those situations where a fee will be imposed.

There are both good and some very bad practices in Asia. The Indian RTI law explicitly states that an applicant *"shall not be required to give [...] any other personal details except those that may be necessary for contacting him."*[62] On the other end of the spectrum, the Pakistani and Mongolian RTI laws require information such as name, address, phone number, national identity number and, in the case of Pakistan, the requester's father's name and even a photocopy of the national identity card. The majority of laws require only name and address for delivery.

Justification of the request

To enable the greatest possible access to information, requestors should not be required to justify the reasons why they are seeking information. If the public body has the discretion to assess whether the requestor has a legitimate reason or not, this is a serious restriction to the right to information which hinders the control and accountability purposes of the RTI legislation. There is a tension between RTI laws and the data protection legislation. The latter often requires personal data to only be processed for legitimate and known purposes, thereby raising a question of conflict of laws when a RTI request includes access to personal data.

Some RTI laws in Asia explicitly prohibit the authorities to ask for a reason for requesting information. In India, for example, *"[a]n applicant making request for information shall not be required to give any reason for requesting the information"*.[63] Another good practice is found in the Mongolian law which states that requestors are not required to *"explain the requirement and ground for receiving information."*[64] Some other laws do not explicitly prohibit examining the reasons, but neither do they enlist the reason for the request among the requirements of the request. Such is the example of Japan, Bangladesh and Thailand.

However, there are some laws that unambiguously require the justification of the request. Indonesian law states that every requestor *"has to state the reason for such request."*[65] Similar requirements are found in Chinese, Nepali, South Korean and Taiwanese RTI laws. Possibly the worst example may be found in the Pakistani law, where the official request form requires the applicants not only describe the purpose of the request but also to declare that the information will only be used for the stated purposes.

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Identifying the information sought and transfer of requests

The essence of every information request is describing what information the requestor is seeking. Some very restrictive laws or interpretations require the requester to state the exact name of the document and/or the document number. Most laws, however, require that the requestor be as specific as possible in describing the information requested. At the same time, there is usually a duty on government officials to assist the requestor. This is essential otherwise the RTI law is limited to only knowledgeable insiders who know what to ask for. This also benefits the government body as it usually leads to more specific, easier to complete requests. The duty includes contacting the requestor to clarify the information desired, if unclear, and also to forward requests to other appropriate bodies if the information is held elsewhere.

The majority of laws in Asia require the requestors to only describe the information sought and do not impose a burden of naming the documents. Although the Japanese law comes close to that when it requires requestors to name the "titles of administrative documents", the second part of the provision states *"or other particulars that will suffice to specify the administrative documents relevant to the disclosure request."*[66]

No Asian law contain a specific provision on the duty to assist the requester with identifying the information sought. However, Indian and Pakistani laws encompass a broad duty of assistance to requestors and some other laws (namely Chinese, Taiwanese and Japanese) include a duty of the authorities to contact the requesters for clarifications when the request is unclear. Of those three laws, only Japan requires the authorities to help the requestor in the revision of their request.

In case the public authority receives an information request but does not possess the information, progressive RTI laws impose a duty upon public authorities to transfer the request to the authority that likely holds the requested information. The Indian, Mongolian and Taiwanese RTI laws follow this best practice approach, requiring the authority to transfer the application to another public authority and inform the applicant thereof; Mongolia sets the deadline for such a transfer at two days, India at maximum five days and Taiwan does not regulate the timeline. In Japan, there is an obligation to transfer the request, although it is accompanied by the discretion to also transfer the request for documents, prepared by another authority. While Chinese RTI law does not provide for transfer, it at least stipulates that the requestor should be notified about which other authority might be in possession of the documents. In Nepal, there is only a duty to inform the applicant that the authority does not hold the information sought.

Form of information sought

Most laws provide that the requestor can ask for copies of the information in any reasonable form. This includes providing electronic records in their original form to facilitate searches or as printouts if the user does not have the proper equipment, transcripts or copies of audio tapes or video converted to a medium to make them viewable on commonly available machines. Nearly every law also allows a person to view the information directly as long as doing so does not endanger it. The requestors should have the right to select the preferred form of information sought, but there is a question to what extent public authorities are obliged to respect that preference. In Bangladesh and Mongolia the form in which the requestor wishes to obtain information is a required substance of the request. Chinese, Indian and Nepali RTI laws stipulate that the authority should comply with the preferred form to the extent possible. While Indonesian law only mentions the preservation of the integrity of the documents as an obstacle for not being able to respect the requester's preference, Indian law also refers to the disproportionate diversion of resources.

Assistance

Aside from the duty to assist the requestors in identifying the information they wish to receive, many RTI laws also provide for a general (or other specific) duty to assist the requestors in exercising their right to information. Particular attention should be given to upholding equal rights of requestors with disabilities. The Indian RTI law includes all these good practices and introduces a general duty to assist the requesters, a duty to assist with submitting the request in writing (especially relevant for illiterate requestors) and a duty to offer special assistance for requestors with disabilities. China also included a provision on assistance to persons with disabilities and illiterate requestors and the Nepali Information Commission issued guidance to that effect. Bangladesh only covers assistance to persons with disabilities, while other laws either do not have a special provisions, or a general duty to provide assistance applies. In some countries assistance might be due through provisions of special disability focused legislation.

Response Times

Typically, RTI laws require that government bodes must respond to a request as soon as possible, setting a maximum time of between two and four weeks. Some very progressive RTI laws in countries with admirable transparency traditions, such as in Scandinavia, state that the body must immediately respond (usually within 24 hours) to the application and provide the information as soon as possible. In most jurisdictions that allow for oral requests, the requests must generate an immediate response if possible. The best practice is therefore for the response to be made immediately or as soon as possible. There are usually provisions for additional time if the request is lengthy or complex or must be transferred to another body that holds or has control over the information.

Nepali RTI law sets out the shortest response time - immediately after receiving the request or, if this is not possible due to the nature of information, in 15 days without the possibility of extending the time. Other countries establish different deadlines, from seven business days and the same period for extension in Mongolia to 30 days and the possibility to extend for another 30 days in Japan. China, India, Nepal and Pakistan do not allow the public body to extend the deadline. The reasons for allowing extensions also vary significantly. Some laws set out more or less strict rules on when extensions are possible, for example due to a "considerably large amount of administrative documents" (Japan), or if official information is in a condition which can be easily damaged (Thailand). Some other countries base the possibility of extensions on much more vague terms, such as "if deemed necessary" (Mongolia and Taiwan) and "due to unavoidable reasons" (South Korea).

A number of countries require immediate responses if the information relates to threats to a person's health or safety. The US Freedom of Information Act was amended in 1996 to provide for a two-track system, in which information of public interest can be placed ahead of other requests in the processing queue and must be responded to more rapidly. The requester must make a case for why this should be done. In the region, the RTI laws in Bangladesh and Nepal provide that the

body must respond within 24 hours and Indian RTI Act within 48 hours if public interest reasons dictate swift responses, for example if the life and security of persons are at stake.

Excessive delays can frustrate the intent of RTI by preventing the information from being available when it is useful to the requester, for example, in responding to some other consultation or decision-making process. In addition, research has found that government departments are less likely to delay when there is a shorter deadline than a longer deadline because they prioritise the request.[67] However, this is potentially difficult for many bodies as they must have dedicated enough resources to the processing of requests. Lack of sufficient resources and expertise are partially responsible for delays in Asia in furnishing the requested information.[68]

Fees

Types of fees

Many RTI laws allow government bodies to demand fees from requestors. Common types of fees include:

- Application fees: A few countries such as India and Japan require that applicants include a nominal amount with the application before it is processed. They limit the ability of the less well off to demand information from government bodies. In India, officials often use the requirement to buy stamps to pay for the fees as a way of avoiding receiving requests so that they do not have to respond to them. In Japan, government bodies can divide a single request into multiple ones, and thus raise fees beyond that of average requestors.
- Search and processing fees: This can cover the staff time locating and reviewing documents. Many jurisdictions only charge for the searching, not for the time spent on examining the documents. Often, the fees for an initial period, such as the first hour are waived.
- Copying and postage: The most common fees are imposed for the cost of copying and postage of the located records to be disclosed. Most acts provide that a certain number of pages are provided for free and also allow for individuals to be able to view the records in person free of charge.
- Appeals: A few countries such as Ireland and Australia charge for requestors appealing against decisions by bodies that withhold information or challenge the fees levied. Fees for making appeals undermine the effectiveness of the laws by placing barriers to external oversight, thus allowing bad practices that would otherwise be corrected to continue.

Fees are often controversial. They can create unnecessary administrative barriers which reduce requests rather than acting as a cost recovery mechanism. For example, electronic requests can be impeded unless there is an electronic means of payment set up for each body. In addition, impecunious requesters may be barred from exercising their right to information as they may not be able to even file a request or later obtain the documents on an equal basis.

Some government bodies have justified high fees by describing access to information as a service that should be paid for by its users. However, this undervalues RTI as an inherent part of democracy and the benefits listed above of an open government on government bodies and public trust. Fees should be regulated in a way that is consistent with the objects of the RTI law and should not *"effectively disqualify citizens from participating by imposing prohibitive charges."*[69] While providing free access to information may place financial burden on public bodies, the government should, when setting up the regime of costs, take into account the democratic potential and other benefits of the RTI legislation. A general principle is that fees should not be used as a profit-making device.

Best practices

The best practice is to limit fees to actual costs for providing information, not for the time taken in deciding on the request itself, provide waivers for information of public interest, and not charge for appeals. In practice, in many jurisdictions that do allow for fees, they are not imposed because the nominal costs in providing the information is less than the administrative cost in collecting and processing the fee. In some countries, charges do not apply for reproducing only small amounts of documents. From the analysed countries, only Nepal offers some pages free of charge, although only five.

In Asian Pacific countries fees are usually foreseen in the RTI laws and implementing rules, whereby in most countries fees are set centrally by the Government. In China, there are guidelines, following which each agency determines the fees. In Bangladesh, the Government is obliged to consult with the Information Commission before setting up the rules on charging the fees. In the majority of countries analysed it is usually free to file a request, namely no application fees are prescribed. In Japan and Pakistan, however, the requestors must pay a fee for submitting a disclosure request and a fee for implementation the disclosure. Fees are limited to actual costs of reproduction in all analysed countries except in Indonesia and Taiwan.

Fee waivers

Most countries waive fees for those that can be sown to be below a certain income level or on government support. Many jurisdictions provide for the waiving of fees when it is in the public interest to release the information. In the US, media and NGOs are generally exempt from fees. In many jurisdictions, fees are also waived or reduced for those who show that they are on public assistance or cannot otherwise afford it. Under the Indian Right to Information Act, *"no such fee shall be charged from the persons who are of below poverty line"*.[70] South Korean RTI law provides for a reduction or exemption of fees if the information sought *"is necessary for the maintenance and promotion of public welfare."*[71] No fee waivers are foreseen in the Indonesian, Mongolian and Nepali RTI laws.

Exemptions

Statutory Exemptions

All right to information laws recognise that there are circumstances in which information should not be released because it would harm specific public or private interests. Generally, these exemptions are included in RTI laws.

There are a number of common exemptions that are found in nearly all laws. These 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.

Exemptions under Indian Right to Information Act 2005

The 2005 RTI contains the following exemptions:

Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence

Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court

Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party

Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information

Information received in confidence from foreign Government

Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes

Information which would impede the process of investigation or apprehension or prosecution of offenders

Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers

Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual [72]

National Security

National security, as defined as information that would threaten the sovereignty or territorial integrity of the nation, is one of the most common exemptions found in national laws. However, this exemption is not unbounded. As the UN Human Rights Council stated in General Comment 34, *"it is not compatible with [the ICCPR], for instance, to invoke [official secrets or sedition laws] to suppress or withhold from the public information of legitimate public interest that does not harm national security."*

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information proposed detailed guidelines on the limits of national security.[73] The Principles were developed by a working group of experts in 1995 and have been subsequently endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, the UN Human Rights Commission and various courts.[74]

In 2013, these principles have been built upon and updated by Tshwane Principles on National Security and the Right to Information,[75] developed under the umbrella of 22 civil society organisations, in consultation with the four special representatives on freedom of expression. Among many other crucial principles, this document emphasises that the restrictions should be narrowly interpreted and the burden of proving the necessity of restrictions of public access lies within the government. The national security exemption should never apply to information concerning human rights violations and breaches of humanitarian law. Moreover, the Principles are adamant that intelligence and security services should not be excluded from the scope of the RTI laws. However, such exclusions are known in some of the Asian RTI laws, including in Bangladesh, India and Pakistan.

Nevertheless, the Indian and Bangladeshi laws stipulate that such bodies fall within the scope of the law if the information sought relates to corruption and human rights violations.

[T]he Tswane Principles are adamant that intelligence and security services should not be excluded from the scope of the RTI laws

In many national laws, including the Indian Right to Information Act and the UK Freedom of Information Act, any information that has been administratively designated as Secret or Top Secret under the Official Secrets Act is still reviewed and can be released if it is not otherwise exempt under one of the exemptions for protecting national security or other interests.[76]

Protecting Individual's Privacy and Personal Data

The right to privacy and data protection are recognised internationally as human rights, underlying human dignity and enabling all other human rights to thrive, including freedom of expression. The right to privacy and the right to information may be seen as conflicting rights, one limiting the use of (personal) information and the other one aimed at opening up government records. However, they are often described as complimentary and mutually reinforcing rights. In countries where there are no comprehensive privacy or data protection laws, RTI laws may, to some extent, offer the possibility of gaining information about the misuse of personal data, for example about forged names of individuals in relation to distribution of food subsidies in India. Conversely, data protection legislation may help performing accountability function in the private sector, where RTI laws usually do not apply, by allowing individuals to be able to demand information from private bodies that relates to them.[77] There are many other fields of mutually reinforcing application of both bodies of law. In the small number of cases where they come in conflict, there is a need for balancing or reconciling the two. As no human right should take precedent over the other, privacy, personal data and right to information must be carefully balanced.[78] There are different approaches in the world as to how to attempt to reconcile both rights. At the legislative level, some countries adopt both the data protection provisions and the RTI provisions in a single act, such as in Thailand. Another option is to have two separate laws and balance the two rights coherently, such as with a common definition of personal data, by providing personal data and/or privacy as a legitimate exemption from the right to information and by a consistent approach of the oversight mechanisms competent to enforce both rights.

Institutionally, the competences to oversee the data protection and RTI legislation are often bestowed upon a single oversight body such as the the Information Commissioner in Australia, (also in Mexico, UK, Slovenia, Croatia and in many other countries), which enables the balancing of both rights "under the same roof." In others including Japan, New Zealand and Hong Kong, the bodies for appeals or oversight of privacy and RTI are separate.

There are some areas where proper balancing of data protection and privacy rights and the right to information, is especially sensitive and must be attuned to the public interest. Such is the example of information pertaining to individuals acting in a public capacity (e.g. public officials), information regarding the use of public funds (for salaries, expenses and other purposes)

and information attacking a heightened public interest (such as corruption, abuses of power and decision-making). The RTI law should address these issues by enabling the public to receive information, albeit personal information, that serves the public interest. For example, the Indian RTI law stipulates that the personal data exemption only applies if information *"has no relationship to any public activity or interest"* and may be disclosed despite being personal if the larger public interest justifies the disclosure of such information.[79] Many laws also subject the privacy/personal data exemption to a general public interest test and/or harm test.

Other non-exempt information

Many RTI laws prohibit certain information from being withheld. This includes evidence of a crime, information on human rights abuses and corruption. The Mexican Federal Transparency and Access to Information Law provides that "Information may not be classified when the investigation of grave violations of fundamental rights or crimes against humanity is at stake." The UNECE Aarhus Convention limits the ability of bodies to claim commercial confidentiality as a reason for withholding environmental information. India's RTI law states that *"information pertaining to the allegations of corruption and human rights violations shall not be excluded"* even if they come from intelligence and security agencies.[80] There is a very similar provision in the Bangladeshi RTI law, which means that although intelligence and security agencies are exempt from the Indian and Bangladeshi RTI laws, transparency regime overrides the exclusion in cases of alleged corruption and human rights violations.

Harm and Public Interest Tests

Harm Tests

Most RTI laws require that the authorities demonstrate that harm to any of the protected interests will occur if the information is released. The test for harm generally varies depending on the type of information that is to be protected. While national security, privacy, and international relations tend to get the highest level of protection, even for allegedly protecting those interests, embarrassment to the government or an official should never be an excuse to withhold information. Different laws prescribe different thresholds that must be reached in order for the harm test to apply. These range from disclosure: 1) only affecting the protected interest or creating a risk to cause harm; 2) causing 'regular' harm (the phrases 'causing a threat', 'endanger', 'impede', 'be damaging to'); 3) causing serious or irreparable damage ('likely to cause grave and significant damage'[81] Some countries, such as China, include a "reverse" harm test combined with the public interest test, whereby the authorities must release certain exempted information if not disclosing it would cause "serious harm to the public interest."[82] This would have been a good practice, should the "reverse" harm test be an additional safeguard and all individual exemptions would be subject to a regular harm test.

> While national security, privacy, and international relations tend to get the highest level of protection, even for allegedly protecting those interests, embarrassment to the government or an official should never be an excuse to withhold information

RTI laws also take on a different approach as to whether the harm test is applied to all exemptions or just a selected few. Best practice is that the harm test is applied to all exemptions, although some RTI laws narrow the application of this test to only a few selected exemptions. The latter is true for all RTI laws in Asia.

Public interest test

In most countries, the law requires that a public interest test is applied to at least some exemptions. This provides for information to be released if the public benefit to the disclosure of the information outweighs any harm that may be caused by doing so.

Framing the public interest in disclosing information that would otherwise be legitimately restricted entails the most difficult balancing of human rights and different societal interests. The Tshwane Principles on National Security and the Right to Information define Information of public interest as *"information that is of concern or benefit to the public, not merely of individual interest and whose disclosure is 'in the interest of the public,' for instance, because it is useful for public understanding of government activities."*

The public interest test is seldom defined in the law. Therefore it is important to look at different laws, international standards, jurisprudence of national and international courts and guidelines developed by independent oversight bodies, NGOs or other organisations. For example, the Council of Europe Parliamentary Assembly Resolution defined areas of public interest to include information which would:

- Make an important contribution to an on-going public debate
- Promote public participation in political debate
- Expose serious wrongdoings, including human rights violations, other criminal offences, abuse of public office and deliberate concealment of serious wrongdoing
- Improve accountability for the running of public affairs in general and the use of public funds in particular
- Benefit public health or safety.

It is necessary that the framing of "public interest" is not too restrictive as to eliminate the purpose of establishing a public interest test. This is also important in the area of whistleblowers protection, who are often protected if they reveal information in the public interest. A narrow definition would inevitably mean weakening the scope of whistleblower protection.

Many RTI laws only prescribe the applicability of public interest test to some exemptions, often leaving out the national security exemption, which is also one that can undermine the largest public interest and demand for accountability of the state in charge of protecting the life and security of the nation. In India, the public interest test applies to all exemptions and it states that regardless of the Official Secrets Act and any exemptions from the RTI Act *"a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests."*[83] The public interest test applies to all exemptions also in Japan and Indonesia, whereas only in Indonesia the application of the test is mandatory, not discretionary. The majority of analysed states, however, prescribe the public interest test to a limited set of exemptions. Mongolian, Nepali and Pakistani RTI laws do not mention the public interest test at all.

> [The Indian RTI Act states that] "a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests."

The test can be applied both at the administrative level when a body is reviewing information for release and at the appeal level by an independent commission or court. In Japan, the head of the administrative organ is given the power for a discretionary release "when it is deemed that there is a particular public interest necessity."[84]

Application of Exemptions

Duration of Exemptions

Exemptions should not be set for an indeterminate duration. Most RTI laws require that once the reason for exemption has passed, the information should be made available. The current trend is to set the limits on the maximum duration of exempt information to between 10 and 20 years. In the UK, a special committee set up by the UK government recommended that the UK's 30-year rule be reduced to 15 years. The 30-year rule was considered *"anachronistic and unsustainable"* by that committee.[85] The trend of reducing timeframes is spreading in other countries of the world. Under the progressive Indian RTI law *"any information relating to any occurrence, event or matter which has taken place, occurred or happened 20 years before the date on which any request is made"* shall be provided to the requestor.[86] In Nepal, information may be kept confidential for a maximum of 30 years, but this decision comes under review every 10 years to establish whether information should still be kept confidential. South Korean and Taiwanese RTI laws provide that when it is not necessary to restrict access to information anymore, e.g. due to passage of time or change in circumstances, information should be released to the public.

Partial Disclosure

Often, documents contain both exempt and non-exempt information. Almost all RTI laws provide for the excision of exempted information from documents or files and disclosure of the remainder to the requestor. This prevents the unnecessary withholding of a document or entire file based on the inclusion of a single bit of exempt information, which might not even be relevant to the request or was placed there just to prevent access. Very few RTI laws leave out provisions on partial disclosure, although there are still some: Mongolian, Pakistani and Thai law do not mention a severability clause at all. As a good practice, the authority should inform the requestor about the reasons why only parts of the requested documents may be released and there should be a possibility to challenge this decision.

Interaction with other Laws

As noted above, other laws may protect state, commercial and other secrets and limit public access to certain information. The best practice is for the RTI law to have precedence over these other laws and for bodies to use the exemptions of the RTI law as the sole reason for the withholding of information. Otherwise, RTI laws can be seriously undermined by hundreds of conflicting statutes, some long past their reason for existence and clearly not relevant in the modern era of openness. The Indian RTI law specifically overrides the Official Secrets Act and there is a similar provision in the Bangladeshi law.

Administrative Exemptions

In addition to exemptions based on substantive concerns, RTI laws commonly include provisions to reject RTI requests based on administrative concerns. These include information that is available by other means, will be published shortly, overbroad requests that would interfere with the operations of the body and "vexatious", "frivolous" or repeated or extremely voluminous requests.

The best practice is to ensure a standard of reasonableness. There might be a good reason for the "unreasonable" request. A broad request might be necessary for a scholar writing a book on a historical figure where the information needed is only available in government records or a citizen wanting to know about all of the environmental hazards of a local government installation. Repeated requests may be necessary to keep an updated record of the body's activities, such as for maintaining a database of their current activities.

Vexatious requests must be shown to have been submitted only to intend to disrupt the normal working activities of the body, not just that it would annoy or embarrass the body to release the information.[87] The body should not use these administrative defences to unreasonably deny requests and should have the burden of proof to show why they should be allowed to ignore them. If a request is too vague or broad, most RTI laws require that the RTI official contact the requestor and discuss the request to see if it can be clarified or narrowed down to something that satisfies both parties.

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The Indian RTI law includes a provision that prevents the body to be obliged to deal with frivolous requests and states that the body may refuse access to information if releasing information *"would disproportionately divert the resources of the public authority."*[88] A study has shown that only 0.6% of requests filled could justifiably be labelled vexatious or frivolous; 2% required voluminous response and 1% of requests sought information covering a long time span of more than 10 years.[89]

Appeals and Oversight

In all countries, the decisions of the public body on whether to withhold or disclose information are subject to some form of review. In most laws, there is both an internal review and a final review by an independent external body. The courts are the final remedy in nearly all systems.

Internal review

The first level of review in all but a few countries is an internal appeal. This typically involves asking a more senior decision-maker in the body or a higher-level department to review the withholding of information. Internal review can be an inexpensive and quick way of reviewing decisions and releasing more documents. However, the experience in some countries, such as Australia, is that the internal system tends to uphold the denials and is used more by departments for delaying releases rather than enhancing access.[90]

In Asia, internal appeals are available in all countries except for India and Japan. In China, a requester may report the refusal to the higher-level administrative organ, the supervision organ or the department in charge of open government information.

External review

Nearly all countries have some form of external review that can be requested once the internal appeals have been completed, to ensure that the decision by the government body was not flawed. Usually, under standard administrative procedure practice, internal appeals must be exhausted before external review can be requested, although this is not necessarily the case. In Bangladesh, requesters may lodge an internal appeal or complaint to the Information Commission independently

from each course of action. External review is possible in nearly all countries; Chinese and Taiwanese RTI laws, however, do not foresee an external appeal mechanism.

Ombudsmen

The most common form of external body to review decisions is an Ombudsman, typically a constitutional officer or a representative of parliament. A similar but collegiate body is a National Human Rights Commission. Ombudsmen or Human Rights Commissioners can hear complaints from individuals and generally do not have the power to issue binding decisions on bodies. But in many countries their decisions are considered to be quite influential and are typically followed by the government body. Most Ombudsmen limit their activities to handling specific cases and only infrequently take a more systematic view of the overall system. International law clearly requires that human rights bodies are functionally and administratively independent from all public authorities. The Paris Principles, endorsed by the UN General Assembly, set minimum standards for such bodies.[91]

In a majority of countries in the world there exists a function of or similar to an Ombudsman. In countries that foresee other (more binding) complaint mechanisms, it is usually still possible to turn to the Ombudsman, although their mandate is usually limited. The RTI law in Mongolia expressly foresees this possibility; the requester may appeal either to the higher instances within the body or organisation, the National Human Rights Commission or to the court. Pakistan, on the other hand, only offers recourse to the Wafaqi Mohtasib, the Federal Ombudsman of Pakistan, whose decisions are not binding.

Information commissioners

Dozens of countries have created an independent information commission, which can be part of the parliament, the prime ministers' office (such as in Thailand) or an independent body.[92] In many jurisdictions, such as in Canada and France, the commissioners are essentially ombudsmen and are only given the power to issue opinions. A commissioner can be tasked with many duties besides merely handling appeals. This includes general oversight of the system, reviewing and proposing changes, training, and public awareness.

In Bangladesh, India, Indonesia and Nepal, a commissioner can issue binding decisions. The Indian Central Information Commission (CIC) has all the necessary powers to perform its oversight duties; it may initiate an inquiry and may issue binding decisions ordering the authorities to: provide the information sought; appoint information officers; publish certain information proactively; make changes to its information management; enhance the efforts to train the officials on the right to information; and submit an annual report on their activities. The CIC may also order that the requester be compensated for any loss occurred and may impose penalties against the authority. Importantly, the Indian RTI law includes many strong provisions guaranteeing the independence of the CIC, from the procedure of appointing the commissioners to its functional and financial independence.

The Indian Central Information Commission may also order that the requester be compensated for any loss occurred and may impose penalties against the authority.

A commissioner can also have additional duties based on other laws. In a number of countries including Thailand, Mexico, UK, Germany, Switzerland, Slovenia and Hungary, a commission also functions as the national data protection authority. In Thailand, the information commission also handles data protection complaints. However, it is part of the prime minister's office and is not completely independent of the bodies that it oversees.

Specialised tribunals

Some countries have adopted specialised quasi-judicial bodies to hear appeals that are intended to be quicker, less expensive and less formal than court. In the UK, a tribunal system hears appeals from the decisions of the information commissioner and is generally regarded as being very positive. In Japan, the external Information Disclosure Review Board hears appeals of initial decisions by agencies. However, the agencies can delay referring cases to the Review Board, which has led to extensive delays in many cases.

Courts

Courts have the advantage of being independent, are generally given the power to obtain copies of most records, and can make binding decisions. However, they also have significant negative aspects. The cost of bringing cases to court and the delays in resolving the cases effectively prevents many users from enforcing their rights in many jurisdictions. The courts are also often deferential to agencies, especially in matters of national security-related information, and may not develop the experience or expertise to know to challenge authorities more energetically. They are also unable to carry out systematic investigations into practices of one or more agencies that commissions typically can undertake. Those systems which only allow for court appeals, such as in the US, where some requests languish for years or decades before completion, are considered less effective.

Almost all countries allow the requestor to appeal to the national courts. In some countries, the court can only review a point of law once a tribunal or commission decides. In others, requestors can appeal to the court instead of appealing to the ombudsman or information commission. In general, the jurisdictions that have created an outside monitor such as an ombudsman or information commissioner appear to have more successful adoption of RTI laws. The best practice is to have an internal review, followed by a review by the information commission and finally a review of that decision by a court. In the region, the RTI laws either expressly allow recourse to courts (often through an administrative lawsuit) or this possibility stems from the constitutional legal order.

Sanctions

Sanctions are an important function of a right to information law in order to deter negative conduct by officials who may not comply with the legal obligations for openness and transparency. Nearly all RTI laws include provisions for imposing sanctions on public authorities and employees in cases where information is unlawfully withheld. Typically, the cases involve the body or the employee unreasonably refusing to release information or altering or destroying documents. Some laws also sanction a failure to provide information in the prescribed time (the so-called administrative silence). In Thailand, sanctions are foreseen for disobeying the order of the appellate body, the Official Information Board.

Nearly all RTI laws include provisions for imposing sanctions on public authorities and employees in cases where information is unlawfully withheld.

Only Japanese RTI law does not mention any fines or other sanctions, while most other laws provide for fines, administrative sanctions and even imprisonment for egregious violations. In case the law provides for monetary fines, it is a

good practice to include continuous fines, such as daily fines, until the breach is eliminated, otherwise the fine does not act as a pressure to immediately eliminate the violation. Such is the example of Bangladesh and India, but these two laws also correctly provide for a cap on the daily fine. The Bangladeshi and Indian RTI laws also foresee that the information commission may recommend to the authority disciplinary actions against the officer who breached the law. The Mongolian RTI law provides for an explicit sanction of dismissal of the public official who repeatedly or seriously violates the right to information. In Indonesia and Thailand, prison sentences are prescribed as an alternative to monetary sanctions.

The sanctions can be imposed against the body itself or administrative or criminal sanctions against specific employees. In India, public officials can be directly fined against their salaries for refusing to follow the obligations of the law.

Contrary to the best practice in the field, the Nepali and Indonesian RTI laws also prescribe sanctions against an individual who uses the information contrary to the declared purpose (in the case of Nepal) or contrary to the law (in the case of Indonesia). The Pakistani legislation enables the Ombudsman to fine the individual for making a so-called frivolous, vexatious or malicious complaint. In China, sanctions may also be imposed for disclosing information that is considered exempt, which may have the effect that the public officials, fearing the sanctions, refuse the right to information more often than they otherwise would have. This, however, is also the problem of many national secrecy laws which may prescribe severe penalties for revealing national secrets and other classified documents.

Sanctions that compensate the requestor can also be imposed against bodies that refuse to release information. In the US, the courts impose a form of sanction by awarding legal costs to requestors when it is found that the documents should not have been withheld. In Asian countries, however, it is more common for some RTI laws, such as Bangladeshi and Indian, to prescribe compensation for damage or loss due to violation of the right to information.

Promotional and Implementation Measures

Typically, an ombudsman or the information commission plays an important support role to both government bodies and to the public on the RTI law. The body typically has many roles: as a promoter of good practice, an advocate for the citizen, and a mediator of disputes. Some typical functions, aside from handling complaints, are described below.

Codes, Regulations and Recommendations

In some jurisdictions, the body is given the power either individually or jointly to develop codes of practice and other regulations on the use and implementation of the law and on the application of exemptions. This gives the agencies guidance on how their decisions will be reviewed and encourages consistent application of the law across government. It also encourages the requesters to exercise their right to information by shedding the light on best practices and the extent of their right.

In Bangladesh and India, the information commission is mandated to adopt regulations on the preservation and management of information which every authority shall follow. In China, developing guides on accessing governmental information is in the competence of each body.

Awareness rising and training

Many oversight bodies are tasked with awareness rising activities. For example, the Bangladeshi Information Commission should increase awareness about the right to information by disseminating information on the protection and implementation of this right.

The body can also conduct public seminars and trainings on the Act and produce brochures, guides and other materials to educate the public on how to use the RTI law. Some laws also enable the Information Commissions to order that authorities conduct trainings of their public officials (in Bangladesh and India).

Monitoring and reporting

The body can monitor either formally or informally the progress of each government unit as it implements the act and provides advice on best practices. At an early stage, informal advice is probably the most constructive, but once an act is in place, it can require the production of annual status reports and statistics and conduct audits and investigations.

In Bangladesh, India and Indonesia, the information commissions prepare an annual report on the activities of public authorities as well as its own activities. The report is presented to parliament and made available to the public.

Issuing penalties

Some RTI laws prescribe sanctions against public officials for not respecting the law's provisions. In India, the Central Information Commission has the power to sanction the information officer for refusing to receive a request, for not respecting the statutory deadlines, for refusing information in bad faith, for knowingly giving incorrect, incomplete or misleading information or for destroying information. The burden of proving that the information officer acted reasonably and diligently is on the information officer.

Records Management

For freedom of information and good governance to be effective, there must be a recordkeeping system in place that allows for the easy collection, indexing, storage and disposal of information. There is an important relationship between effective records management and effective freedom of information as poor record management leads to reduced effectiveness of the public sector services and reduced transparency, accountability and trust in government.[93] The best practice in the field of records management and RTI is to include provisions on recordkeeping accountability in the RTI laws or policies; to adopt a separate records management policy aside from RTI policies; to include awareness of records management in RTI training programmes.[94]

If the public bodies are not able to find information that the requesters are seeking, they are of course not able to disclose it. Therefore the RTI system is inevitably linked with recordkeeping and *"depends on records being created, properly indexed and filed, readily retrievable, appropriately archived and carefully assessed before destruction to ensure that valuable information is not lost."*[95]

Many RTI laws provide for a register of all documents to be maintained by government bodies. This register allows for easier identification and location of documents for many reasons. This register can also be combined with a system to make information automatically available. In Mexico since 2005 all documents created are automatically numbered, indexed and archived. In the EU, documents created by the Council are automatically archived and many are automatically put on the online register for public access shortly after being

created. A new problem that has emerged in the past fifteen years is how to handle electronic records. Governments are still struggling with setting rules on the retention and organising of electronic mail and files. A further problem is how to ensure access to those records in the future. As software evolves and changes, it will be necessary to develop common standards or keep old computer systems and software to ensure that storage devices and files can be read in the future.

In Bangladesh and India, each authority should prepare a catalogue and index of all information and preserve it in an appropriate manner. The information commissions of both countries are tasked with preparing regulations on information management. China, Indonesia, Japan, Mongolia, Nepal and Thailand do not have any provisions in their RTI laws on records management; neither do they mention any role of the supervisory bodies in developing guidelines on this issue.

Proactive disclosure

Categories of information for proactive disclosure

A common feature in most RTI laws is the duty of government agencies to actively release certain categories of information. This includes details of government structures and key officials, texts of laws and regulations, current proposals and policies, forms and decisions.

Many other laws also require that government departments affirmatively publish information. These include acts on public administration, consumer protection, environment, court practices and statistics. Pollution registers in many countries allow citizens to easily locate online the potential threats to their health from local industries.

The active provision of information is also beneficial to public bodies. It can reduce the administrative burden of answering routine requests. This affirmative publication can directly improve the efficiency of the bodies. The Council of the EU noted in its most recent annual report that as, *"the number of documents directly accessible to the public increases, the number of documents requested decreases."*[96] The US Justice Department reported in their 2002 review of agencies that many had substantially reduced the number of requests by putting documents of public interest on their web sites.[97]

Newer RTI laws tend to proscribe a listing of certain categories of information. Other countries, such as the UK, require that bodies adopt a publication scheme. The Information Commissioner has developed a model schemes for different types of bodies, usually in conjunction with the representative association and has the power to approve and reject schemes.[98] This allows for greater consistency of schemes and also saves resources by giving bodies, especially smaller ones, the ability to adopt adequate schemes without having to develop the schemes themselves.

Recommended categories of information for proactive disclosure

Structural information. Information on the structure of the organisation, its primary functions, a listing of its employees, annual reports, audits, services offered, and other related information.[99]

Budget Documents. Detailed information on projected expenditures and expenses. The IMF notes that "fiscal transparency is of considerable importance to achieving macroeconomic stability and high-quality growth. [100]

Tenders and contracts. Many countries, as part of their electronic government efforts, are moving to make more information about their financial decisions available. This can be an effective anti-corruption measure.

RTI procedural information. Most laws require that information detailing the procedures for making requests, lodging appeals and contract information for the RTI officer must be made widely available to facilitate peoples' rights. Some jurisdictions now make available request and disclosure logs so that potential requestors can see what has already been requested and released.

Record systems. This includes information describing the types of records systems and their contents and uses. In countries such as Sweden which have document registers, this includes providing facilities for the public to search and review documents. This can also include statistical information on the use of the RTI or documents already released.

Internal law. A common requirement is that bodies make available the internal rules, regulations, manuals and other information on how they make decisions. In Australia, a number of states reported that a positive benefit of the process of making these public was that it forced the departments to update, revise and clarify them which made them more useful to the departments. This also promotes consistent decision-making.

Reports. Many laws require that all reports are made public unless there are particular reasons for exemption. In some jurisdictions, this process of publishing allowed the bodies to better review its activities and reduce redundant efforts.

Commonly requested documents. Across jurisdictions, there are many types of documents that are frequently the subject of RTI requests. These include travel expenses, salaries and other expenses for public officials. In Wales, the Assembly provides the minutes and agendas of meetings.[101] Making these affirmatively available reduces the need to process requests later.

In Asia-Pacific, many RTI laws include comprehensive provisions on proactive disclosure, including Bangladesh, China, India, Indonesia, Mongolia, Nepal and Taiwan. The Japanese RTI law does not include any requirement to proactively publish public information. Information is published online on the basis of standards adopted in 1991 by interministerial committee, which NGOs have criticised.[102]

In Indonesia, the RTI law prescribes a wide range of information that is to be published proactively and distinguishes between information that is to be supplied "periodically", "immediately" and "at any time".

Indonesian RTI law on proactive disclosure: Chapter V

Part One - Information to be Supplied and Published periodically

Article 9

(1) Every Public Agency is obliged to announce Public Information periodically.

(2) Public Information as referred to in paragraph (1) covers:

a. information pertaining to a Public Agency;

b. information on the activities and performance of the related Public Agency;

c. information on the financial report; and/or

d. other information regulated in the regulations of the laws.

(3) The obligation to provide and to submit Public Information as referred to in paragraph (2) is conducted at least every 6 (six) months (semi-annually).

(4) The obligation to disseminate Public Information as referred to in paragraph (1) is submitted in such a manner that it can be obtained easily by the people and in a simple language.

(5) The methods as referred to in paragraph (4) are further determined by the Information Management and Documentation Officer at the relevant Public Agency.

(6) The provision on the obligation of a Public Agency to provide and to submit Public Information periodically as referred to in paragraph (1), paragraph (2) and paragraph (3) is further regulated by the Technical Directives of the Information Committee.

Part Two - Information to be Published Immediately

Article 10

(1) A Public Agency is obliged to announce immediately any information that might threaten the life of the people and public order.

(2) The obligation to disseminate Public Information as referred to in paragraph (1) is submitted in a manner that can be obtained easily by the people and in a simple language.

Part Three - Information to be Available at Any Time

Article 11

(1) A Public Agency is obliged to supply Public Information at any time, covering:

a. a list of all of the Public Information to which it is authorized, excluding information that is classified;

b. the result of the decisions of the Public Agency and its considerations;

c. all of the existing policies, along with their supporting documents;

d. the project working plan, including the estimated annual expense of the Public Agency;

e. agreements between the Public Agency and a third party;

f. information and policies presented by the Public Officer in a meeting that is open to the public;
g. working procedures of the Public Agency personnel relating to public services; and/or

h. reports on access to Public Information services as regulated in this law.

(2) Public Information that has been stated as open to the public based on the mechanism of objections and/or the settlement of a dispute as referred to in Article 48, Article 49, and Article 50, are Public Information that are accessible by the Public Information User.

(3) The provision on the method to implement the obligation of the Public Agency to supply Pubic Information that is accessible by the Public Information User as referred to in paragraph (1) and paragraph (2) is further regulated with the technical directives of the Information Committee.

Electronic Access

Electronic networks can be an efficient method of providing information. They can allow for quick and inexpensive access at all hours to records without the need for officials to actively respond to requests. Large documents can be provided without expensive copying fees.

Many RTI laws require that government bodies create websites and publish information on the sites along with physical copies. In Poland, the Public Information Bulletin is the primary method of accessing government information. The Council of the European Union automatically makes available most of the documents it creates, including any document released under its access regulations, in its electronic register.[103]

Related to this is a recent trend for publishing data in an open, machine-readable format, known as Open Data. Most open data initiatives run parallel to RTI and are not specially provided for. In Europe, the Directive on Re-use of Public Sector Information, first adopted in 2003, sets rules on reuse of information but does not address rights of access.[104] In Korea, the 2013 Act on Promotion of the Provision and Use of Public Data[105] promotes the release of electronically processed data or information created by public institutions with the intent to promote public access and the "smart industry".

This is starting to change. In 2014, President Obama signed the DATA Act to make spending information available in common formats and linked to other systems to make tracking easier.[106] In the UK, the Protections of Freedom Act amended the FOIA to include open data provisions.[107]

Benefits of Open Data

There are significant benefits in making information available in an Open Data format. As described by the G-8 leaders at the 2013 Lough Erne Summit: *"Open government data are an essential resource of the information age. Moving data into the public sphere can improve the lives of citizens, and increasing access to these data can drive innovation, economic growth and the creation of good jobs. Making government data publicly available by default and reusable free of charge in machine-readable, readily-accessible, open formats, and describing these data clearly so that the public can readily understand their contents and meanings, generates new fuel for innovation by private sector innovators, entrepreneurs, and non-governmental organisations. Open data also increase awareness about how countries' natural resources are used, how*

extractives revenues are spent, and how land is transacted and managed."

The Open Data Charter announced by the G-8 leaders agreed to five principles:[108]

- Open Data by Default
- Quality and Quantity
- Useable by All
- Releasing Data for Improved Governance
- Releasing Data for Innovation

In Asia, states such as India, Indonesia, Japan, Nepal, Pakistan, South Korea and Taiwan, and some cities are starting to establish their open data portals.[109]

Reuse of Information

The many economic and social benefits of the reuse of information, especially data, are growing. A key factor of free reuse is that it is not always obvious what other uses the information may have until it is out there and other people or groups see its possible benefits. For example, environmental organisations could reuse information about population density and traffic released by different ministries to combine with air pollution data to evaluate the effectiveness of measures to reduce pollution or promote public transportation; anti-poverty organisations could use budget information combined with information on crime, and health and education spending to identify areas where further resources should be made available and use it to advocate for targeted spending; researchers and authors could reproduce them in books or on websites to shed light on policies or historical events.[110]

There are also substantial economic benefits from reuse. Companies can combine public data with their own information to analyse the market and identify where it would be most beneficial to establish new businesses, such as factories, restaurants, hotels or shops. Similarly, reuse enables companies and service providers to better expand into new markets and effectively bid for new contracts.

By way of example, the UK has created "Open Government License"[111] which allows any person to:

- Copy, publish, distribute and transmit the Information;
- Adapt the Information;
- Exploit the Information commercially and non-commercially for example, by combining it with other Information, or by including it in your own product or application.

Re-using public sector information could be problematic in those Asian countries that demand from requestors that they state the purpose for their request (Indonesian, Nepali, South Korean and Taiwanese RTI laws). It would be even more problematic in China, which limits the right to information to those who can prove "special interests" and in Pakistan where requestors must "pledge" they will only use information for the declared purposes.

Electronic Participation and E-Government

Electronic access can also be used to enhance citizen participation. In Finland, a project initiated by the Ministry of the Finance had civil servants conducting conversations about issues in early states of preparation in the central government. Once a discussion is completed, a summary of it is kept with the proposal as it is acted upon. The US government site http://www.regulation.gov/ makes it easy for citizens and interested parties to identify federal regulations to submit public comments.

Barriers to Electronic Access

However, there are continued barriers which prevent the entire population of many countries from being able to use these resources. The digital divide is a significant problem in many developing countries. Furthermore, a high proportion of those who are connected live in the large cities and people in small towns and rural areas are less likely to have access. Another large hurdle is the level of education or willingness of individuals to use electronic services, especially those from older generations. Polling results from many countries around the world have found significant numbers of people who are unwilling to go online to use the services, even if offered training.

It is also necessary to ensure that the information is provided in such a way that it is easy to find and use. Care should be taken to ensure that files are not too large to preclude users using mobile telephone-based systems for Internet access from viewing them, and that formats are commonly understandable.

It should still also be possible for individuals to have access to the same information in physical form. Most laws provide for the ability to view the documents in the offices of the body. In the US, government departments have "reading rooms" where individuals can arrange to view standard information and already released documents.

Review of right to information laws in Asia

Bangladesh

Constitutional Framework

Article 39 of the Bangladeshi Constitution[112] guarantees the right of every citizen to freedom of speech and expression and freedom of the press, and subjects these rights to reasonable restrictions in the interest of state security, friendly relations with foreign states, public order, etc. The right to seek, receive and impart information is not explicitly mentioned, although the preamble of the Right to Information Act stipulates that this right is an inalienable part of freedom of expression.[113]

Right to Information Act

The fight against corruption was a major factor in Bangladesh's path to adopting the RTI legislation. The initiative and lobbying for the passage of the RTI legislation came from a variety of different interest groups and individuals: human rights defenders, media professionals, academics, grassroots organisations, NGOs and concerned citizens.[114] In 2002 and 2006 two draft proposals on the Right to Information Act were circulated, the first by the Bangladeshi Law Commission[115] and the second by the Manusher Jonno Foundation, an NGO advocating for freedom of information[116] In 2008, the caretaker government installed during the state of emergency in Bangladesh passed the Right to Information Ordinance that the civil society had the opportunity to co-shape.[117] The 2008 Ordinance was subsequently ratified by an elected government and the Right to Information Act (RTI Act) came into force on 1 July 2009.[118]

The fight against corruption was a major factor in Bangladesh's path to adopting the RTI legislation.

Provisions of the RTI Act

Principles

The purpose of the RTI Act stated in the Preamble is to increase transparency and accountability, decrease corruption and establish good governance. The Act includes a provision whereby laws that create an impediment to the right to information are superseded by the RTI Act in case of a conflict of laws. Right to information is laid down as a principle underlying the functioning of the government and "no authority shall conceal any information or limit its easy access" (Section 6(2)).

Scope

Only citizens have the right to demand and receive access to information from public bodies. The scope of the RTI Act in relation to bodies liable to provide information extends to the executive, legislative branch and organisations that undertake public functions. Private organisations with government or foreign funding are included, which applies to NGOs, international organisations and other private bodies. However, the Act excludes state security and intelligence agencies, unless information sought pertains to corruption and violation of human rights in these institutions. The definition of "information" is broad: any documentary material relating to the constitution, structure and official activities of any authority regardless of its physical form or characteristics (including machine readable records) fall within this definition.

Proactive disclosure

The RTI Act includes a long list of information that should be proactively published, although it does not explicitly mention that such information should be available online. This includes information on decisions, activities, policy related documents and reasons for their adoption. On an annual basis, every authority shall publish a report containing information about its structure and activities, rules and regulations, conditions on accessing services and information on freedom of information officers.

Disclosure upon request

As a rule, requesters are required to fill out a form to request documents, but if the form is not easily available, the information may be requested in writing (without a form) or in an electronic form. The requesters need to identify themselves only by name and address; describe the information sought so that it can be identified; and note the form in which they wish to obtain the documents. Individuals have the right to receive a copy, inspect the documents, take notes or use any other "approved method".

Each body must appoint a Designated Officer. There is no general requirement to provide assistance to all requesters, but if the requester is a person with a disability, the authority must provide such assistance as necessary for him or her to access requested information. If the authority is not in possession of the information sought, there is no procedure in place to refer the request to another body.

The authority must provide the information within 20 working days, unless information relates to life and death, arrest or release of persons, where the deadline is 24 hours. If more than one authority is involved in the decision-making, the information may be provided within 30 working days. If the authority decides to refuse access, the decision must be issued within 10 working days. In case of administrative silence, the request is presumed to be rejected.

A reasonable fee may be imposed for obtaining information and the price should not exceed the actual expenses. The regulation fixing the fees should be published in the Official Gazette. The fee regulation may also provide for fee waivers.

Exemptions

The access to information regime put forward by the RTI Act takes supremacy over any impediments laid down in other laws. There is a list of 20 exemptions which broadly protect the following interests: state security; international relations; commercial secrets and intellectual property rights; tax and budget information; law enforcement; judicial activities; investigations; privacy; "secret information" of a person; life or physical safety of individuals; and others. Some of these exemptions are subject to a harm test, but there is no public interest override. The only similar provision relates to information on human rights breaches or corruption held by security and intelligence services, which are otherwise excluded from the scope of the law, but in this case fall inside the scope.

Partial access is provided by the law; no request may be fully rejected if it is reasonably possible to allow access to non-exempt portions of requested information.

The authority must inform the requester of the reasons for refusal. The RTI Act also states that information may be refused only with a "prior approval from Information Commission" (Section 7).

Appeals

The Act explicitly bars access to a court following a denial of the right to information, but establishes the Information Commission, an independent appeal authority with strong competences. The Commission is formed of a Chief Commissioner and two Commissioners, appointed by the President with respect of a gender balance requirement. This oversight body handles appeals against refusal decisions, administrative silence, imposition of unreasonable fees, incomplete, misleading or false information and other violations of the RTI Act. The Commission may conduct inspections, has other strong oversight powers and issues binding decisions. The Commissioners may also conduct other tasks, such as promoting the right to information, issuing policy recommendations, researching on the impediments to the right to information and so forth.

Sanctions

The RTI Act prescribes fines for officials who fail their duty to justify the refusal, to decide upon the request in due time, to give misleading or false information or who create impediments to the right to information. The Commission may also recommend to the authority takes departmental action against the responsible official.

Publication / Reporting mechanisms / Promotional measures

Every authority shall prepare a catalogue and index of all information and preserve it and designate a RTI officer. The Information Commission is entrusted with promotional and awareness-raising activities. The Commission adopts an annual report that includes statistics on the implementation of the law and presents it to the President, who sends it further to the Parliament.

Implementation of the RTI Act

Several groups have noted that the RTI Act has a concrete effect on the ground, a possibility to achieve societal change.[119] However, civil society groups report that implementation of the RTI Act is a challenging process, not least because of the "culture of fear" and the lack of trust.[120] The World Bank has drafted a Strategic plan on implementation of the RTI for 2014-2018,[121] which identifies areas where implementation has stayed behind the promises of the RTI legislation, in particular: lack of awareness, capacity issues, the need for an increased political support, the lack of an internal coordinating body within the Government.

Several groups have noted that the RTI Act has a concrete effect on the ground, a possibility to achieve societal change.

Many NGOs warn that strong demand-side efforts, namely frequent use of the law, is needed for the success of the Act.[122] While the Commission reported that as many as 7,000 requests have been filed in 2012,[123] people are still not sufficiently informed on their right to information. The Commission implemented some wide-ranging awareness campaigns, such as running TV campaigns and sending mobile text messages to the public (250 million free SMS messages have been sent).[124] Nevertheless, more awareness-raising activities among lay and expert public and authorities are needed.[125] On the supply side, two studies have shown that the response rates to RTI requests remain low.[126]

Another serious challenge for implementation of the law is the capacity of governmental agencies, frequent transfers of designated officers and the lack of training for the officers. Constant transfers of RTI officers are not good for the continuity and they also make trainings on implementation of the law less efficient.[127] The question is also whether all authorities liable under the RTI Act designate officers; a special problem arises with private bodies (such as NGOs and internationally funded organisations), where a study from 2001 showed that only 201 from roughly 30,000 such organisations appointed an officer.[128] Nevertheless, the NGOs seem to be better aware of their responsibilities under the RTI Act.[129]

Related legislation

Media laws

In 2014, the Government released a National Broadcasting Policy which reportedly prohibits broadcasters from disseminating information that could smear the image of law enforcement agencies, armed forces and government officials with judicial powers, information that is against the government or public interest or impedes national security.[130] Nevertheless, this is not a law and any restrictions should be incorporated in a law and conform to international standards.

State Secrets Act

The Official Secrets Act (OSA)[131] was adopted in 1923 under the British colonial rule. The OSA prohibits the unauthorised collection or disclosure of secret information and imposes fines for perpetrators, even in cases when a person voluntarily receives secret official information but knows or ought to have known it is classified. Attempts to or assistance in breaching the OSA are also punishable. The RTI Act overrides the OSA, but intelligence and secret services are excluded from this Act and there are a number of exemptions applicable to information related to national security with no public interest test prescribed.

Protection of whistleblowers

Whistleblower protection has been enacted in The Disclosure of Public Interest Information (Protection) Act, 2011.[132] It defines public interest information as information relating to misuse of public money or resources, abuse of power, criminal acts and acts against public health, safety or the environment, and corruption. Any whistleblower can make a "public interest disclosure" to the competent authority and receives protection from civil and criminal prosecution, employment disadvantages, protection of identity etc. Disclosure of false information or information not in the public interest is punishable.

Environmental protection legislation

Bangladesh adopted the Environmental Protection Act in 1995[133] and its amendments in 2010.[134] The tasks of the Director General of the Department of Environment, include collection, publication and dissemination of information relating to environmental pollution. The Act and the Amendment also prescribe the obligation of the Government to publish in the Official Gazette general guidelines and maps with legal descriptions of environmentally critical or threatened areas. Nevertheless, the Government is required to publish very little environmental information proactively.[135] The Act also stipulates that before issuing an environmental clearance certificate, the Government should consult the public

("surveying public opinion, getting information from public about all these matters").[136]

International Framework

Bangladesh has ratified the ICCPR and UNCAC.[137]

The country is also a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[138] and OECD Busan Partnership for Effective Development Co-operation.[139] Bangladesh has also endorsed the International Aid Transparency Initiative (IATI) in 2011 and has been elected Vice Chair of the IATI Steering Committee in 2013.[140]

China

Constitutional Framework

China's Constitution does not expressly mention the right to information but grants Chinese citizens freedom of speech, of the press, of assembly, of association, of procession and of demonstration.[141]

Right to information Act

The path towards adopting the RTI legislation was not majorly influenced by civil society movements, although anti-corruption movements and organisations (at the grassroots and at the international level, such as in the World Trade Organization) pushed for greater transparency.[142] The RTI movement started at a regional level. Before the state RTI legislation was adopted, 30 provinces and large municipalities already had their local regulations on access to information.[143] In 2003, the People's Republic of China Open Government Information Regulations (OGI Regulations)[144] were put on the legislation agenda of the State Council and adopted in 2007. The OGI Regulations were criticised for being less progressive than local regulation.[145] The central government in 2012 started issuing new progressive annual guidelines on the implementation of the Regulations emphasising the need for more transparency of the regulatory authorities and more proactive disclosure of environmental information.[146]

The path towards adopting the RTI legislation was not majorly influenced by civil society movements.

Provisions of the RTI legislation

Principles

The purpose of the OGI Regulations is to enhance transparency, promote legality of the administration and support productivity and social and economic activities. The OGI Regulations are rather ambiguous as to whether 'need to know' is a precondition to the access right. The Regulations state that people may request information *"in the light of their special needs for production, living or scientific research"*. According to the mainstream view among Chinese legal scholars, the Regulations have not required applicants to prove their needs (especially because Article 20 does not instruct applicants to provide reasons for their OGI requests). Yet the General Office of State Council imposed this condition, which was widely regarded as *ultra vires* (even by judges). Hence, 'proving special needs' is a *de facto* rule added by the General Office during the implementation of the Regulations. In 2008 and 2010, the General Office adopted two Opinions reiterating that if requested information does not relate to the requester's "special needs" as mentioned in the Regulations, the government body may refuse access.

Scope

The right to information is limited to citizens, legal persons and other organisations. The OGI Regulations only apply to the government and its agencies at the national and local level, excluding the judiciary, the legislature and the Chinese Communist Party. Articles 36 and 37 of the Regulations apply the disclosure obligation to organisations authorised to manage public affairs and to public enterprises and institutions that provide public services closely related to the public's interests, as further specified in in the implementing guidance of 2008[147]. The Regulations define "government information" as information recorded or preserved in any form that is made or obtained by administrative agencies in the course of carrying out their duties.

Proactive disclosure

The Regulations provide for an extensive list of information to be proactively disclosed. The information for affirmative disclosure shall be made available within 20 days of its creation. The information to be made available relates to government structure, functions and procedures as well as information that affects the "vital interests" of the public, and matters that society broadly needs to know about or participate in. Local governments at different levels are instructed to make available information on matters of particularly great interest to the public, such as regulations and regulatory documents and information regarding emergencies and emergency planning, education policies, results of investigations into environmental protection, public health, food and drug safety, economic and social programs, government budgets and decisions, urban planning, and land requisitions and building demolition plans and standards of compensation to be given therefore.

Disclosure upon request

Requests may be submitted in written or oral form. The requestor only needs to provide his/her name, contact information, description of the information sought and the preferred form of access. Even if the OGI Regulations do not stipulate that the request must include the explanation of the purpose, this is probably required anyway since access to information needs to be justified under the problematic opinions of the General Office of State Council. The requestor may choose his/her preferred form of access and the authority is required to comply with it, unless it is impossible.

Bodies of the county level or above are obliged to set up a comprehensive right to information system and designated an organ competent to carry out tasks regarding providing the information. The bodies are required to help requesters with visual or hearing impairment or who have difficulties reading. They also should set up reading rooms where the applicant may consult the information. In case the information is not in possession of the body, it is required to notify the requester of the competent authority that likely holds the document. If the authority cannot determine the content of the request, it may require that the requester amend or supplement the request.

Even if an agency has the information, it may still refer the applicant to other agencies, because of Article 17, a unique requirement that all information created (not acquired) by agencies should be disclosed by the agency which created it and not by the agencies in possession of it. This has led to tremendous troubles for applicants and substantial extra work for bodies and requestors. According to the annual OGI data

released by six provincial governments, from 2008 to 2014, in each year over 20% of OGI requests were rejected on the ground that 'information should be disclosed by other agencies', while less than 10% of requests were rejected by invoking exemption clauses.[148]

The authority shall provide the information immediately if possible or otherwise within 15 working days, which may be extended once by another 15 working days.

The fees for requesting information may be imposed, but must not supersede the actual costs for retrieval and reproduction. The implementing measures provide that fees may be waived for impecunious requesters.[149]

Exemptions

The exemptions to the right to information relate to state secrets, commercial secrets and individual privacy. The OGI Regulations also call for government agencies to establish mechanisms to ensure protection of secrecy in accordance with the State Secrets legislation and other regulations. In addition to information classified as a state secret, information classified as professional, or work secrets are also protected under other laws as its disclosure could "bring indirect harm to the authority's work". Often government bodies regulate internally categories of information that should be protected as "work secrets".[150] This is considered to be a controversial analysis and there have been cases in which courts have overruled an agency's decision that information should be withheld because it is classified as 'internal information', though not a state secret, according to the 'Provisions of the National Committee for Family Planning on Determining the Scope of State Secrets and Their Levels of Classification in the Work of Family Planning'.[151]

In addition to these exemptions, the Regulations impose a very broad principle that disclosure may not harm "state security, public security, economic security or social stability." There is no harm test, but there is a public interest override for the privacy and trade secret exemptions. Any disclosure shall be examined in the light of the prevailing state secrets legislation.

The Regulations contain a severance provision indicating that partial access shall be granted by removing the protected bits of information.

In case of refusal, the authority shall indicate the legal grounds and reasons for the refusal in writing.

Appeals

The Regulations provide for an internal review mechanism to a higher-level administrative organ, the supervision organ or the department in charge of open government information. In case of further refusal, the requester may apply for administrative reconsideration or file an administrative lawsuit. In 2011, the Supreme People's Court provided clear legal guidance on accepting an OGI lawsuit, which agency should be the defendant, the relevant burden of proof, and what kind of judgment should be made under different circumstances.[152] In 2014, the Court issued 10 model cases on implementation of the OGI Regulations, which resolved issues generally in favour of the requester.

The State Council is designated to promote, guide, coordinate and supervise implementation of the OGI system throughout the whole country. The Regulations do not establish an independent oversight body, such as an Information Commissioner/Commission or Ombudsman. The lack of an impartial and independent oversight body is perceived by some commenters to be curbing the public trust in the OGI system and in the dispute settlement mechanism.

The lack of an impartial and independent oversight body is perceived by some commenters to be curbing the public trust in the OGI system and in the dispute settlement mechanism.

Sanctions

There are sanctions for civil servants that breach the duties bestowed on them by the Regulations, including for charging excessive fees. However, there are also sanctions for disclosing exempt information, without taking into account disclosure in good faith or in the public interest.

Publication / Reporting mechanisms / Promotional measures

Each body has an obligation to draw up an annual report which is submitted to the State Council and made publicly available. The report shall contain statistical data on proactive disclosure and requests, number and grounds for appeal or lawsuits, and implementation problems. Each government body shall establish an evaluation of the implementation system. The implementing measures of the Regulations provide for setting up a training plan for each government body.[153]

Implementation of the RTI legislation

The implementation of the law encounters a number of practical obstacles. Some of the identified problems include a lack of resources to meet records management standards and address the access requests; massive bureaucracy; broad interpretation of prevailing secrecy legislation; unease and lack of experience of civil servants; lack of experience of the courts in handling a new type of lawsuits which emerged with the OGI Regulations; and court decisions largely in favour of the government.[154]

Some of the identified problems include ... broad interpretation of prevailing secrecy legislation

However, positive trends had been observed, such as wide use of the Regulations, increased media coverage of landmark RTI cases, and changing practices through the internal review mechanism (administrative appeal). The Regulations are actively used by civil society organisations, lawyers who also advance the cause of strategic RTI litigation and citizens mainly in the area of land and property takings, urbanism and planning. While many requests are for information related to the requester directly, such as benefits information, other requests relate to environmental information, and particularly pollution, safety and conformity of vaccines, wrongdoings and corruption, budget information, and illegal construction.[155] Some prominent cases resulted in changes in national disclosure policies, such as publicity of budget information that was previously considered as state secret.[156]

In 2011, roughly 3,000 requests were filed to central-government departments and 1.3 million others to offices at the provincial level. Over 70% led to the full or partial release of information and the success rate of lawsuits won by requesters increased from 5% in 2010 to 18% in 2012.[157] However, a study conducted by the Peking University reported that the number of requests is dropping due to obstacles faced by the requesters.[158] Aggregation of data released by local governments shows that the request volume across the country reached top in 2009, dropped in 2010, and increased again from 2011 till 2014.[159]

[A] study conducted by the Peking University reported that the number of requests is dropping due to obstacles faced by the requesters

The most often cited reasons for refusal of access to information are the failure to demonstrate a "special need" for requesting information; privacy or commercial secrets; concern for a negative impact on the local economy; and information being outside the scope of "government information." On a positive note, the Chinese Government has reportedly stepped up the efforts on providing proactive disclosure of an increasingly large pool of information.[160]

Related legislation

Local laws

More than 30 provinces and municipalities adopted some kind of right to information laws, many of which were usually seen as more progressive than the OGI Regulations. The first municipality to adopt RTI legislation was the Municipality of Guangzhou in 2002, establishing a presumption that accessibility should be a rule and secrecy an exception. In 2004, Shanghai adopted its legislation, more progressive and detailed than the state level legislation.[161] Most local OGI legislation was revised to conform to the OGI Regulations after they took effect, and most if not all 30 provinces, as well as local governments and government departments, now have OGI implementing regulations.

State Secrets Act

The Law on Guarding State Secrets[162] was adopted in 1988 (amended in 2010) and defines "state secrets" very broadly as "matters that affect the security and interests of the state." State secrets legislation is reportedly often used for retaliation against human rights defenders.[163] In 2014, the government adopted implementing regulations under the State Secrecy Law. The Regulations impose conditions for classification and set deadlines for de-classifications, but have been criticised for not clarifying the term "state secrets" and for being generally vague.[164]

Protection of whistleblowers

The right to make public interest disclosure relating to the public sector and a prohibition against state agencies or personnel from retaliating is constitutionally guaranteed (Article 41 of the Constitution) but there is no comprehensive whistleblower protection legislation and in practice, whistleblowers often face retaliations and sanctions.[165] The Administrative Supervision Law, revised in 2010, establishes a system for the public to inform against state organs and public servants that violate law or discipline, and the supervisory organs under the Ministry of Supervision (whose Party counterpart is the Central Discipline Inspection Commission) are to keep informers' names confidential and protect them. In practice, however, many informers end up being dismissed, harassed and otherwise subjected to retribution. Many Chinese legal scholars and legislators are calling for comprehensive protection of whistleblowers. A National Bureau of Corruption Prevention was created to comply with the UN Convention against Corruption. It is mandated to analyse the root causes of corruption, develop preventative measures and guide anti-corruption work in public and private sectors. However, it is not authorised to investigate individual complaints.

In practice, however, many informers end up being dismissed, harassed and otherwise subjected to retribution.

Environmental protection legislation

China's Environmental Protection Law was passed in 1989 and strengthened in 2014. Chapter V of the amended law stipulates for more detailed obligations to disclose environmental information (Articles 53 -56). In particular, Article 56 provides that EP agencies should disclose the full text of EIA reports, while the Measures on Open Environmental Information (for Trial Implementation) only require disclosure of the results of EIA. It also gives the public the right to report/inform on pollution and other law-breaking activities and to have their names kept confidential. In addition, the 2009 Regulations on Environmental Impact Assessment in Planning (to implement the EIA Law adopted in 2002), and the Measures on Public Participation in EIA issued by the Ministry of Environmental Protection recently in July 2015 further impose obligations to release certain categories of information about EIA and the public's participation in it.

In 2006, China adopted the Measures on Open Environmental Information (for Trial Implementation),[166] which require environment agencies to disclose 17 different types of environmental information, including on environmental quality, a list of polluters, audits of polluters, etc. The Measures encourage open environmental information systems, but also provide for an access upon request regime. The 2012 report of 113 cities from NRDC and the Institute for Public and Environmental Affairs found that there has been uneven progress over the past several years in improving transparency.[167]

International Framework

The People's Republic of China has signed, but not ratified the ICCPR. It has signed and ratified the UNCAC.[168]

China has not endorsed OGP, EITI, or IATI but is member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[169] and OECD Busan Partnership for Effective Development Co-operation[170] of which IATI is a core component.

India

Constitutional Framework

The Constitution of India was adopted in 1949[171] and its Articles 19(1)(a) and 21 protect freedom of speech and expression and the right to freedom of liberty, which the courts have interpreted to extend a right to information. The Supreme Court ruled in 1975 that access to government information was an essential part of the fundamental right to freedom of speech and expression.[172] There have been other groundbreaking judgments of the Supreme Court, such as a ruling that disclosure must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. In 2002, the Supreme Court also specifically ordered the Election Commission to make candidates for election publish information about criminal records, assets, liabilities and educational qualifications.[173]

The Supreme Court ruled in 1975 that access to government information was an essential part of the fundamental right to freedom of speech and expression.

Right to information Act

The social grassroots movement across a number of states of India was a decisive factor in the efforts to adopt strong RTI legislation. The Freedom of Information Act (2002) was approved by Parliament and the President as a result of a lengthy activist campaign and the Supreme Court's decision on the need for the institutionalisation of the right to information.[174] The Act was widely considered to be severely flawed.[175] It was not notified in the Official Gazette and never went into effect. In the meantime, numerous states took their own initiative and enacted their own state-based RTI Acts. Following national elections in 2004, the new government decided to substantially improve on the 2002 Act and in April 2005 Parliament passed a new – and substantially improved - RTI Act.[176]

There have been several attempts to amend the Act to reduce its effectiveness. In 2006, amendments to reduce access to "file notings" were approved by the Cabinet but then withdrawn following public protests.[177] In 2009, the Government sought to water down the RTI Act by introducing an exemption for so-called "vexatious and frivolous" requests and trying to exclude from the scope of the law documents relating to the deliberative and decision-making processes. However, a major campaign against the proposed amendments was organised[178] and the government withdrew the proposed amendments. More recently, in 2013, a proposal to exempt political parties from the scope of the Act was introduced and supported by the Parliamentary Standing Committee on Personnel, Public Grievances and Pensions but not adopted.[179]

Provisions of the RTI legislation

Principles

The purpose of the Act is to promote transparency and accountability of public authorities, help fight against corruption and improve the operation of public services. The Act includes the principle that the requesters are not required to justify their request by stating the reasons for accessing information. The access regime set out in the Act shall prevail over any other inconsistent law.

Scope

Under the Act, all Indian citizens (not foreigners) have a right to ask to ask for information. Requests from companies, associations and other organisations are only accepted if it comes from an employee or office bearer who is a citizen.[180] The right applies to all public authorities under the jurisdiction of the Central Government and the States. The Act covers all public authorities set up by the Constitution or statute, as well as bodies controlled or substantially financed by the Government or non-government organisations which are substantially funded by the government. The Act comprises a list of exempted authorities, although the right to information applies even to these authorities in case the information pertains to an allegation of corruption or human rights violations after approval of the Central Information Commission (CIC). According to this list, the security and intelligence agencies are, in principle, exempted, subject to CIC override.[181] Information is defined as any material in any form (including samples of materials) and includes information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Proactive disclosure

Public authorities are required to proactively publish 16 categories of information including details of the services provided, organisational structure, decision-making norms and rules, opportunities for public consultation, recipients of government subsidies, licenses, concessions, or permits, categories of information held, and contact details of information officers. In 2010, the CIC issued an Order[182] aiming at the harmonisation of the practices in relation to proactive disclosure of information across the bureaucracy, requiring public authorities to appoint one of their senior officers as 'Transparency Officer' in charge of the proactive publication.

Disclosure upon request

Requests shall be submitted in writing or through electronic means. If a requester is not able to make it in writing, he/she shall be given assistance to produce the particulars of the information sought in writing. The RTI Act does not regulate the required substance of the request, but it does stipulate that the requesters shall not be required to give the reasons for their access requests.

Citizens can not only request to inspect or copy information, but the Act also allows them to make an application to inspect public works and take samples. As a rule, the information should be provided in the requested form, unless this would present disproportionate costs for the authority or endanger the documents sought.

Applications must be submitted to a Public Information Officer (PIO) who must be appointed in every unit of a public authority. The PIOs have a general duty to assist the requesters, a duty to assist with submitting the request in writing and a duty to offer special assistance for disabled requesters. If the authority is not in possession of the documents sought or the subject matter falls closer within the remit of another authority, the body must transfer the request to that other authority and inform the applicant thereof in five days.

The PIO must respond as expeditiously as possible and at the latest within 30 days or in emergency cases of life or liberty of a person, within 48 hours. There is no possibility to extend the time limit. If the authority does not respond in the prescribed time, the request is presumed to be rejected.

There are fees for submitting requests and for costs of reproduction and delivery.[183] Fees must be waived if the requester lives below the poverty line (as demonstrated by producing a Below the Poverty Line government card). In practice, the fees are used frequently by officials to attempt to avoid requests.[184]

Exemptions

The exemptions are aimed to protect the following interests: the sovereignty and integrity of the state, national security or economic interests, international relations, public safety, court proceedings (whose disclosure will result in contempt of court, or whose disclosure is specifically forbidden by a court), life or safety of a person, law enforcement, investigation or prosecution, parliamentary documents which would result in a breach of parliamentary privilege and Cabinet papers prior to a final decision, commercial and trade secrets or corporate intellectual property, fiduciary relationships, personal information etc. While only some, not all exemptions are subject to a harm test, an overarching public interest test shall be applied to all exemptions where information will still be released if the public interest in disclosure overrides the

interest in withholding the information. If the information relates to allegations of human rights violations or corruption, the absolute exemptions for security and intelligence agencies do not apply.

There is a severability clause, whereby exempted information can still be redacted and access to non-exempt information should still then be granted.

The authority shall notify the applicant of the reasons for refusing the right to information and of their right of appeal and the procedure for lodging a complaint.

Appeals

The Act establishes a two-tier mechanism for appeal. The first appellate option is with an officer senior in rank to the PIO. If still not satisfied the applicant may submit a second appeal with the Central Information Commission (CIC) or the relevant State Information Commission (SIC). Information Commissions have a broad remit to hear cases in relation to access to information. They have investigative powers and can make binding decisions. Information Commissions can make any order necessary to ensure compliance with the Act, including requiring a public authority to publish information, appoint PIOs, produce annual reports and make changes to record management. The Commissions can also order compensation and impose penalties. The RTI Act bars appeals to the courts, but as the right to information is a constitutionally guaranteed right, the writ jurisdiction of the Supreme Court and high courts remains unaffected.

Sanctions

Fines and disciplinary proceedings can be ordered for a range of offences, including for refusing to provide access, for not respecting statutory deadlines, for releasing false, misleading or incomplete information and for obstructing information officials. In addition, the Information Commissions have been empowered to recommend disciplinary action against public servants.

Publication / Reporting mechanisms / Promotional measures

The Act imposes duties to monitor and promote the law. Information Commissions must monitor the implementation of the Act and produce annual reports. To the extent that resources are available, Governments must provide training for officials and conduct public education activities, including publishing a User's Guide.

Implementation of the RTI legislation

The Indian RTI Act is rightly considered one of the most progressive and advanced laws in the world and serves as a model and a benchmark for assessing other laws in the region. A comparative survey showed that India has the largest number of civil society organisations working in the field of right to information and transparency among the selected Asian countries.[185] The designation of a "nodal agency", the Central Government Department of Personnel and Training (DOPT), with a responsibility to oversee and assist with the implementation of the Act, has been regarded as a distinctively good practice.[186] DOPT has led many mass public awareness campaigns, issued clarifications and specific orders on implementation of the Act (such as to appoint the Public Information Officers, proactively disclose information, improve record management).[187]

The Indian RTI Act is rightly considered one of the most progressive and advanced laws in the world and serves as a model and a benchmark for assessing other laws in the region.

Nonetheless, India also faces certain difficulties with implementation which has varied across the country. The main problems with implementation include: the relatively low awareness of the right to information especially among rural populations; poor record management and digitisation of records; discrepancies in proactive publication practices; failure to comply with time limits; and lack of training of Information Officers.[188] Often, requesters face harassment from public officials, especially in rural areas. Budget constraint has also been cited as an impediment to full implementation of the RTI Act.[189] Official statistics from the CIC state that the denial percentage at the central level is 7.21%.[190] A recent review has found that while government bodies claim that full information is provided in 77% of the requests and partial information in 7%, requesters only report receiving full information 29% of the time, including not receiving responses 23% of the time.[191] The national average for receiving information on time is 41% with wide variations between the central government and states.

Often, requesters face harassment from public officials, especially in rural areas.

As India is a federal country, state governments adopted their own respective RTI rules (as many as 88 different rules exist). Civil society organisations noted confusion when attempting to access information, related to inconsistent fee structures, restrictive formats, and varying procedures for accessing information.[192] DOPT has also been criticised for some controversial interpretations of the RTI Act.[193]

While the system of appeal has largely been celebrated on account of establishing central and state information commissions, the RTI Act has a major flaw in that it does not establish a timeline in which the Information Commissions ought to decide on an appeal.[194] It has been estimated that an average waiting time for the Central Information Commission to decide on a case is 13 months and it disposes approximately 2,000 cases per month.[195] Over 40,000 cases are currently pending.[196] The delays are worse in some states. In Madhya Pradesh, it is estimated that cases will take over 60 years before they are heard if they keep the current rate of disposals. Moreover, many of information commissions' places are vacant.[197]The post of Chief Information Commission of the Central Information Commission was vacant for nine months until June 2015.

In Madhya Pradesh, it is estimated that cases will take over 60 years before they are heard if they keep the current rate of disposals

A serious concern is the increasing number of attacks against requesters who are using the Act to reveal corruption or other misdeeds in their communities. [198] There have been at least 50 reported deaths and hundreds of attacks in the past seven years. The government in 2015 will begin collecting data on the attacks.

Other laws

State laws

At the time the national Right to Information Act was passed, eight states and one territory had already passed their own access laws, largely in response to pressure from local anti-corruption activists. Acts were passed in Tamil Nadu, (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), etc. With the passage of the national RTI Act, some states repealed their acts but most remain in force but are no longer used by requestors.

Official Secrets Act

The Official Secrets Act of 1923 is based on the 1911 UK colonial law. The OSA prohibits unauthorised collection or disclosure of "secret information." The lack of definition of this term grants a wide discretion to public officials to classify anything as secret. Nevertheless, the OSA is said not to be the legal basis for classifying documents; instead, it is the Manual of Departmental Security Instructions.[199] The OSA is considered outdated and inconsistent with the standards of freedom of expression and freedom of information in a democratic society and has been frequently used against the media.[200] The Second Administrative Reforms Commission of India and UNESCO recommended the OSA be repealed, overhauled or amended in line with international standards,[201] but the previous and current government have refused to implement the recommendations.[202] It is important to note that the RTI Act specifically states that its provisions will have effect notwithstanding anything inconsistent in the OSA or any other law.[203]

Whistleblowing law

A decade after a government resolution on the need to adopt a whistleblower protection scheme,[204] India finally adopted a comprehensive Whistleblowers Protection Act in 2014, which has yet to be implemented,[205] A whistleblower can make a public interest disclosure on corruption, misuse of power, or criminal offence by a public servant before the Central Vigilance Commission (CVC) and his/her identity will be protected. The government has proposed amendments to the Act which will seriously undermine the protections in the Act, including by removing protections from prosecution under the Official Secrets Act and limiting the grounds that complaints can be made if they relate to the exemptions in the RTI Act. [206]

Environmental Protection Laws

According to the Environment Protection Act,[207] the government shall collect and disseminate information in relation to environmental pollution. The Ministry of Environment, Forests, and Climate Change issued an Environmental Impact Assessment Notification[208] which makes prior environmental clearance mandatory for development activities as listed in its schedule (which covers a wide range of activities) and establishes procedures for public hearings and consultations.

International Framework

India has signed and ratified the ICCPR and the UNCAC.[209]

India was one of the nine countries founding the Open Government Partnership and sat on the initial Steering Committee, but the government withdrew from the initiative in July 2011, two months before the formal launch of the Initiative on 20 September 2011.

The country is also a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[210] and OECD Busan Partnership for Effective Development Co-operation.[211]

India participated in the UN Conference on Sustainable Development Rio+20; its inputs to the Compilation document focus on green economy practices and eradication of poverty.[212]

Indonesia

Constitutional framework

The constitutional amendments of 2000 incorporated the right to information into the Indonesian Constitution.[213] Article 28F guarantees every person the right to communicate and obtain information for the purpose of the development of his/her self and social environment. Everyone also has the right to seek, obtain, possess, store, process and convey information using all available channels.

Right to Information Act

Indonesia adopted the Public Information Disclosure Act (RTI Act) in 2008, and it came into force two years later on 1 May 2010.[214] The process for the adoption of this law began in 2000 at the initiative of the Indonesian Center for Environmental Law (ICEL) and was supported by a multi-stakeholder coalition of approximately 40 civil society organisations and individuals.[215] The Coalition developed a draft law in 2002, from which the draft legislation was developed by the Parliamentary Special Committee and sent to the then-President Megawati Sukarnoputri. Negotiations halted for several years until resuming in 2005.[216] The Government Regulation on the Implementation of Freedom of Information Act[217] and the Central Information Commission Regulation on Public Information Service Standards[218] were subsequently adopted to supplement and clarify the law.

Provisions of the RTI legislation

Principles

The purpose of the RTI Law is to materialise good state management, optimise public supervision on the organising of the state and matters in the public interest and to develop an informative society. When providing information, the relevant public agency must take into consideration the overarching principle of supplying the information fast, prompt, and at a low-cost. However, the law demands from requesters that they state a reason for their information request.

Scope

Only Indonesian citizens and/or Indonesian corporations have the right to request information; Indonesian residents and foreigners are not provided any rights in this regard. The RTI Act applies to executive, legislative, judicative agencies, state-owned corporations, non-governmental or other publicly funded organisations and organisations funded from overseas. The Act defines the concepts of "information" and "public information". The latter means any information, produced or processed by a public agency in relation to organisation of the state and other information in the public interest.

Proactive disclosure

The Act includes a wide range of information that is to be published proactively and distinguishes between information that is to be supplied "periodically", "immediately" and "at any time". Periodic publication of information relates to information on the activities and performance of the related public agency,

information on the financial report, and/or other information regulated in the regulations of the laws. Immediate publication of information includes information that might threaten the life of the people and public order. Information that should be available at any time is enumerated and includes a list of all public information, decisions and reasoning thereof, policies, working plans of an agency, including annual budget, reports on access to public information services etc. State-owned corporations are obliged to publish a vast range of information on their services, responsible persons, annual and financial reports, external evaluations, procurement mechanisms and many others. The law further regulates which information, mainly concerning functioning, should be published by political parties and by NGOs respectively.

Disclosure upon request

The Act broadly stipulates that requests can be made to the relevant public agency in "writing or otherwise," including by email. The requester needs to state his or her name, address and the subject of the request. Problematically, the requester also needs to give the reason for requesting public information. The RTI Act does not stipulate whether the agency is obliged to respect the requester's preference for the format of the requested information.

Every public agency is required to appoint an Information Management and Documentation Officer; however, there are no clear instructions laid down for the officers to provide assistance to the requesters. In case the information is not in possession of the public authority that receives the request, such agency must notify the requester where the information can be obtained; there are, however, no provisions on transferring the request to the competent authority.

The agency has 10 working days to either provide the requested information or issue a refusal notice. This period may be extended for a maximum period of 7 working days, provided that the reason for delay must be provided to the applicant in writing.

Information Commission Regulation No. 1/2010 stipulates that the local authority determines the fee structure for obtaining copies of public information[219] and the RTI Act states that the requesters have the right to complain in case of unreasonable fees.

Exemptions

The RTI Act adopts an unusual language of a "right" of public agencies to refuse access to public information. Nevertheless, agencies are required to interpret all exemptions restrictively and the information may not stay restricted permanently. Information that should be exempt from public access relate to law enforcement, intellectual property and fair competition practices, defence and security of the state, natural wealth, national economic security, diplomatic relations, personal secrets and similar. All exemptions except for the one relating to the "natural wealth" of Indonesia are subject to a harm test. Equally, there is a mandatory public interest override applicable to all exemptions; should revealing the information serve a "larger interest," the otherwise protected information shall be released to the public.

The law provides for the possibility of partial access and "blackening" only restricted information, while enabling access to the rest of the requested document.

The body must provide the requester with a written notification on the reasons why the request may not be granted. The Act stipulates that the reasoning shall take into account "political, economic, social, cultural considerations and/or state defense and security."

Appeals

The RTI Act provides for internal and external appeal options. Internally, the appeal is with the supervisor of the information officer. External administrative appeal is possible with the Information Committee, an independent institution competent for overseeing the implementation of the RTI Act. It consists of the central, provincial and, if required, district/municipal Information Committees. Members of the Central Information Committee are recruited openly and nominated by the President through the Ministry of Telecommunication and Informatics. The government sends the nominations to the parliament and the candidates are elected by the Indonesian parliament through a fit and proper test, and subsequently appointed by the President. The Committee is competent to inspect the documents and issue instructions and its decisions are final and binding. In effect, the Committee settles disputes and operates under the dispute resolution procedure. The requesters also have the right to file a suit in court if they are obstructed from obtaining public information.

Sanctions

The RTI Act sets out the sanctions for noncompliance. Penalties are prescribed for public officials that deliberately hinder the right to information, including for not supplying or publishing information, for destroying or losing the information or producing incorrect or misleading public information. On the other hand, anyone who deliberately uses public information "against the law" may also be sanctioned. Moreover, the law prescribes harsh penalties (imprisonment and monetary sanction) for acquiring or supplying classified information without the right to do so.

Penalties are prescribed for public officials that deliberately hinder the right to information, including for not supplying or publishing information, for destroying or losing the information or producing incorrect or misleading public information

Publication / Reporting mechanisms / Promotional measures

Every public authority shall annually publish information on the number of requests received, approved and denied, the reasons for rejection and the time for fulfilling the requests. The reporting is complete through publishing the information. The Central Information Committee reports on implementation to the Parliament, whereas the district/municipal committees report to the district/municipal parliaments. The reports are public. There are no provisions on awareness-raising activities or conducting promotional measures.

Implementation of the RTI legislation

Since the RTI Act came into force, the implementation of the law has been slow; by August 2012, the Alliance of Independent Journalists estimated the implementation to be at 30 per cent.[220] Many NGOs have since raised concerns regarding the RTI Act. One of the main concerns is that the law has broad exemptions in relation to national security and foreign relations, which could still lead to a significant amount of information being withheld.[221] Despite the lack of clear provisions surrounding classified information, the sanctions for the violations of such remain high.[222]

One of the factors delaying implementation is the lack of understanding by public officials of their transparency obligations,[223] who still decline to reveal information.[224] There is also a disparity in how public bodies interpret the

exemptions, leading to unconsolidated jurisprudence.[225] Often, local, provincial and national public agencies also lack the funds, procedures and personnel necessary to effectively implement the law.[226] While there have been some efforts to train relevant officials on information disclosure through the efforts of the CIC or NGOs, this still does not meet the needs.[227]

Some Indonesians are apprehensive about requesting information from public agencies, fearing that the act will be perceived as challenging authority.[228] There remains a general perception, particularly among the media, that in order to speed up service applicants must pay out bribes to government officials.[229] The culture of secrecy is attested by research. In a 2012 test, out of a total of 224 requests submitted, less than half of the cases were granted information and severe flaws in handling the requests were noted.[230] Moreover, not all of Indonesia's regions have yet set up Information Commissions to protect the right to information.[231]

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Information is not sufficiently available proactively, largely due to inefficient information management systems and a lack of capacities and skills in public bodies.[232] The government is slowly opening up[233] and in September 2014 it launched an open data portal.[234]

Related legislation

Media laws

The Indonesian Press Law[235] recognises the right of the press and the public to information. It stipulates that the domestic press has the right to seek, acquire, and disseminate ideas and information, and must fulfil the public's right to know.

State Secrets Act

The State Intelligence Law (SIL) 2011[236] greatly broadens the power of the State Intelligence Agency, Badan Intelijen Negara. The SIL's vague phrasing of crimes has the potential to conflict with the terms under the RTI Act. The SIL prohibits individuals or legal entities from revealing or communicating state secrets, with penalties of up to 10 years in prison and fees exceeding 100 million rupiah. The SIL defines "intelligence secrets" as "information that could jeopardize national security," but provides no further explanation about the definition of "national security." The Constitutional Court rejected a challenge to the law in 2012.[237]

Protection of whistleblowers

Indonesia does not have a comprehensive whistleblower protection law, although the Law on Witness and Victim Protection[238] offers protection to whistleblowers who reveal information leading to criminal prosecution. The implementation of this protection in practice is reportedly severely flawed.[239] In addition, the Anti-Corruption Law[240] also establishes some protection for whistleblowers that are considered witnesses.

Environmental protection legislation

According to the Environmental Democracy Index, Indonesia scored very well in the transparency pillar.[241] The Environmental Protection and Management Act[242] stipulates that the participation of communities should be based on the provision of information. The polluters are obliged to mitigate the risk of polluting, among others, by providing information about the warning of environmental pollution and/or damage for communities. Moreover, the national and regional governments shall develop and make available an environmental information system, where information about the environmental status, vulnerability maps and other important information should be published.

International framework

Indonesia has acceded to the ICCPR and signed and ratified the UNCAC.[243]

The country was one of the founding countries of the Open Government Partnership (OGP) and launched the partnership in September 2011.[244] Indonesia's Action Plan addresses the lack of transparency in several sectors, from the government to business and investment. In 2014, Indonesia acted as a Lead Chair of the OGP.[245] Indonesia endorsed the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[246] and OECD Busan Partnership for Effective Development Co-operation.[247] Indonesia also joined the Extractive Industries Transparency Initiative (EITI) and has been declared compliant in December 2014.[248] Indonesia has also joined the International Aid Transparency Initiative (IATI) and has been a partner country since 2012.[249]

Japan

Constitutional Framework

Article 21 of the Constitution of Japan[250] guarantees freedom of assembly, association, speech, press and all other forms of expression. While the Constitution does not expressly protect the right to receive and impart information, the Supreme Court has decided that the right to information is protected by Article 21 of the Constitution.[251] The Constitution further prohibits censorship and provides that secrecy of communications shall not be violated.

Right to Information Act

The initiatives that led to the adoption of the Japanese right to information law were put forward by the Japan Consumers Federation, public interest lawyers and the Japan Civil Liberties Union (JCLU), driven by concern over the lack of transparency surrounding the safety of the drug thalidomide and other cases where information to prove government culpability was required. Members of the JCLU and other public interest groups joined together in March 1980 to form the "Citizens Movement for an Information Disclosure Law."[252] After a 20-year effort, the Act on Access to Information Held by Administrative Organs (RTI Act)[253] was approved by the legislature, the National Diet in May 1999 and went into effect in April 2001. An expert panel conducted an extensive review of the law in 2004, finding numerous problems with the law but made no recommendations on changes to the legislation. Other efforts to amend the law have been unsuccessful.[254] However, in 2013 Japan adopted a controversial Secrecy Act that has serious implications for exercising the right to know.[255]

[I]n 2013 Japan adopted a controversial Secrecy Act that has serious implications for exercising the right to know.

Provisions of the RTI legislation

Principles

The purpose of the RTI Act, declared in Article 1, is to ensure greater accountability of the Government and to contribute to the "promotion of a fair and democratic administration."

Scope

Every person, corporation or group can request access to information. The Act applies to the Cabinet, the organs within the Cabinet or established under the jurisdiction of the Cabinet, and certain other agencies. The legislative and judicial branches are not mentioned by the Act. While the Act does not mention private bodies with public functions or those receiving public funding, a separate statute applies to public companies (special public corporations) which was adopted on 2 November 2001.[256] An "Administrative document" is defined as a document prepared or obtained by an administrative body for the purpose of organisational use by its employees. The Act excludes from its scope documents published for the purpose of selling to a broader public (such as official gazettes, newspapers, books) and historical, cultural or academic materials managed as archives.

Proactive disclosure

The Act does not include any requirement to proactively publish public information. However, a guideline for online provision of administrative information was issued in 2004 by the inter-ministerial CIO committee. This guideline was replaced by the guideline for promoting provision and usage administrative information by websites and others, issued in March 2015. These include what kind of information the ministries should provide voluntarily. An OECD study in 2010 showed that the Japanese government routinely publishes budget documents and audit reports.[257] The Government E-Procurement System (GEPS) was launched in March 2014.

Disclosure upon request

The Act provides for a simple procedure that enables anyone to seek information. The Act does not prescribe in what form the request may be submitted. The requesters are only obliged to state their name and address (in case of a corporation also a name of the representative) and provide as much detail about documents sought as necessary for the authority to identify relevant documents. Requesters are not required to state reasons for requesting information.

The requester may indicate the preferred form of accessing the documents, although there are no clear rules on whether the authority needs to comply with such a preference. If the authority considers that the demanded inspection of the documents would entail risks for preserving the documents, it may decide to provide a copy of the original for inspection.

The authority is obliged to provide help to the requestor to specify the requested documents easily and accurately and take other steps "that take into account the convenience" of the requester. The body must also help the requester to revise the request if this is deficient. If the body holds the requested documents, but they were prepared by another body or there are reasonable grounds for another body to make the decision for the request, the Act provides for the possibility for the authority to transfer the request to another body. There is no obligation to transfer the request to another body or notify the requester that the requested document might be held by another body.

The deadline for the decision on the request is 30 days which may be prolonged to 60 days provided the individual is notified without delay. Article 11 of the Act allows for extended delays in response when there is a "considerably large amount" of documents and the body notifies the requestor in writing.

Requesters must pay a fee at the time of the submission of the request and separately if documents are disclosed. The Act limits the amount of fee to the actual expenses and it also provides for fee waivers in cases of economic hardship or other special reasons.

Exemptions

There are six broad categories of exemptions all of which are subject to a harm test. The exemptions protect information about a specific individual (unless the information is made public by law or custom, is necessary to protect a life, or relates to a public official in his public duties); national security or international relations or negotiations; the interests of corporations if information affects their legitimate rights or was given voluntarily in confidence; law enforcement activities; internal deliberations or internal decision making; inspections, supervisions, concluding of contracts, etc. With all these exemptions the body must assess whether the risk would occur for the protected interests.

Exempted information can be disclosed by the head of the agency "when it is deemed that there is a particular public-interest need." The head of the agency can also refuse to admit the existence of the information if answering the request will reveal the information.

The Act contains a severability clause, although access may be denied if meaningful information is only contained in the excluded parts of the documents.

Appeals

A requester can submit an appeal with the authority that decided on the request. If the authority does not change its decision, it must refer the appeal to the Information Disclosure Review and Personal Information Protection Review Board. The Review Board is an independent body established within the Cabinet Office.[258] It a collegiate body made of 15 experts selected and appointed by the Prime Minister from "among people of superior judgment" and approved by the parliament. The Review Board has the power to inspect the documents concerned. Its decisions are not binding and it is not possible to appeal them. The appeal is, however, also possible with the district courts ("specific jurisdiction courts") and there is no requirement to first appeal to the Review Board. Starting in 2016, the board will be affiliated with the Ministry of Internal Affairs and Communications

Sanctions

The Act does not provide for sanctions against civil servants that impede the individuals' right to information. However, a penalty is prescribed for members of the Review Board who disclose secret information that they came to know during or after the time served on the Board.

Publication / Reporting mechanisms / Promotional measures

The Act mandates the Minister of Internal Affairs and Communications to request reports on the implementation of the law from public bodies. The Minister shall collect, arrange, and publish a summary of these reports on an annual basis. The government is tasked with some modest promotional measures: it should promote disclosure and educate people on exercising the right to information.

Implementation of the RTI legislation

The number of requests has not substantially increased in recent years and more information is now being withheld. In 2013, there were a total of 110,662 requests to administrative agencies and public corporations, up from 93,717 in 2004. In 2013, nearly 42,000 of the requests resulted in full disclosure, down from 60,000 in 2004. There were 56,000 partial releases, compared with 21,000 in 2004. The 3,000 cases that resulted in non-disclosure is roughly the same for 2013 as it was in 2004. There were over 1,100 administrative appeals in 2013, down from 1,500, and 750 recommendations from the Review Board in 2013, up slightly from 720 in 2004. Between 60 and nearly 90 per cent of the decisions are upheld each year by the Review Board and only between two and 12 per cent of the bodies' decisions are reversed.[259] Less than 10 per cent of cases were appealed to the courts.[260]

The main criticisms by civil society groups of the Act as implemented are high fees, prolonged deadlines for decisions, delays in referring appeals to the Review Board, missing documents, poor archiving, and excessively broad non-disclosures. The time consuming process has been somewhat improved after introducing an obligation on bodies to report to the Ministry of Internal Affairs and Communication, publish individual cases where the deadline for decision has been prolonged over 90 days, and delays in referring appeals to the board over 90 days. The public interest test is infrequently used. Among other factors that contribute to the low levels of implementation, commentators cited a shortage of resources, especially human resources, to uphold the information disclosure legislation.[261]

There have been reported pressures against the information requesters; the Defence Agency compiled a list of people who had submitted requests and had conducted a background investigation of those people and distributed it to the officers of the agency in 2002.[262] More recently, the Ministry was found to be withholding requested documents until it was revealed. Another bad practice that has been identified concerned the destruction of documents that could otherwise fall within the RTI regime and mismanagement of public records.[263]

There have been reported pressures against the information requesters; the Defence Agency compiled a list of people who had submitted requests and had conducted a background investigation of those people and distributed it to the officers of the agency in 2002.

Another problem relates to the lack of mechanisms to ensure compliance with the Act and with the Information Disclosure Review Board recommendations.[264] The decisions of the Review Board are not binding, although they are generally respected. The Review Board has made a number of important decisions, such as recommending the disclosure of the minutes of meetings between Emperor Hirohito and US General Douglas MacArthur, and a list of 500 hospitals that used a blood-clotting agent infected with Hepatitis C. Following the latter decision, the Health Minister promised to release the full list of 7,000 hospitals that used the drug.[265]

One of the most troubling developments came with the adoption of the so-called secrecy law, the Act on the Protection of Specially Designated Secrets.[266] More details are set out below.

Related legislation

Local laws

All 47 prefectures have adopted disclosure laws applying to nearly 1,700 local governments and 99 percent of villages. The first jurisdictions to adopt laws were Kanayama-cho in Yamagata prefecture in 1982 and Kanagawa and Saitama Prefectures in 1983.[267]

Official Secrets Act

The Act does not regulate the relationship with secrecy laws. In December 2014, a new and widely criticised secrecy law, the Act on the Protection of Specially Designated Secrets came into effect.[268] The Act specifies procedures and circumstances on designating official documents as secret in the interest of Japan's national security, which means the safety of the nation and its citizens from any invasion, the nation's existence and so forth. The main criticisms against the act is that there is no credible third party oversight of the secrecy designation and declassification systems, excessively prolonged classification, no public interest override, no prohibitions on classifying documents related to illegal activities and malpractice, and no provision demanding that the public authority explains why a particular document should be designated as a special secret.[269] The Act has led to unprecedented public protests. Since it was released as an outline of a draft bill, over 90,000 opinions were submitted through the public comment procedure with nearly 70,000 being critical. Civil society organisations, some mass media and many ordinary citizens proactively organised a campaign against the bill.

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382 kinds of information were designated as a secret by the end of 2014. It has been estimated that 460,000 documents would fall under the "special secrets" definition and thus closed from the public.[270] 189,193 documents were marked as a designated secret by the end of 2014. The law has been widely described as violating international standards on freedom of expression and information.[271]

Whistleblowing law

Japan has a comprehensive Whistleblower Protection Law[272] which came into force in 2006. Employees in the private sector, as well as the public sector, local governments, and public corporations are protected against dismissal or any disadvantageous treatment on the basis of whistleblowing. The Law protects those who expose misconduct from unfair treatment, such as dismissal, demotion or salary cuts, but it does not sanction the companies for breaching this obligation. The Law defines "public interest disclosure" as information pertaining to criminal conduct or statutory violations relating to the protection of consumer interests, the environment, fair competition and generally the "life, body and property of the general public". However, the Act on the Protection of Specially Designated Secrets prescribes penalties for public officials who leak state secrets and there is no public interest defence exemption.[273]

Environmental Protection Laws

A 1999 law required the creation of a Pollutant Release and Transfer Register.[274] A law was approved in 2004 which requires government ministries, local governments and specified businesses to publish annual reports on the

environmental consequences of their activities.[275] Pursuant to the Environmental Impact Assessment Law assessments shall be made available for consultation and subject to public discussion.[276]

International Framework

Japan has signed and ratified the ICCPR, but has only signed and not ratified the UNCAC.[277]

Japan is not participating to the Open Government Partnership, but is eligible to join.[278] The country is also a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific (it endorsed the Action Plan in 2001)[279] and OECD Busan Partnership for Effective Development Co-operation.[280] Japan is a supporting country of the Extractive Industries Transparency Initiative (EITI).[281]

Mongolia

Constitutional Framework

The right to information is protected by Article 16 (Para. 17) of the Constitution of Mongolia,[282] which grants the citizens of Mongolia the right to seek and receive information except in cases when the State is legally bound to protect it. The exceptions to disclosure of information aim to protect the human rights, dignity and reputation of persons and to ensure national defence, security and public order.

Right to information Act

The Mongolian parliament passed the Law on the Information Transparency and the Right to Information (the RTI Act)[283] on 16 June 2011 as a result of the social grassroots movement in Mongolia. A local NGO, Globe International Center supported by the Open Society Foundations, AUSAID, the US Democracy Fund and the UK Embassy campaigned for the adoption of a RTI Act since 2002.[284] Two draft bills were previously discussed in 2003 and in 2006 respectively.[285] The RTI Act has been amended twice; on 17 August 2012 and 16 January 2014.

Provisions of the RTI legislation

Principles

The objective of the RTI Act, declared in Article 1, is to ensure state transparency and guaranteeing the right of citizens and legal entities to seek and receive information. There is a specific presumption in favour of openness: all information with exception of the state classified information should be open. The Act also contains a unique provision establishing a presumption in favour of an international treaty, to which Mongolia is a party, if the latter is in conflict with the RTI Act.

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Scope

Any citizen or legal person lawfully residing in Mongolia is entitled to seek information pursuant to the law. This means that all non-residents and non-citizens are excluded from exercising their right. The RTI Act applies to the legislative, executive and judicial branches of government, local government, and legal entities wholly or partially funded by the state and NGOs performing public functions. With regard to the parliament, only its secretariat and bodies and institutions arising from the functioning of the parliament fall under the scope of the RTI Act, not the parliament itself.[286] The Act explicitly excludes information pertaining to the armed forces, border protection and intelligence services from the purview of the Act. Entitled individuals and legal entities may request all information and documents in possession of the organisation and any other information pertaining to the functioning of the organisation.

Proactive disclosure

The provisions on proactive disclosure are progressive and the scope of information that is subject to affirmative disclosure is extensive. It includes financial and budget information, as well as more general information on services, participation and decision-making, and information on public procurement. The provisions stipulate very narrow time limits for updating the information. Information shall be updated within three days in the case of change and renewed at least every 14 days. The amendment in 2014 invalidated all the provisions on disclosure of information relating to budget and finance, and public procurement. The Act now says it shall be regulated by the Law on Glass Account. This law was passed on 1 July 2014. Under Article 9 and Article 10 of the RTI Act, there are only provisions saying it shall be subject to the Law on Glass Account which was effective from 1 January 2015.

Procedure

The RTI Act dictates that the request must be submitted in a written form, which means oral requests are not possible. The possibility to submit an electronic request exists, but the Act limits this option by demanding such a request to be signed with an electronic signature and include the requester's ID number. The information that requesters need to provide in the request include a substantive description of the information sought, the name, address (may be electronic address), national identity card or other similar identification and signature or analogous information for legal entities. There is an explicit provision stating that no reasons for the request need to be provided.

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The individuals have the right to select the form in which they wish to receive the information sought. Information can be received "verbally, in writing or electronically", requesters may also inspect the documents in person.

The Act does not establish a duty upon public servants to help the requesters. On the other hand, individuals have the right to an oral explanation about the content of the received information. If information is not in the possession of the particular body, the official in charge shall transfer the request to the competent body and inform the requester thereof.

The request shall be considered within seven business days which may be extended once for another seven days. If information sought is available immediately, it shall be resolved and answered immediately.

The disclosure of information is subject to payment of fees which are determined by each public authority but shall not exceed the actual cost for the provision of information (photocopying, copying, postage cost). The government adopted

its Procedure on Payment for Information and its Discount and Exemption by its Resolution No. 54 of 16 February 2013. Elderly and persons with disabilities are exempted from the payments.

Exemptions

The authority may refuse access to information that relates to human rights, national security and the lawful interests of organisations. The RTI Act also excludes any information pertaining to the Mongol Bank, the Financial Regulatory Commission and Competition Regulatory, and Professional Inspection (Supervisory) bodies from the purview of the law. Other exemptions cover information related to the process of concluding international treaty or agreement, the investigation and prosecution of crimes, the infringement of intellectual property rights, personal information and commercial information. Only the exemption relating to the protection of commercial information is subject to a harm test requiring the disclosure to "be detrimental to the lawful interest" of the respective entity. There is no public interest override provision. On the contrary, the Act establishes a reverse public interest test enabling the public authorities to classify documents if disclosure "might be detrimental to the national security and public interest of Mongolia."

The Act does not provide for a severability clause.

The requester has the right to be informed of the reasons for a refusal of the right to information.

Appeals

The RTI Act provides for a possibility to lodge an internal appeal, appeal with the independent National Human Rights Commission, and appeal with the courts. The Act does not establish specific rules for processing the appeals but instead refers to other laws where these rules are set out. The Commissioners of the National Human Rights Commission (the Ombudsman) are elected by parliament.[287] The Commission's decisions are not binding *per se*, but the Commission may file a suit against a body that fails to undertake measures, imposed by the Commission.

Sanctions

The Act provides that disciplinary measures can be initiated against a civil servant who violates a citizen's right to information. A civil servant who repeatedly or seriously violates the law (defined in the Act as violating the law more than three times) may be discharged from their job. There is a specific prohibition on destroying information in its possession and impeding the right to receive information.

Reporting, monitoring and promotional measures

There is no general provision requiring promotional or educational measure to be enforced. The RTI Act requires the state authority in charge of information technology to organise trainings among state organisations and provide professional and methodological assistance on the issues of storing information into electronic form, creating information base, distribution, security of data. The authorities are required to keep data in order to enable monitoring on the implementation of the Act. But the Act fails to establish a requirement to draft annual report outlining overall performance in terms of implementing the Act, and identifying strengths and weaknesses, along with recommendations for reform.

Implementation of the RTI legislation

Globe International, a national NGO that campaigned for the adoption of a RTI law since 2002, conducted a baseline survey on implementation of the Act in practice. The survey explored the level of awareness of the RTI legislation, the level of compliance with the Act and the challenges in practice.[288]

It has been established that awareness of the RTI Act is poor among both citizens and public officials. Only 62% of the total respondents knew they have a right to access to information and further analysis showed that people were not aware of the details of this right. Globe International commented that the lack of awareness of the Act is primarily due to the lack of trust in the rule of law in Mongolia overall, the actual and perceived corruption and nepotism, and a widely held belief that "government money is the government's money."[289] Aside from the lack of trust in the rule of law, citizens are not aware where and how to file requests for public information. One of the reasons for this is that the adoption of the Act was not joined by any implementation and promotion measures.[290] The National Human Rights Commission also called upon the state to promote the law among the general public, to study its implementation, and to carry out activities aimed at ensuring its implementation.[291]

Civil society reports on the widespread use of defamation laws, pressure against journalists, and blocking websites for revealing information in the public interest, such as for publishing information on the prime minister's ownership of a resort which allegedly polluted the local river.[292]

NGOs also report that two of the main reasons for non-disclosure are privacy and national security. They reported that the State Secrets Law has been used to inhibit freedom of information and transparency and hinder citizen participation in policy discussions and government oversight.[293]

Other laws

Official Secrets Act

In Mongolia the protection of state secrets is regulated by two different statutes: the general State Secrets Act, 1995 and the List of State Secrets Act, 1995. [294] Article 5 of the State Secrets Act sets outs five areas of secrecy – national security; defence; economy, science and technology; secret operations and counter-intelligence; and procedures on the execution of criminals with capital charges – followed by an exhaustive list of information, documents and physical items that are secret. The List of State Secrets Act lists 59 categories of information as secret among which 19 are national security-related, 14 are defence, 5 are economics, science and technology items, and 15 are intelligence-related. According to a report by Globe International Center 69.5% of the classified information is protected for 40-60 years or for indefinite periods.[295]

Whistleblowing law

A member of the Mongolian parliament drafted the Law on Whistleblower Protection and has gained some support from parliamentarians, but it has not yet been passed by the legislature.[296] Therefore, there is currently no whistleblower protection legislation in Mongolia.

Environmental Protection Laws

The Environment Protection Act was adopted in 1995.[297] The Act affirms that citizens have the right to obtain accurate information about the environment from relevant organisations. A state body is in charge of the monitoring of changes in the

environment and this body shall also provide the public with information on the environment and natural resources. The Environment Impact Assessment Act also stipulates that detailed environment impact assessments shall be made accessible to the public.

International Framework

Mongolia has signed and ratified the ICCPR and UNCAC.[298]

The country joined the Open Government Partnership (OGP) in 2013 and submitted the first country action plan. One of the key priorities of Mongolia's action plan is to increase the transparency of public institutions.[299] Mongolia also joined Extractive Industries Transparency Initiative (EITI) in 2006[300] and was declared a Compliant country in October 2010. A National Council, chaired by the prime minister, coordinates and monitors implementation of EITI while a Multi-Stakeholder Working Group is in charge of implementing EITI activities. Since 2006, Mongolia has produced eight EITI Reports,[301] which are highly comprehensive and disclose production activities, revenues collected at provincial and local levels, including fines and environmental remediation costs, social payments and donations.

Nepal

Constitutional Framework

The 1990 Constitution of Nepal recognised the right of citizens to demand and obtain information held by public agencies on any matter of public importance. This was repeated in the Interim Constitution of 2007[302]. Article 27 guarantees every citizen the right to seek and receive information on matters of their interest or of public interest, unless secrecy of information should be protected by law. A serious limiting factor in this provision which is at odds with international standards is the fact that only citizens are guaranteed this right.[303] The most recently available version of the Draft Constitution currently being considered by the Constituent Assembly includes the right but again limits access to citizens.[304]

Right to Information Act

Despite the constitutional guarantee, it took almost two decades for specific RTI legislation to be adopted in Nepal. The 1993 government draft of the Right to Information Act was rejected by the parliament following opposition from stakeholders, who feared the draft would institute a regime of secrecy rather than transparency. After the Interim Constitution was passed, the government formed a taskforce in 2007 to draft a right to information bill. After enormous efforts from stakeholders and civil society to improve the draft, the Right to Information Act (RTI Act)[305] was enacted on 21 July 2007 and came into force on 20 August 2007. In 2009, the Right to Information Rules[306] were adopted, detailing appeal procedure before the National Information Commission and regulating its competencies, structure and functioning.

Provisions of the RTI legislation

Principles

The purpose of the RTI Act as defined in the Preamble is to make the functions of the state open, transparent, responsible and accountable to citizens in accordance with the democratic system. There is a presumption in favour of openness in the provision of the Act that states that access to information may only be restricted with an appropriate and adequate reason. The RTI Act incorporates a serious limitation to free access to information by requiring the requesters to state a reason for their information request. Another limiting provision stipulates that the individual may not "misuse" the information by using it for different purposes than have been stated.[307] In case of a suspected "misuse", the authority submits a complaint to the Information Commission as prescribed by the Right to Information Rules (Section 31).

The RTI Act incorporates a serious limitation to free access to information by requiring the requesters to state a reason for their information request.

Scope

Only citizens may request information in accordance with the RTI Act. The Act applies to all public agencies, covering constitutional statutory bodies, agencies performing public services and government-funded or controlled agencies. It also covers political parties and NGOs, funded by the government of Nepal or foreign governments and international organisations. "Information" is defined as any written document, material or information related to the functions, proceedings or decision of public importance made or to be made by public agencies.

Proactive disclosure

The Right to Information Act 2007, Section 5, and Rules 2009 require bodies to disclose 20 types of different information proactively, including the obligation to publish essential information about each body, its functions, services, decision-making processes, details about the Chief and Information Officer and financial information about the body. The information must be updated every three months.

Disclosure upon request

One of the problematic issues with the RTI Act is that it does not regulate the procedure for requesting information, although the absence of such rules has been interpreted as meaning that the request may be submitted in any form of communication.[308] The content of the request, except for the requirement to state a reason for asking for information, is also not regulated, but should be discerned from various provisions. The body must comply with the requester's preference about the form of the information sought or another appropriate format if there is danger that information would be damaged, destroyed or spoilt.

Each public body must appoint an Information Officer who will be responsible for dealing with information requests. The Officer has an obligation to make the citizens' access to information simple and easy, but there is no provision on providing assistance to requesters or any rules on dealing with unclear or incomplete requests.[309] If the authority is not in possession of information sought, it is required to notify the requester, but it has no obligation to transfer the request to another competent body.

Information should be provided immediately. If this is impossible, the body shall instantly notify the requester and decide upon the request in 15 days, except when security of life is at stake and the deadline in such a case is 24 hours. There are no rules on extensions.

The body may charge fees for obtaining information which are, in principle, limited to the actual cost of providing information. The first 10 pages of A4 -size paper information are free of cost as per Section 4.2 of Rules. There is a right to complain in case of unreasonable charges.

Exemptions

A public body may only invoke the statutory exemptions if there is an appropriate and adequate reason. The act provides five categories of exemptions that may justify a refusal to disclose information. The list includes national security, investigation and prosecution of crimes, economic and other interests, intellectual property and professional secrets; harmonious relations among casts and communities; individual privacy, security, life, property or health of a person. Most of the exceptions are subject to a harm test (which varies in strictness), but there is no public interest override.[310]

The Act contains a severability clause, whereby an information officer must provide partial access to information if it contains exempt information and information that is accessible under the law.

The right of an individual to be informed of the reasons for a refusal is not expressly provided in the Act. However, the Act stipulates that reasons for refusal ought to be explained when the requester complains to the Chief (head) of the authority via internal appeal.

Appeals

The requester may appeal the refusal decision, but the first step is through internal channels: the requester must ask the chief of the authority for reconsideration of the decision. In case of an unsatisfactory reply, the appellant may complain to the National Information Commission (NIC). The NIC is an independent oversight body, composed of a Chief Information Commissioner and two Information Commissioners (selected with gender balance). The Commissioners are appointed for five years by the government at the recommendation of a special committee, where one of the three members is a civil society representative. The NIC hears appeals against various violations of the RTI Act and may issue orders, instructions, decisions and recommendations, including ordering structural changes. It has the power to inspect all relevant documents and it is also competent to declassify documents. The Act also provides for a basis for compensation claims in cases harm or loss occurred for failing to provide information.

Sanctions

The RTI Act imposes stiff sanctions against the chief of the public agency or information officer for withholding information without a valid reason, providing partial and wrong information and for destroying information. The NIC's decision may be appealed before the Appellate Court for decisions under Section 32.

Publication / Reporting mechanisms / Promotional measures

The Information Officers and the NIC are in charge with promotional activities. The RTI Act sets out a number of promotional activities of the NIC: it recommends the government and other bodies on the promotional measures and it may issue orders for the bodies on the promotion of the right to information, such as publication of certain information online. The NIC reports annually on its activities to the parliament through the prime minister and makes available the annual report for the public.

Implementation of the RTI legislation

According to the NIC, civil society organisations and experts, the implementation of the RTI Act has been weak and largely inadequate.[311] One of the main reasons for this is the lack of awareness by the public about their right to information and the lack of awareness and well-trained and competent human resources in public agencies.[312] The limited number of requests and small RTI focused organisations have had limited impact on the level of awareness among public bodies about their statutory obligations. Nevertheless, there is a growing demand from civil society groups for a proper implementation of the Act[313] and one study showed that the awareness of the RTI legislation in Nepal is higher than in many other South Asian countries.[314] The implementation of provisions on proactive disclosure has also been weak and none of the surveyed public authorities published all required information on their respective websites.[315] A lack of efforts to proactively disseminate information of public importance, especially in emergency situations, was visible in the aftermath of the deadly earthquake that Nepal endured in April 2015.[316]

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A large proportion of public bodies have failed to appoint information officers as required under the law. Only about 200 of 9,000 government bodies have designated an officer. Problems with applying the exemptions have also been reported, namely that public bodies often refer to the exemptions laid down in special laws to deny access to information, such as the Income Tax Act, Competition Promotion and Market Protection Act, Revenue Leakage (Investigation and Control) Act, Civil Service Rules and others.[317] The overall lack of capacity of public bodies also hinders implementation.[318] A key demand of civil society groups is to revise Article 37 to ensure that the RTI Act overrides other laws.

A key demand of civil society groups is to revise Article 37 to ensure that the RTI Act overrides other laws.

While the NIC has the power to issue binding decisions and is tasked with conducting promotional activities, it is largely considered as under-staffed, under-resourced and in general lacking institutional capability and expert knowledge.[319] The NIC has no actual powers to enforce its decisions or monitor their implementation.[320] On the other hand, there is a welcome provision on compensation, which the requesters may claim in case they suffered damages or incurred loss. A lack of a "nodal agency", a central body responsible for monitoring and enforcing compliance, has been identified as a factor that limits the success of implementation of the law.[321]

Related legislation

State Secrets Act

In Nepal, there is no separate act regulating state secrets and classified information for the protection of national interests. Such provisions are part of the RTI Act itself, which introduces a classification procedure under Article 27. The provisions on classification are not limited only to state secrets, but extend to all exemptions from free access laid down in the RTI Act. The classification committee is charged with classifying information for up to 30 years and the decision to classify information is subject to appeal. Regular reviews should be held every 10 years to ascertain whether information needs to be kept confidential. This system of *a priori* classification, in contrast with *ad hoc* assessment in publicity of information, has been criticised particularly because such a classification scheme does not allow for the balancing of different interests on a case-by-case basis. In December 2011, a government committee proposed procedures on classification and created new secrets

for 24 broad categories and 116 types of information, and allowed the Cabinet to classify any information. The proposal was strongly opposed by civil society and stayed by the Supreme Court in 2012 following a lawsuit filed by the Democratic Lawyers´ Association.

Protection of whistleblowers

The RTI Act includes provisions on the protection of whistleblowing.[322] It provides that whistleblowing is not only a right, but an obligation of public servants: they are *required* to provide information on on-going or probable corruption or irregularities. The recipient of such information must protect the whistleblower's identity and the whistleblower should not suffer any detriment for revealing information, such as sanctions in employment, or criminal and civil liability. If punished, the whistleblower may seek compensation and reversal of the punishment.

[W]histleblowing is not only a right, but an obligation of public servants: they are *required* to provide information on on-going or probable corruption or irregularities

Environmental protection legislation

The Interim Constitution of 2007 imposes an obligation on the state to increase awareness of the public about environmental cleanliness. However, the Environment Protection Act of 1997[323] does not include many transparency provisions; it only stipulates that the public has the right to copy the Environmental Impact Assessment report in order to be able to comment on it. Nepal scored poorly in the Transparency and Participation sections of the Environmental Democracy Index of 2014[324] due to the lack of a system for proactive transparency measures for publishing environmental information.

International Framework

Nepal has signed and ratified the ICCPR and the UNCAC.[325]

With regard to multi-stakeholder initiatives, Nepal had joined the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[326] and OECD Busan Partnership for Effective Development Co-operation.[327] Since 2012, Nepal has been a partner country in the International Aid Transparency Initiative (IATI) Steering Committee.[328] The Annual Report of IATI for 2014 described Nepal's Aid Management Platform as significantly contributing to aid transparency in the country.[329]

Pakistan

Constitutional Framework

The 1973 Constitution[330] only specifically recognised freedom of speech and expression. The Supreme Court ruled in the 1993 Nawaz Sharif[331] case that the right to receive information can be "spelt out from the freedom of expression" provision of the Constitution. In 2007, the Constitutional Court held that "access to information is *sine qua non* of constitutional democracy. The public has the right to know everything that is done by the public functionaries."[332] In 2010, there was a significant amendment to the Constitution to include an explicit right to information under Article 19-A, guaranteeing that "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."[333]

Right to Information Act

In October 2002, President Musharraf promulgated the Freedom of Information Ordinance 2002 (FOI Ordinance),[334] largely at the initiative of the Asian Development Bank.[335] Although the Ordinance should have lapsed within four months, it became permanent following the 17th Amendment to the Constitution which gave protection to all orders/ordinances laws adopted by General Musharraf.

In July 2012, the senate mandated a committee to elaborate a comprehensive access to information law[336] and a very strong draft of a new RTI bill was developed. It drew inspiration from the very progressive Punjab and Khyber-Pakhtunkhwa provinces' RTI laws and among other features establishes a strong information commission.[337] If the bill is adopted as is, it would be one of the strongest RTI laws in the world.[338]

If the bill is adopted as is, it would be one of the strongest RTI laws in the world.

Provisions of the RTI legislation

Principles

The purpose of the Pakistani FOI Ordinance is to make the federal government more accountable to its citizens by ensuring access to public records. While the Ordinance does not require the requesters to state the purpose for requesting the information, the Freedom of Information Rules 2004 include an application form that requires the requesters to state the purpose and sign a special declaration guaranteeing that they will use the information only for the stated purposes.[339] Only exemptions found in the Ordinance are permissible grounds for restricting the right to information.

Scope

The FOI Ordinance allows any citizen of Pakistan access to official records held by a public body of the federal government. The Ordinance only applies to the federal government including ministries, departments, boards, councils, courts and tribunals and the secretariat of parliament. It does not cover provincial or local government or any private bodies funded by the government or providing public services. There is some ambiguity about what information is accessible. The Ordinance allows access to "official records," where a record is defined as a record in any form that is used for official purposes of the body that holds it. The Ordinance also defines what public records are and which records cannot be considered as public records, such as notings on files; minutes of meetings; preparatory opinions and recommendations, individuals' bank account records; defence forces and national security; classified information; personal privacy; documents given in confidence; and other records decreed by the government.

Proactive disclosure

Only acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be proactively published and made available at a reasonable price.

Disclosure upon request

The Freedom of Information Rules 2004 prescribe a specific form of request and requires applicant to give reasons why and for what purposes they need the information sought. The form

includes a high amount of personal details (including the photocopy of an official document) and requires the applicant to describe the requested document.

Every authority is required to designate a freedom of information officer. In case the officer is not designated, the head of the body shall take on the duties of the officer. The Ordinance provide for an explicit duty to assist any requester. There are no explicit procedures in place if the body does not possess the documents; in such a case the request is denied. The authority may also refuse access straight away if the request is not submitted in the prescribed form and does not include all necessary information.

The authority is required to respond within 21 days and no extensions are possible.

Under the Rules, the applicant is required to pay an initial fee of 50 rupees for 10 or less pages. An amount of five rupees per page of photocopy shall be paid for every additional page. There are no fee waivers.

Exemptions

Aside from the exclusions described above, the Ordinance also prescribes exemptions, which include international relations, law enforcement, privacy and personal information and economic and commercial affairs. Exemptions are subject to a harm test on a case-by-case basis to information whose disclosure is sought, but there is no public interest override. Reverse public interest test is included, such as that the government can broadly refuse to disclose any other record from the purview of this Ordinance in the public interest.

The Ordinance does not foresee a severability provision.

The requesters are to be informed in writing of the reasons for refusal.

Appeals

Complaints against delay or denial of information may be first filed to the head of the concerned public authority (internal appeal) and then to the Wafaqi Mohtasib (Ombudsman) or if the complaint is against the Federal Board of Revenue, to the Federal Tax Ombudsman. The Ombudsman has the power to make binding orders, such as issuing summons, demanding documents etc., but its decisions are not binding. The Federal Ombudsman may be compared with the Supreme Court in regard to administrative, financial, and functional autonomy and performance, but is less financially independent.[340] After the Wafaqi Mohtasib has issued its recommendation, a person may complain to the president of Pakistan. The Ombudsman's decision does not affect the right to seek other legal remedies, including judicial recourse.[341]

Sanctions

Officials who destroy records with the intention of preventing disclosure can be fined and imprisoned for up to two years. The Mohtasib can fine individuals for making "frivolous, vexatious or malicious" complaints. The Ombudsmen can uphold the complaint and order disclosure or reject the complaint.

Reporting, monitoring and promotional measures

There are no provision on reporting and monitoring mechanisms. The Rules however require all government departments and ministries to publish annual reports and make them accessible to, among others, members of the public.

Implementation of the RTI legislation

The RTI regime in Pakistan is considered to be below international standards. High hopes are therefore bestowed upon the proposed new Federal Freedom of Information Act.[342]

Media groups and NGOs report that the current Ordinance has not been fully implemented and access is still difficult; the Ordinance has been described as ineffective and a toothless piece of legislation.[343] Many information officers are still not aware of their roles and responsibilities under the Ordinance as there has not been a systematic training programme for implementation. A majority of surveyed public authorities admitted they were not even aware of the RTI legislation.[344] An exception to this situation is the province of Punjab, where at least some of the surveyed heads of authorities were aware of the legislation and some (albeit a minority) information officers received training on the Ordinance.[345]

> A majority of surveyed public authorities admitted they were not even aware of the RTI legislation.

Reportedly, no public funds were allocated for the implementation of the Ordinance[346] and there is a lack of resources and capacity for proper implementation. Research revealed that most authorities do not have proper mechanisms in place to respond to RTI requests.[347] Poor record management is one of the major impediments to the effective exercise of the right to information and the authorities lack resources to digitalise documents.

A survey showed that citizens are rarely given information or are given only very ordinary information or information already in the public domain; only 2 out of 46 information requests in the period of 2013-2014 resulted in a response.[348] Non-compliance with time limits is also a common occurrence. A survey of websites showed that information is published proactively despite the provision on affirmative disclosure of rules and regulations.[349]

> [O]nly 2 out of 46 information requests in the period of 2013-2014 resulted in a response.

The average number of requests to all federal authorities is between one and five a month. The average number of requests per year is around 100.[350] The Federal Ombudsman received 164 applications between 2003 and 2011.[351] The compliance with the Ombudsman's instructions to provide the information is varied. Another problem is the accessibility of the Ombudsman's office in Islamabad for the general public and the lack of administrative and financial capacities for fulfilling its obligations.[352]

Other laws

State laws

The Ordinance is supplemented by the Local Government Ordinance providing for proactive disclosure by state governments. All four provinces have their RTI laws: Balochistan Freedom of Information Act 2005 and Sindh Freedom of Information Act 2006 are regarded as largely ineffective, while the law in Punjab from 2013 has been widely praised. [353] Notably, it established an information commission with strong enforcement powers. The law in Khyber-Pakhtunkhwa was also considered to be progressive but was amended by the Assembly in 2015 to exempt the Assembly

from coverage, and reduced the status of the information commission.

State Secrets Act

Pakistan has retained the colonial Official Secrets Act (OSA),[354] based on the original UK OSA 1923, which sets broad restrictions on the disclosure of classified information. The Cabinet Division has a declassification Committee which reconsiders the classifications. Apart from the OSA, a wide range of secrecy laws reflect the lack of a culture of openness in Pakistan. These statutes include the Security of Pakistan Act 1952, the Maintenance of Public Order Act 1960, the Defence of Pakistan Rules and the Penal Code. The Law of Evidence of 1984 stipulates that no government official can be compelled to give information 'when he considers that the public interest would suffer by disclosure'.[355] While Section 3 of the FOI Ordinance recognises the supremacy over other laws with regard to exemptions, Section 23 of the Ordinance states that it does not derogate other laws.

Whistleblowing law

There is currently no whistleblower protection law in Pakistan at the federal level and the FOI Ordinance does not provide for protection of people disclosing information in the public interest. The Khyber Pakhtunkhwa province is the most progressive in this regard as the provincial Right to Information Act offers protection to whistleblowers and a new comprehensive whistleblower protection bill is being discussed.[356]

Environmental protection legislation

The 1997 Environment Protection Act[357] requires the environmental agency to provide "information and guidance to the public on environmental matters" and establishes procedures for public consultation and participation in environment impact assessment. Information can not be disclosed during the public hearings if it relates to trade and commercial secrets of the investor but the agency may order the disclosure if it considers that the public interest outweighs the possible prejudice to the investor. Information relating to the international relations, national security or maintenance of law and order is not subject to this override provision and cannot be disclosed unless the Federal government explicitly consents to the disclosure. The Environmental Democracy Index gave Pakistan a fair score in its 2015 assessment, finding that the law is inadequate on proactive publication of information.[358]

International Framework

Pakistan has signed and ratified the ICCPR, but with a number of reservations, including one on Article 19. However, as a result of international pressure, Pakistan withdrew the reservations. Pakistan has also signed and ratified the UNCAC.[359]

Pakistan has not joined the Open Government Partnership, but it is eligible to join.[360] It is also a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[361] and OECD Busan Partnership for Effective Development Co-operation.[362]

The UNDP funded the customisation of the Development Assistance Database platform for Pakistan, thus Pakistan established an Aid Information Management Systems (AIMS) and is listed by the aidinfo.org.

Pakistan was suspended twice from membership of the Commonwealth, following decisions of the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG). The Harare Commonwealth Declaration[363] recognises the individual's inalienable right to participate by means of free and democratic political processes and the CMAG is a mechanism that deals with serious or persistent violations of the Declaration. The first suspension was in 1999 after the military overthrow of the democratically elected government (the suspension was lifted in 2004) and the second in 2007 for failure of President General Musharraf to meet a deadline for lifting emergency rule (suspension lifted in 2008).[364]

South Korea

Constitutional Framework

The South Korean Constitution[365] protects freedom of speech and the press of all citizens, without specifically referring to the right to information. The Constitutional Court ruled in 1989 that there is a constitutional right to information as an aspect of the right of freedom of expression.[366] The court affirmed that there is a right to request disclosure of information held by the administrative agencies and that the government is obliged to comply with legitimate requests for information and emphasised that specific implementing legislation to define the contours of the right was not a prerequisite to enforcement of the right.

Right to Information Act

After several groundbreaking court judgments that paved the way for a right to information in South Korea, the government first formally recognised the right in 1993 with its changes to the Military Secrets Protection Act, allowing for the disclosure of military secrets in the public interest. [367] In 1996, the Act on Disclosure of Information by Public Agencies (the RTI Act)[368] was enacted as a consequence of the "activist" approach of the courts, and was one in a series of democratic reforms that the government saw necessary for making Korea a more open society.[369] In 2004, the Act was revised to include some positive changes, for example the possibility of electronic disclosure and the introduction of "information disclosure review committees"[370]. In 2013, after several years of other initiatives to enhance proactive disclosure, Korea adopted the Act on Promotion of the Provision and Use of Public Data.[371]

[T]he Act on Disclosure of Information by Public Agencies (the RTI Act)[372] was enacted as a consequence of the "activist" approach of the courts

Provisions of the RTI legislation

Principles

The purpose of the RTI Act is to secure participation of the people in state affairs and ensure transparency in the operation of state affairs. The original Act required individuals to state a purpose for requesting disclosure and obliged them to use the information "adequately" and in conformity with the declared purposes. These provisions were deleted in the 2004 amendments.

Scope

The Act allows all nationals to demand information held by public agencies. A separate Presidential Decree allows requests from foreigners who are permanent residents, in the country temporarily for scholarly research, or companies or organisations with an office in Korea.[373] The Act prescribes the

obligation of "state agencies" to ensure the right to information; state agencies includes central government bodies, municipal governments, and public institutions under the Act on the Management of Public Institutions including companies in the majority ownership of the state and other institutions determined by the Presidential Decree. The Act also explicitly excludes from its scope information collected or created by agencies that handle issues of national security except for the obligations under Article 8(1) for creating catalogues. The term "information" means matters recorded in documents (including electronic documents), drawings, pictures, films, tapes, slides, and other media corresponding thereto that are made or acquired, and managed by public institutions for the performance of their duties

Proactive disclosure

The RTI Act imposes an obligation on the bodies to actively provide information in the public interest.

The government has long been active in promoting e-government services as a means of improving access to information and to fight corruption.[374] The 2013 Act on Promotion of the Provision and Use of Public Data[375] promotes the release of electronically processed data or information created by public institutions with the intent to promote public access and the "smart industry". [376] It focuses on the release and free reuse for public and commercial purposes of data in 15 strategic areas including traffic, weather, space, welfare, health, food, tourism, and the environment. Following its enactment, the government adopted the Open Public Data Directive and Societal Use Principles to promote disclosure by government bodies. Through its OGP Action Plan, South Korea reported it has established a 24-hour public online services website with important citizen information and released the Open Data Portal.[377] In addition, central and local government agencies have a specific section on their respective websites entitled "Government 3.0/Information Disclosure" with proactively disclosed public information.[378]

Disclosure upon request

The request must be submitted in a written or oral form and contain the name and resident registration number of the requester, the content of the information and the method of disclosure. Requests for information to be released in electronic form shall be complied with unless it is remarkably difficult. In principle, the requesters may select the form of access to information, although reproductions may be restricted if information is already in the public domain, if it would damage the original copies, or if the number of documents is an "excessive quantity" that the release would seriously impede the agency's normal operations.

Agencies must establish an "Information Disclosure Deliberative Committee" which decides upon requests. Under the Presidential Decree, agencies, mayors and other heads may designate among their civil servants a staff in charge of disclosure of information and arrange for such staff to handle the following in relation to disclosure of information. Bodies must also establish information management systems for proper preservation and expeditious search of information, have a department or human resources in charge of duties related to information disclosure, and endeavour to establish the information disclosure system by using the information and communications network. There are no provisions on providing assistance to the requesters, neither are there any procedures in place for situations when the request is incomplete. Under the Decree, bodies shall inform requesters that they do not hold the information.

Agencies must decide in 10 days, except when this is not possible due to an unavoidable reason; the permissible extension is another 10 days. In such a case, the agency must inform the requester of the reasons for the delay. If there is no response from the body in 20 days, it is deemed to have been rejected and can be appealed.

The fees may be charged, but are limited to the actual costs determined by the Decree and the actual delivery costs. Fee reduction or waiver is foreseen if the information is requested for the purposes of "public welfare."

Exemptions

There are eight categories of exemptions which aim to protect secrets as defined in other acts; national security and foreign relations; public safety of the safety of individuals or property; investigation of crime, criminal prosecution and litigation; audits, inspections and other decision-making processes; personal information; trade secrets; and particular private interests. The majority of exemptions are subject to a harm test with the exception of national security information. The public interest test may be applied to only two exemptions: protection of private information when disclosure is needed to remedy public interest; and protection of trade secrets if disclosure is needed for the protection of lives, bodies or health or to prevent individuals from illegal or unjust business operations. The RTI Act foresees a sunshine clause, stating that the information can be released once the passage of time or other factors has reduced its sensitivity.

There is a clear procedure for allowing partial access when only a part of information may be refused if it is possible to separate the information without changing the nature of the request.

The requesters have the right to be informed in writing without delay of the reasons for non-disclosure, the methods and procedures for appeal.

Appeals

There are three different paths to appeal, an internal, external and judicial procedure. Internally, the ACT foresees an "application of objection", which is a confirmatory procedure, by which the requester asks the agency that issued a negative decision to reconsider its position. An external appeal is called "administrative adjudication", whereby an appeal can be made to the Administrative Appeals Commission under the Administrative Appeals Act. The external appeal is possible either after using the internal confirmatory procedure or separate from it. Judicial review is provided under the Administrative Litigation Act. The Ministry of Government Administration is in charge of oversight and planning for the Act and can inspect and review the activities of state agencies.[379]

Sanctions

Sanctions are not foreseen in the RTI Act. The Act only explains that the members of administrative appeals are considered as public officials for the purposes of the Criminal Act or other acts.

Publication / Reporting mechanisms / Promotional measures

The Minister of Government Administration and Home Affairs is in charge of promotional activities, policy-making and institutional reforms of the information disclosure system. The 2004 amendments added a requirement for a yearly report by the minister to the National Assembly.

Implementation of the RTI legislation

The South Korean courts have been particularly active in promoting and implementing the right to information. They

found that disclosure should be the rule not the exception and that exemptions should be interpreted narrowly.[380] The Constitutional Court also held that the system of classification of documents as secret should be subject to judicial oversight.[381] In addition, the Supreme Court connected the public's right to know to the protection of whistleblowing in a notable case of a public official releasing a secret internal report.[382]

The South Korean courts have been particularly active in promoting and implementing the right to information.

People in South Korea are increasingly requesting disclosure of public information; the number of requests more than doubled in the three years from 2000 to 2003, from 61,586 to 192,295 requests. More than 90% of the requests are handled either entirely or partially and in more than 80% of cases requests have been granted in full.[383] A coalition of citizens and anti-corruption groups launched the Korean Social Pact on Anti-Corruption and Transparency (K-Pact) in 2005, calling for the law to be amended to improve public access to information to fight corruption.[384]

With establishment of the Korean Open Data portal, accessibility of information has undoubtedly increased. There has been a promise by the current government that the state will increase the amount of proactively released administrative data from 16% to 60% by 2016.[385] By the end of 2013, there have been around 85,000 public documents released proactively.[386] However, civil society voices criticism over the government's pledges in relation to open data initiatives, saying that the intentions are not followed by strong action, as legislation is often vague in relation to setting out clear responsibilities for different agencies and clear options for citizens to access information.[387]

Related legislation

State Secrets Act

The Military Secrets Protection Act[388] was amended in 1993 to sets out rules on disclosure of classified information. The revision of this Act followed the Constitutional Court's decision, ruling that military secrets may only be classified following a legal procedure and if they create a clear danger to national security.[389] However, there is another severely limiting piece of legislation for freedom of expression and the free flow of information, the National Security Law (NSL),[390] enacted in 1948 as a response to the threat from their neighbour North Korea. Despite several attempts to repeal the law, harsh sentences, even the death penalty, are still prescribed for accessing, gathering, leaking, transmitting or compromising a national security secret. Even communicating with "anti-state" groups is punishable with 10 years imprisonment.

Protection of whistleblowers

The recent Act on the Protection of Public Interest Whistleblowers (2011)[391] was enacted to protect and support "people who report violations of the public interest." Public interest is defined as touching upon the health and safety of the public, the environment, consumer interests and fair competition or criminally or administrative sanctioned acts. The Act applies to whistleblowers in both private and public sector and protects them from a long list of disadvantageous treatment, such as employment related detriments - removal or transfer from office, reduction of pay, removal of benefits and opportunities, bullying etc. Penalties for imposing such treatment are criminal sanctions and liability for damages.

Environmental protection legislation

In 1990, Korea adopted the Framework Act on Environmental Policy[392] that serves as a basis for other more specific laws and regulations.[393] The Framework Act stipulates that the Ministry of Environment may disseminate an environmental nature assessment map and shall publicise knowledge and information on the protection of environment, including on the current state of environment, and aim at making the environmental information easily accessible to the people, possibly through an environment information network. The State has also undertaken to publish permissible emission levels.

International Framework

South Korea has acceded to the ICCPR and signed and ratified the UNCAC.[394]

South Korea applied to join the Open Government Partnership (OGP)[395] in 2011 and is a participating country in its second cycle. It has also endorsed the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[396] in 2001 and OECD Busan Partnership for Effective Development Co-operation,[397] whose one of the key commitments is strengthening transparency and approving common standard for the electronic publication of data on development co-operation.

Taiwan

Constitutional Framework

Taiwan's Constitution of the Republic of China[398] was adopted on 25 December 1946 and has been amended seven times since the adoption.[399] It does not contain any specific provisions on the right to information. Nevertheless, it guarantees freedom of speech and freedom to impart information in Article 12, which states that the people "shall have freedom of speech, teaching, writing and publication."

Right to information Act

The Freedom of Government Information Law[400] (RTI Act) was promulgated and entered into force on 28 December 2005. Little information is available about the legislative efforts and background. A professor from the National Taiwan University, College of Law, participated in drafting the RTI Act.[401]

Provisions of the RTI legislation

Principles

The purpose of the RTI Act according to Article 1 is to facilitate sharing and "fairly" using government information, protect the public's right to know, enhance the public trust and civil oversight and encourage public participation in a democratic society. There is a presumption in favour of access to information, although the provisions of other laws prevail in case of a conflict of laws.

The requester needs to state the purpose of requesting government information, which is a serious limiting factor for exercising the right to information.

Scope

Only nationals registered as residents in Taiwan, legal persons established by these nationals and nationals of Taiwan who

reside overseas are entitled to seek information. This is a rather narrow definition, although the law contains a reciprocity clause for foreigners. They are entitled to request information if the law of their countries of origin does not restrict Taiwan citizens from obtaining information from the respective country.

[T]he law contains a reciprocity clause for foreigners. They are entitled to request information if the law of their countries of origin does not restrict Taiwan citizens from obtaining information from the respective country.

The RTI Act applies to the government agencies at central and local level as well as institutes for experiment, research, education, culture, medicine, and management of special funds that are established by those agencies. Private entities vested with state authority are also subject to the provisions of the Act. The law applies to the president, the judiciary and to the legislature since the central government consists of the Office of the President and five branches (called "Yuan").[402] The law does not apply to state-owned or controlled enterprises.

The law defines 'government information' as "information which a government agency produces or acquires within its respective authority" and is saved in any possible form. It is only possible to request specific documents and not information in general.

Proactive disclosure

Public authorities are required to publish a wide range of information summarised in ten categories, including details of the services they provide, their organisational structure, their decision-making norms and rules, budget and audit information, information on public procurements and meeting records of collegiate agencies. Taiwan established an open data portal in April 2013.[403] The RTI Act enables the authority to only inform the requestors where and how they can access information sought if is already available through means of proactive disclosure.

Disclosure upon request

The request should be made in writing; electronic requests may only be made with an electronic signature. The law does not provide for a possibility to submit an oral request. The request must include identifying information of the requester. In addition, the requester is required to indicate the purpose for requesting the information and provide a short description and number of the requested document.

There is no obligation for the authority to comply with the preferred form of access. If the requested information is under copyright protection or it is hard to make a copy, the requestor may only be granted the right to consult the information without making copies. There is no specific requirement upon the authority to assist the requestors. It may, however, demand that the requester corrects the request. In case the authority does not possess the information it shall transfer the request to the competent authority and notify the requester.

Within 15 days the competent authority examines whether to approve the request (Article 12) and this term may be extended by not more than another 15 days. Even if the authority needs to consult third parties for their comments, the decision on the provision or the refusal of access to the information shall be taken not later than 30 days following the submission of the request.

Provision of the information is subject to payment of a fee determined pursuant to the Duplicating or Copying the Government Information Fee Standard Table. The authority may charge a fee "according to the purpose of requesting" the information and the fees may be reduced or waived if the applicant requests information for academic research or public interest use.

Exemptions

The law enumerates the exemptions from free access in Article 18, some of which are subject to a public interest and harm tests.

Secrecy provisions override the RTI Act according to Article 2. Moreover, the Act provides that information classified as state secret or any other classified information by secrecy laws, regulations and orders is exempted. The protection of on-going investigations, the enforcement of the law and the guarantee of a fair trial are other legitimate interests which are protected under the law. These exemptions are not subject to the overriding public interest test.

Preparatory and internal documents are only protected before the adoption of a final act and they can be disclosed even before the adoption of a final decision if there is overriding public interest in their disclosure. Another common ground for refusal is the protection of personal data and privacy and the protection of trade secrets. Both of these exemptions are subject to overriding public interest test, and protection of trade secrets is also subject to a harm test.

There are other exemptions subject to the harm test. Information on enforcement of tasks of supervision, management, investigation or ban is protected if disclosure would "make difficult or disrupt the purpose of such works." Less typical exemptions relate to information about cultural heritage and to information about state-owned companies, both subject to the harm test.

In case the need for a restriction ceases to exist or the situation changes in another way, the authority shall "accept the request."

If the requested information relates to third parties, the authority shall notify the affected person and seek his/her comments. The third party needs to submit the comments in 10 days.

The RTI Act also includes a provision on partial access: if only parts of the information sought are restricted, the body shall make other parts of such information available to the public.

Appeals

The requester who wishes to challenge the decision of the authority may file an internal administrative appeal. The requestor can also complain to the administrative courts pursuant to the applicable procedural law. The law does not envisage an independent administrative oversight body.

Sanctions

Article 23 stipulates that sanctions can be imposed on civil servants that violate the provisions of the Act but refers to special laws.

Publication / Reporting mechanisms / Promotional measures

The Act does not provide for special duties to oversee the implementation of the law nor to promote it.

Implementation of the RTI legislation

While Taiwan ranks top in Asia for general press freedom,[404] the RTI Act itself is limited.[405] Civil society reports that the implementation of the RTI Act has been unsatisfactory.[406]

Transparency International Chinese Taipei urged the President's Office in 2009 to push for the establishment of a central agency, capable of enforcing the law and to impose strict sanctions for breaching the right to information. While the government requested from the Ministry of Justice and other competent bodies to present policy proposals that would implement such recommendations,[407] the RTI Act remains unchanged until this day.

While there is no centralised agency that would report on the statistics of the use of the RTI Act, individual bodies regularly publish information on approvals and rejections on their websites. For example, the National Immigration Agency received 300 requests in the first three quarters of 2012; it approved 37% of the requests fully, 39.33% partially and rejected 23.67% of requests. Surprisingly, the Ministry of Foreign Affairs reported it has approved all 2,070 requests in full. The Taiwan Supreme Administrative Court seems reluctant to decide against the refusal decision of the authorities; out of 41 cases that reached the court from 2005 to 2010, only three have been successful.[408]

There appears to be low awareness of the Act among journalists, limiting the use of the Act.[409] There is no agency specifically in charge of promoting the law and conducting awareness-raising activities. On the other hand, there is a lively open data community and both central and municipal open data portals.[410]

There appears to be low awareness of the Act among journalists, limiting the use of the Act.

Related legislation

State Secrets Act

The Classified National Security Information Protection Act (2003)[411] provides for three levels of classification as confidential, secret and top secret with periods for protection respectively for 10, 20 and 30 years. The Act specifically provides that classification shall be kept to the "absolute minimum". Information cannot be classified if the aim of classification is to conceal wrongdoing, restrain competition, prevent embarrassment, or is not necessary to protect the interest of the national security. Declassification is automatic at the expiration of the period of protection. The Act does not provide for regular review but provides that declassification before the expiration of the protection may be solicited by interested parties.

Protection of whistleblowers

Taiwan does not have a comprehensive whistleblower protection law. Nevertheless, the Anti-Corruption Informant Rewards and Protection Regulation (2011)[412] provides for whistleblowers with confidentiality in reporting acts of corruption, and compensation for the whistleblower. The Regulation only applies to the public sector. The Agency against Corruption under the Ministry of Justice was established in 2011 to tackle corruption and investigate complaints from whistleblowers.

Environmental protection legislation

The Environment Protection Act (2002)[413] provides for access to environmental information. It states that all relevant government entities shall collect and analyse environmental information, build an environmental information system and make it available to the public on a regular basis. The Environmental Impact Assessment Act (1994)[414] also provides for publication of the EIAs and requires public discussions to be held.

International Framework

Relevant UN treaties

Taiwan is not a part of the UN system.[415] Taiwan ratified the ICCPR in 2009, but the UN rejected its deposit based on General Assembly Resolution 2,758.[416] However, Taiwan continued to implement the ICCPR into its legal order by way of passing the Implementation Act in 2009.[417]

Taiwan cannot be a signatory of the UNCAC, as this Convention is only open for signature and ratification by UN Member States. However, Taiwan continued to pass a bill with "measures for implementing UNCAC-related laws" in 2015."[418]

Taiwan is not a participating country in the Open Government Partnership (OGP), although the government announced plans to attempt to join the OGP in 2013.[419] It is also not part of other notable inter-governmental transparency initiatives. There is a general lack of aid transparency in Taiwan, which has transformed from an aid receiving country to a donor country, both due to the failure of the government to publish such information and the fact that Taiwan is not included in the majority of international databases.[420]

Thailand

Constitutional Framework

The turbulent history of Thailand is reflected in the number of constitutions the country has adopted since the overthrow of the monarchy in 1932.[421] The right to information was first recognised by the 1997 People's Constitution and later included in the 2007 Constitution, stating that a person shall have the right to receive and to get access to public information, save in cases when certain enumerated interests and rights shall be protected.[422] The 2014 Interim Constitution does not include specific provisions on any of the rights and freedoms, but it does state that all rights and liberties protected by the constitutional convention and international obligations shall be protected.[423] The Constitution Drafting Committee (CDC) is currently working on a new version. Section 61 of the draft bill provides that citizens have a right to information.[424]

Right to Information Act

The Official Information Act (RTI Act) was approved in July 1997 and went into effect in December 1997.[425] Civil society, which was generally dissatisfied with the political climate and distortion of information, was the main driving force in adopting the Act.[426] The government was responsive to the calls for greater transparency and a committee, formed of several law professors, prepared a White Paper on an Official Information Act, which transformed into a bill.[427]

Provisions of the RTI legislation

Principles

The RTI Act states that its rationale as "allowing people wide access in receiving information about various undertakings of the state is necessary in order for the people to be able to express opinion and exercise their political rights rightfully with the reality, which will better promote having a government for the people" and for the "development of a secured democracy

and it will result in allowing the people to be fully aware of their rights and duties so they can protect their own interest", as well as to protect the privacy rights of individuals. The Act repeals any laws that regulate the same content or are in contradiction with the RTI Act.

Scope

The RTI Act allows citizens to demand official information from a state agency; aliens are allowed to exercise the right to information to the extent allowed by the Ministerial Regulation. The bodies liable under the RTI Act include central, provincial and local administrations, state enterprises, the courts for information un-associated with the trial and adjudication of cases, professional supervisory organisations, independent agencies of the state and other agencies as prescribed in the Ministerial Regulation. There has been a long-lasting dispute whether independent public agencies such as the National Anti-Corruption Commission, the Office of the Auditor General and the Office of the Election Commission fall within the scope of the Act as they see themselves as independent from the RTI Act.[428] The Supreme Administrative Court has ruled that the National Anti-Corruption Commission falls under the RTI Act. "Official information" is defined as any material that communicates information and is arranged in a form of a document or any other form in possession or control of a state agency relating to the operation of the state.

Proactive disclosure

State agencies are required to publish information relating to their structure, powers, bylaws, regulations, orders, policies and interpretations and other information as determined by the Official Information Board (the Board). They are also required to keep indices of documents. Historical information is sent to the National Archives Division.

Disclosure upon request

The law does not provide detailed guidance on the procedures and necessary steps taken by the requesters to demand access to information. The RTI Act only states that the requester may demand information that is not already published elsewhere by making a reasonably apprehensible mention of the intended information. The law does not mention what form the request should take nor regulate the substance. It is also silent with regard to whether the requesters may ask for a copy, electronic reproductions or inspection of documents. The office does provide a form of request which can be downloaded from their website.

In case the agency is not in possession of the requested documents, it shall give advice to the requester on obtaining the information elsewhere, but it is not obliged to transfer the request itself. There are no other provisions on providing assistance to people seeking information. If the agency has the requested information but it is not the originator, it may transfer the request to the agency that prepared the document to consider the request and make an order.

The law is extremely vague with regard to setting the deadlines and rules on extensions. It stipulates that the body must respond within a "reasonable time." Despite the fact that the deadline is not fixed within the law, the Royal Decree on Criteria and Procedures for Good Governance requires state agencies to respond within 15 days.[429] Extensions are possible if official information is in a condition which can be easily damaged and a state agency needs more time for its provision.

An agency may lay down rules on collecting fees with the approval of the Board and it should give regard to impecunious requesters.

Exemptions

There are several exemptions from free access to official information that relate to the Royal Institution, national security or international relations, law enforcement, inspections and supervisions, internal opinion and advice, life or safety of any person, right to privacy, confidential information and other cases prescribed by Royal Decree. All exemptions apart from protection of "internal opinion and advice" are subject to a harm test. There is no public interest override except in a situation when the official who wrongfully discloses information is exempt from liability in case information concerns public interest, life, body, health or other benefit of a person. Information relating to the Royal Institution is to be kept secret for 75 years. Other information should be disclosed after 20 years which may be extended in five-year periods.

There is no mention of partial access when only part of the requested document contains exempted information.

The body must inform the requester of the reasons for refusal.

Appeals

The RTI Act distinguishes between a complaint and an appeal. A complaint may be submitted with the Official Information Board when the information is not proactively disclosed or in case of administrative silence. The Board is not independent, its oversight competences are very limited and it does not issue binding decisions. The appeal may be submitted with the Information Disclosure Tribunal (IDT), which is competent to hear a wide range of grievances. Its decisions are final, except when a further appeal is submitted to the administrative court. The Office of the Official Information Commission (OIC), which is part of the Prime Minister's Office, is the secretariat of both bodies.[430] The government has sent mixed signals on giving the OIC more power, denying a request to upgrade it to a Department but placing it under the direct control of the prime minister.[431] When an appeal is received, the OIC transfers it to one of the functional IDTs, which are established based on the areas of competence (Foreign Affairs and National Security; National Economy and Finance; Social Affairs, Public Administration and Law Enforcement; Medicine and Public Health; and Science, Technology, Industry and Agriculture).

The Board is not independent, its oversight competences are very limited and it does not issue binding decisions.

Sanctions

Sanctions are prescribed for anyone who fails to comply with an order of the Board when it summons a person to give a statement or demands documents and evidence for inspection. There are also sanctions for anyone who wrongfully disclose information or otherwise fails to comply with the restrictions and conditions.

Publication / Reporting mechanisms / Promotional measures

The Board has the competence to issue recommendations and opinions on the implementation of the RTI Act. It also regularly (and at least annually) reports on the implementation of the Act to the Council of Ministers.

Implementation of the RTI legislation

The media, civil society organisations and citizens have received the RTI Act warmly, especially since the Act was used for accessing information in several prominent public interest cases. These cases revealed corruption and nepotism in

admitting children to public schools and a corruption scandal in procuring medicine which resulted in demands for transparency by several advocacy groups.[432] There has been a constant and sharp increase in the number of complaints and appeals issued against the first instance bodies. The number of complaints rose by 250% from 2002 to 2012 (from 184 to 647) and the number of appeals rose by 115% in the same period (from 118 to 253 appeals).[433]

Nevertheless, the media has reportedly used the RTI Act infrequently and the implementation of the law has been widely seen as weak.[434] The initial enthusiasm by users of the Act has subsided due to several identified limitations of the Act. The impediments to proper implementation include not respecting the timeframes set by the law and very long proceedings; unclear reasons for rejecting access requests; vaguely defined exemptions and wide discretionary powers of officials to apply exemptions; inefficient organisation of information; difficulties in enforcing decisions of the Tribunals due to overlapping laws; lack of responsibility of those in charge of implementing the law.[435]

With regards to the Commission, it has been noted that the OIC had very small number of staff, it only convenes once a month and several of the ex-officio members of the OIC frequently do not attend meetings.[436] In addition, the OIC is not independent as it operates under the Prime Minister's Office.

The government has announced several times it will endeavour to amend the RTI Act; the latest promise came by the National Reform Council with the announced amendments of the media legislation.[437] However, all past efforts to amend the Act have been unsuccessful.[438]

Related legislation

Media and internet regulation

Defamation is criminalised in Thailand and the Computer Crimes Act prescribes a penalty of prison for online publication of forged or false content that endangers individuals, the public or national security.[439]

State Secrets Act

There is no state secrets legislation in Thailand, but a rule on secrets was issued in 2001 in connection with Section 16 of the RTI Act.[440] Thai political turmoil is reflected in its national security legislation and a series of emergency decrees that the government adopted after the coup in 2014. The 2015 Security Law, in conjunction with the Penal Code, stipulates that the "Peacekeeping Officers" may suppress the "propagation of any item of news or the sale or distribution of any book or publication or material likely to cause public alarm or which contains false information likely to cause public misunderstanding to the detriment of national security or public order."[441]

Protection of whistleblowers

Thailand does not have a comprehensive whistleblowing protection legislation, but offers special protection to individuals under the Witness Protection Law[442] in cases relating to anti-corruption, money laundering, narcotics, national security and other areas. It applies to public and private sector whistleblowers. There is also a provision in the Official Information Act that protects officials who order disclosure of public interest information, although there is no information on whether this provision could or has been used as a limited whistleblowing provision. The provision excludes the liability under any law of a public official that acts in good faith and issues an order for disclosure of information for "securing a benefit of greater importance which relates to public interest, life, body, health or other benefit of a person and such order is reasonable" (Section 20(2) of the OIA).

Environmental protection legislation

The 2007 Constitution explicitly granted the right to receive information affecting the quality of the environment, health and sanitary conditions, the quality of life or any other important interest. Thai Enhancement and Conservation of National Environmental Quality Act of 1992[443] stipulates that individuals have the right to obtain information and data "concerning the enhancement and conservation of environmental quality," except in if information is classified. The Information Commission Decree on Environmental and Health Information requires all relevant bodies to make environmental information available to the public.[444] For these reasons, Thailand scored well in Transparency pillar of the Environmental Democracy Index.[445]

International Framework

Thailand has acceded to the ICCPR and signed and ratified the UNCAC.[446]

The country is a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific[447] and OECD Busan Partnership for Effective Development Co-operation.[448] In 2013, Thailand joined the COST - Construction sector transparency initiative, the "global transparency and accountability initiative that aims to stamp out corruption and mismanagement in public infrastructure. [449]

About ARTICLE 19

ARTICLE 19 envisages a world where people are free to speak their opinions, to participate in decision-making and to make informed choices about their lives.

For this to be possible, people everywhere must be able to exercise their rights to freedom of expression and freedom of information. Without these rights, democracy, good governance and development cannot happen.

We take our name from Article 19 of the Universal Declaration of Human Rights:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

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Appendix A: Survey of international and regional instruments, guidelines and documents

United Nations

Human Rights

UNGA Resolution /217a, Universal Declaration of Human Rights, Article 19 (1948)[450]

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

International Covenant on Civil and Political Rights (1966)[451]

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. 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.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, (2011)[452]

Right of access to information

18. Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs[1] and the right of the general public to receive media output.[2] Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records.[1] The Committee, in general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused of a criminal offence.[2] Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general.[3] Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities.[4]

19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.[5] The procedures should provide for the timely

processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

30. Extreme care must be taken by States parties to ensure that treason laws[1]and similar provisions relating to national security, whether described as official secret or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.[2] Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.[3] The Committee has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike, was not permissible on the grounds of national security.[4]

Additional International Materials

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2013), See para. 76 for a detailed criteria on right to information.[453]

UNESCO, Media Development Indicators (2008). UNESCO criteria for RTI.[454]

UNESCO, Brisbane Declaration "Freedom of Information: The Right to Know" (2010).[455]

Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995) (Endorsed by UN Special Rapporteur and AU and UN Human Rights Commissions).[456]

Global Principles on National Security and the Right to Information ("The Tshwane Principles") (2013) (Endorsed by 4 Special Rapporteurs and COE PACE Committee)[457]

Anti-Corruption

United Nations Convention against Corruption (2003)[458]

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Article 8. Codes of conduct for public officials

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget; 12

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its

public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non- tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(I) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Environmental Protection

United Nations Conference on Environment and Development, Rio Declaration (1992)[459]

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

The obligations in Principle 10 has been elaborated in detail in United Nations Environment Programme, Guidelines for the development of national legislation on access to information, public participation and access to Justice in environmental matters (Bali Guidelines)[460]

United Nations Framework Convention on Climate Change (UNFCCC) (1992)[461]

Article 6. Education, Training And Public Awareness

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

(a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

(i) The development and implementation of educational and public awareness programmes on climate change and its effects;

(ii) Public access to information on climate change and its effects;

(iii) Public participation in addressing climate change and its effects and developing adequate responses; and

(iv) Training of scientific, technical and managerial personnel.

Minamata Convention on Mercury (2013)

Article 18. Public information, awareness and education

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Provision to the public of available information on:

(i) The health and environmental effects of mercury and mercury compounds;

(ii) Alternatives to mercury and mercury compounds;

(iii) The topics identified in paragraph 1 of Article 17;

(iv)The results of its research, development and monitoring activities under Article 19; and

(v) Activities to meet its obligations under this Convention;

(b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.

2. Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities.

Also see Articles 12, 17 and 19.

Cartagena Protocol on Biosafety (2000)[462]

Article 23. Public Awareness and Participation

1. The Parties shall:

(a) Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;

(b) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.

2. The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.

3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)[463]

Article 15

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislative or administrative measures and may also include:

(a) The establishment of national registers and databases including safety information for chemicals;

(b) The encouragement of initiatives by industry to promote chemical safety; and

(c) The promotion of voluntary agreements, taking into consideration the provisions of Article 16.

2. Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.

Stockholm Convention on Persistent Organic Pollutants (2001)[464]

Article 10. Public information, awareness and education

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Awareness among its policy and decision makers with regard to persistent organic pollutants;

(b) Provision to the public of all available information on persistent organic pollutants, taking into account paragraph 5 of Article 9;

(c) Development and implementation, especially for women, children and the least educated, of educational and public awareness programmes on persistent organic pollutants, as well as on their health and environmental effects and on their alternatives;

(d) Public participation in addressing persistent organic pollutants and their health and environmental effects and in developing adequate responses, including opportunities for providing input at the national level regarding implementation of this Convention;

(e) Training of workers, scientists, educators and technical and managerial personnel;

(f) Development and exchange of educational and public awareness materials at the national and international levels; and

(g) Development and implementation of education and training programmes at the national and international levels

2. Each Party shall, within its capabilities, ensure that the public has access to the public information referred to in paragraph 1 and that the information is kept up-to-date.

3. Each Party shall, within its capabilities, encourage industry and professional users to promote and facilitate the provision of the information referred to in paragraph 1 at the national level and, as appropriate, subregional, regional and global levels.

4. In providing information on persistent organic pollutants and their alternatives, Parties may use safety data sheets, reports, mass media and other means of communication, and may establish information centres at national and regional levels.

5. Each Party shall give sympathetic consideration to developing mechanisms, such as pollutant release and transfer registers, for the collection and dissemination of information on estimates of the annual quantities of the chemicals listed in Annex A, B or C that are released or disposed of.

Additional Documents

UN Human Rights Council, Resolution 25/21. *Human rights and the environment* (2014)[465]

4. Recognizes that human rights law sets out certain obligations on States that are relevant to the enjoyment of a safe, clean, healthy and sustainable environment, and that the enjoyment of the corresponding human rights and fundamental freedoms can be facilitated by assessing environmental impact, making environmental information public and enabling effective participation in environmental decision-making processes, and that in that regard a good practice includes adopting, strengthening and implementing laws and other measures to promote and protect human rights and fundamental freedoms in the context of environmental legislation and policies;

Also see the Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox (2013)[466]

Asia-Pacific Region

ASEAN

ASEAN Human Rights Declaration (2012)[467]

23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

Agreement on the Conservation of Nature and Natural Resources (1985)[468]

Article 16. Education, Information and Participation of the Public, Training

1. The Contracting Parties shall endeavour to promote adequate coverage of conservation and management of natural resources in education programmes at all levels.

2. They shall circulate as widely as possible information on the significance of conservation measures and their relationship with sustainable development objectives, and shall, as far as possible, organize participation of the public in the planning and implementation of conservation measures.

3. Contracting Parties shall endeavour to, individually or in co-operation with other Contracting Parties or appropriate international organizations, develop the programmes and facilities necessary to train adequate and sufficient scientific and technical personnel to fulfill the aims of this Agreement.

ASEAN Declaration on Strengthening Social Protection (2013)[469]

8. Inclusive and participatory approach should be ensured in the planning, programming and budgeting, implementation, monitoring and evaluation processes of social protection at all levels in the region to realise the strengthening of institutional capacity, transparency and responsiveness to the needs of those concerned;

ASEAN Agreement on Transboundary Haze Pollution (2002)[470]

5. The Parties, in addressing transboundary haze pollution, should involve, as appropriate, all stakeholders, including local communities, non-governmental organisations, farmers and private enterprises.

Article 9. Prevention

Each Party shall undertake measures to prevent and control activities related to land and/or forest fires that may lead to transboundary haze pollution, which include:

e. Promoting public education and awareness-building campaigns and strengthening community participation in fire management to prevent land and/or forest fires and haze pollution arising from such fires;

Nay Pyi Taw Declaration on the ASEAN Community's Post-2015 Vision (2014)[471]

Adhering to ASEAN's Basic Principles

Promote adherence to shared values and norms such as promotion and protection of human rights and fundamental freedoms, good governance, the rule of law, anti- corruption, and democracy.

ASEAN Economic Community

Promote the principles of good governance, transparency and responsive regulations and regulatory regimes through active engagement with the private sector, community- based organisations and other stakeholders of ASEAN.

ASEAN Socio-Cultural Community Blueprint (2009)[472]

xix. Advocate policy makers to accelerate actions to increase accessibility to sexual and reproductive health information and friendly health services, and educate society especially parents and adolescent on reproductive and sexual health education;

ASEAN Hanoi Plan of Action (1997)[473]

2.1.4 Other trade facilitation activities:

n. Establish a mechanism of information exchange and disclosure requirements to promote transparency of government procurement regimes by the year 2003 to facilitate participation of ASEAN nationals and companies;

o. Establish contact points in 1999 to facilitate ongoing exchange of the above information;

p. Encourage the liberalisation of government procurement;

q. Establish a mechanism of information exchange by 2003 to promote transparency of each domestic regulatory regime by publishing annual reports detailing actions taken by ASEAN Member States to deregulate their domestic regimes.

6.15 Enhance public information and education in awareness of and participation in environmental and sustainable development issues.

ASEAN Singapore Resolution on Environment and Development (1992)[474]

Public Awareness

(i) continue to promote public awareness of environmental issues so as to bring about broader participation in environmental protection efforts, and to do so through greater exchange of information and experiences on approaches and strategies in environmental education; and

ASEAN Inter-Parliamentary Assembly, Resolution on Strengthening of Democracy and Promotion of Human Rights (2009)[475]

Take joint measures with ASEAN to promote understanding and appreciation of political systems and the rules of law and good governance, and to implement the ASEAN Charter, with a view to enhance transparency, accountability, participatory and effective governance;

Protect and safeguard the ASEAN Citizens from human rights abuses and human rights violations and rejections of fundamental freedoms, transparency, accountability and effective governance.

E-ASEAN Framework Agreement (2009)[476]

Article 9 e-Government

1. Member States shall utilise the ICT to improve the provision and delivery of services by the government.

2. Member States shall take steps to provide a wide range of government services and transactions on-line by usage of ICT applications to facilitate linkages between public and private sector and to promote transparency.

APEC

Leaders' Statement to Implement APEC Transparency Standards (2002)[477]

Transparency in Monetary, Financial and Fiscal Policies and the Dissemination of Macroeconomic Policy Data

9. Prior to our agreement in the Shanghai Accord to implement APEC transparency principles, we agreed in Brunei Darussalam in 2000 to support the key standards identified by the Financial Stability Forum. Three of these key standards focus on transparency:

(a) Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles;

(b) Code of Good Practices on Fiscal Transparency; and

(c) General and Special Data Dissemination Standards.

10. Following APEC Finance Ministers' decision to support the assessment of Economies' implementation of these transparency codes through the IMF-led Reports on the Observance of Standards and Codes (ROSCs), Economies are encouraged to participate fully in the ROSC program. As voluntary disclosure of ROSC modules promotes transparency, Economies should, where practicable, disclose the results of these assessments.

Confidential Information

11. The provisions of this Statement will not require any Economy to disclose confidential information where such disclosure would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular persons or enterprises.

APEC Course of Action on Fighting Corruption and Ensuring Transparency (2004)[478]

II. Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity.

Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes.

Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials.

V. Public-Private Partnerships

Involve, in accordance with each economy's domestic law, individuals and groups outside the public sector, such as civil society, nongovernmental organizations, community-based organizations, and the private sector in efforts to fight corruption, ensure transparency, promote good governance, strengthen public financial management accountability systems, and advance the rule of law.

Vladivostok Declaration Corruption and Transparency (2012)[479]

We emphasize the importance of effective preventive anticorruption measures. Corruption thrives in non-transparent environments. Transparency and public integrity are effective principles for preventing corruption and promoting good governance and sound management of public resources.

We remain committed to the goals of the APEC High Level Policy Dialogue on Open Governance and Economic Growth. And we believe that economies and stakeholder communities – including representatives from business, academia, and non-governmental and labor organizations – can work to enhance public trust by committing to transparent, fair, and accountable governance.

Open governance, technology, and innovation can help shed light on corruption and empower communities to monitor and voice their perspectives on government policies and the use of resources.

We are committed to increase public sector transparency and integrity in our economies and to reduce administrative burdens where appropriate and in accordance with domestic legal systems. We will work to enforce rigorously our anti-bribery laws and encourage strengthening procedures and controls to conduct enhanced due diligence on accounts of individuals who are, or have been, entrusted with prominent public functions including through enhanced financial and asset disclosure consistent with domestic legislation and administrative guidelines.

Beijing Declaration on Fighting Corruption (2014)[480]

With this vision in mind, we hereby call for more concerted efforts for international cooperation in the Asia-Pacific region, subject to domestic laws and policies, through the following actions:

-- Taking all necessary measures in accordance with fundamental legal principles of each economy to implement and promote transparency, including strengthening corruption prevention bodies and anti-corruption policies, as well as welcoming the participation of society; establishing measures and systems to protect whistleblowers; attaching great importance to capacity building of anti-corruption and law enforcement authorities; and advancing exchanges, personnel training and technical assistance for member economies.

APEC Government Procurement Experts Group, Non-Binding Principles on Government Procurement (1997)[481]

ADB-OECD Anti-Corruption Initiative

ADB / OECD Anti-Corruption Initiative for Asia and the Pacific (2001)[482]

Accountability and Transparency

Safeguard accountability of public service through effective legal frameworks, management practices and auditing procedures through:

Measures and systems to promote fiscal transparency;

Adoption of existing relevant international standards and practices for regulation and supervision of financial institutions;

Appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on performance and decision making;

Appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity, and adequate simplified administration procedures.

Enhancing institutions for public scrutiny and oversight;

Systems for information availability including on issues such as application processing procedures, funding of political parties and electoral campaigns and expenditure;

Simplification of the regulatory environment by abolishing overlapping, ambiguous or excessive regulations that burden business.

Pillar 3 – Supporting Active Public Involvement

Public discussion of corruption

Take effective measures to encourage public discussion of the issue of corruption through:

Initiation of public awareness campaigns at different levels;

Support of non-governmental organisations that promote integrity and combat corruption by, for example, raising awareness of corruption and its costs, mobilising citizen support for clean government, and documenting and reporting cases of corruption;

Preparation and/or implementation of education programs aimed at creating an anti-corruption culture.

Access to information

Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals, through:

Establishment of public reporting requirements for justice and other governmental agencies that include disclosure about

efforts to promote integrity and accountability and combat corruption;

Implementation of measures providing for a meaningful public right of access to appropriate information.

Public participation

Encourage public participation in anti-corruption activities, in particular through:

Co-operative relationships with civil society groups such as chambers of commerce, professional associations, NGOs, labor unions, housing associations, the media, and other organisations;

Protection of whistleblowers;

Involvement of NGOs in monitoring of public sector programmes and activities.

Asia Europe Meeting (ASEM)

Towards Good Practices for Public Involvement in Environmental Policies – Progress in ASEM environmental co-operation (2003)

4th Connecting Civil Societies of Asia and Europe Conference: Changing Challenges, New Ideas, An official side-event of the ASEM 8 Summit (2010)[483]

UN ESCAP

***Bangkok Declaration,* Ministerial Declaration on Environmentally Sound and Sustainable Development in Asia and the Pacific, (A/Conf.151/PC/38) (1990).**

"the right of individuals and nongovernmental organizations to be informed of environmental problems relevant to them, to have necessary access to information, and to participate in the formulation and implementation of decisions likely to affect their environment." (p27)

***Bangkok Declaration of the Asia-Pacific region on the United Nations Development Agenda beyond 2015*, Asia-Pacific Ministerial Dialogue: From the Millennium Development Goals to the United Nations Development Agenda beyond 2015 (2013)[484]**

7. *Reaffirm* that the meaningful involvement and active participation of all major groups16, as well as other stakeholders at all levels are important for effective action on all aspects of sustainable development, in accordance with established rules and procedures, as appropriate;

12. *Recognize* the importance of the improvement of the quality of statistics and information and make those available to people and governments, taking into account new technology and improved connectivity to provide people with information on progress towards achieving sustainable development to enable them to take planned and effective decisions;

South Asian Association for Regional Cooperation (SAARC)

Charter of Democracy

Affirming that broad-based participation of people in institutions and processes of governance creates ownership and promotes stability;

Kathmandu Declaration 2014[485]

28. They reiterated their strong commitment to ensure good governance for sustainable development by promoting accountability, transparency, the rule of law and people's participation at all levels of governance.

Social Charter

Article 2.2. In the light of the commitments made in this Charter, States Parties agree to:

xvi. Underline the importance of transparent and accountable conduct of administration in public and private, national and international institutions;

Multi-Stakeholder Initiatives

Open Government Partnership[486]

The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations.

To become a member of OGP, participating countries must endorse a high-level Open Government Declaration, deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward.

The Open Government Partnership formally launched on September 20, 2011, when the 8 founding governments (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States) endorsed the Open Government Declaration, and announced their country action plans. In just two years, OGP has welcomed the commitment of 57 additional governments to join the Partnership.

Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) is a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society working together.

The EITI maintains the EITI Standard. Countries implement the EITI Standard to ensure full disclosure of taxes and other payments made by oil, gas and mining companies to governments. These payments are disclosed in an annual EITI Report (to see all EITI Reports, go to data.eiti.org). This report allows citizens to see for themselves how much their government is receiving from their country's natural resources.

The EITI Standard contains the set of requirements that countries need to meet in order to be recognised as first an EITI Candidate and ultimately an EITI Compliant country. The Standard is overseen by the international EITI Board, with members from governments, companies and civil society.

The EITI Standard (2nd edition), 22 May 2013, http://eiti.org/files/EITI%20STANDARD-screen-version.pdf.

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[1] For the purpose of this paper, the term Right to Information Law (RTI) is used synonymously with Freedom of Information Acts, Access to Information Acts, and other open government laws that provide for a right of access to information.

[2] Roumeen Islam, Do more transparent governments govern better? (World Bank 2003).

[3] Committee on Official Information (Danks Committee), General Report, December 1980.
[4] The Australian Law Reform Commission, Open government: a review of the federal Freedom of Information Act 1982, Report 77. 1995.
[5] Law Commission, Review of the Official Information Act 1982, Report 40. October 1997.
[6] See Final Report of the National Commission on Terrorist Attacks Upon the United States. http://www.gpoaccess.gov/911/
[7] See Transparency International, Global Corruption Report 2003.
[8] See Mary Graham, Regulation by Shaming, *The Atlantic Monthly*, April 2000.
[9] See UNECE, Protocol on Pollutant Release and Transfer Register. http://www.unece.org/env/pp/prtr.htm
[10] See Gary Bass and Sean Moulton, The Public's Right to Know: A Case Study from the United States, in Calland and Tilley, The Right to Know, the Right to Live (ODAC, South Africa, 2002); OECD PRTR pages: http://www.oecd.org/env/prtr
[11] See http://www.prtr.net
[12] Air Pollution in Asia: Real-time Air Quality Index Visual Map
[13] Central Information Commission of Republic of India, Annual Report 2013-2014.
[14] Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, Compendium of Best Practices on RTI.
[15] Marie Shroff, "Behind the Official Information Act: Politics, Power and Procedure" in The Official Information Act: 1997.
[16] See for example Citizens' Access to Information in South Asia: Regional Synthesis Report, *Asia Foundation*, August 2014, pp. 27-28 and Trapnell E. Stephanie (ed.), Right to Information: Case Studies on Implementation: India, *World Bank Group*, 2014, p. 74.
[17] See Maeve McDonagh, The Right to Information in International Human Rights Law, HR L Rev (2013) 13 (1).
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