

Implementing Freedom of Information Legislation in East Asia & Pacific

Summary of the presentations and discussion in a regional videoconference on the implementation of freedom of information laws: specifically, the experiences of India and Indonesia

Organised by the
World Bank Regional Governance Hub
2011

Implementing Freedom of Information Legislation in East Asia & Pacific

On January 28, 2011 the [World Bank Regional Governance Hub \(“the Hub”\)](#) hosted a regional videoconference (VC) on the implementation of freedom of information laws in East Asia. The VC featured the experiences of India and Indonesia in establishing transparency regimes with a focus on the process of lobbying for transparency and the consequent challenges of implementation.

Shekhar Singh (founding member and former convener of the [National Campaign for People's Right to Information](#) in India) gave the opening presentation, touching on the four phases of RTI/transparency regime evolution and the integrated elements of RTI (government leadership, engagement with a coalition of civil society organizations, and mechanics of RTI). He was followed by Dr. Usman Abdhali Watik (Commissioner with Indonesia's Central Information Commission) and Josi Khatarina (Senior Researcher, Indonesian Center for Environmental Law) who provided a perspective on the Indonesian experience. This VC had a wide audience of World Bank staff, government officials, civil society and donor partners, with these groups brought together by the recognition that information flows improve governance. Participating countries included Thailand, Vietnam, the Philippines, Mongolia, Lao PDR, Indonesia, India and Cambodia.

These presentations were followed by a question and answer session that touched on the different themes of Right to Information law, with participants looking to apply the lessons from India and Indonesia to their own contexts. These themes included:

1. Key implementation challenges

Shekhar Singh provided a framework for the discussion by looking at the way transparency evolves in four phases:

- Phase 1 - People are still trying to recognize the value and importance of transparency to people's daily lives and the process of governance. It's a stage of building up alliances across the board and demonstrating why it is important to have an effective transparency regime.
- Phase 2 – The process of getting the transparency regime in position. Formulating the law and putting related institutional rules and structures in place. When it comes to the drafting of the transparency law the Indian experience shows this needs to be done in collaboration with counterparts. Philippines, Mongolia, Vietnam and Cambodia seem to be at this phase.
- Phase 3 – Once there is a transparency regime in place, the focus will be on getting the law implemented. India, Thailand, and Indonesia seem to be at this phase. We have to progressively strengthen the transparency regime.
- Phase 4 - Expanding the scope of the regime and making it more effective. The future of RTI is that more and more information is put out voluntarily.

a. Changing bureaucratic culture

Once the transparency law is in place, it is often difficult for citizens to access the information because of the delay in processing requests and reluctance to disclose information. In Thailand, there is a top-down bureaucratic culture and an attitude that ordinary citizens do not need to know about public-related information. Agencies need to be asked for information and there is no proactive disclosure. In order to change this status quo, it is important to promote a good understanding of the law in bureaucracy as well as putting in place a full-time Information Commission. In Indonesia the 7 members of the Commission are full-time.

b. Generating demand among the people

In Mongolia, the passage of the FOI law has been delayed for years since 2007. An NGO coalition was formed to lobby parliamentarians face to face, but there seems to be little political will to discuss it. The law would clash with existing secrecy and privacy laws. The Indian experience was similar, until they realized that lobbying wouldn't be enough, and engaged with citizens to put a pressure on their MPs directly. In Mongolia it is time to make it into a people's movement. Once the law is implemented, how do you then encourage people to use it? In India it was found that by involving a large number of CSOs and the public in the process of lobbying for the law translated into an immediate demand for information once the law was passed.

2. Importance of government ownership

The value of transparency needs to be recognized by the government. Government leadership is crucial. There are three broad areas that demonstrate the value of transparency laws:

- I. Helps to run a more efficient, honest and accountable government.
- II. In India and elsewhere it has proved to be a good feedback mechanism, showing what is ailing the system. The information that is sought can be a good indicator to what people perceive to be wrong with the government.
- III. Significantly enhances the popularity of the government. The party that got re-elected in India was the one that implemented the RTI law. A transparency law may occasionally embarrass the government but the fact that they have opened themselves up is going to be more of a boost to popularity than any hit they may take due to disclosures.

Having a champion within the government itself is useful – in Indonesia the Minister of Information supported the cause. Experience shows that laws can get stuck due to disagreement and opposition within different sections of the government, so stakeholders and CSOs need to convince government to build up that internal consensus through critical evidence and case studies.

a. Triggers for RTI laws – creating a window

The social and political climate is the key to implementing these laws. The fall of the New Order in 1997 opened up the movement to combat corruption and to enhance good governance in Indonesia, which led to the reform of the constitution and then the eventual implementation of the law. In Thailand the trigger was the Asian Financial Crisis – people found that there was a lack of information about the key causes of the crisis so the law was brought in 1997.

Participants questioned whether they had to go through their own social or financial crises before they could see these laws in their own countries. The consensus was that it doesn't need to be a crisis but just a small window of opportunity through which to leverage the government to get them thinking about transparency, like in India, where it was just a routine election and the coming to power of a different political party.

It was also observed that in many countries with successful RTI laws there were already local or state level transparency initiatives. So often these can provide the window for better access and the opportunity to push for greater information flows. People can already look at institutions, procedures, laws where there are already requirements to share and disclose information and build on that.

3. Building coalitions with CSOs

It's important to demonstrate to CSOs that transparency is a cross-cutting issue to make sure that they all push for the law. In India, the National Campaign for People's Right to Information had hundreds of workshops with different CSOs to demonstrate how transparency can help

them work towards their own objectives e.g. health, women's empowerment, education etc. In Indonesia the ICEL followed a similar process albeit on a smaller scale.

The question was raised as to how to bring pressure to bear on the Government when there is less freedom for civil society to move, such as in Vietnam? Experience with government in China has shown that a transparency regime can be offered up as a mollifier to appease the people and democracy movements – governments will put up with a certain amount of dissent.

4. Volume and profile of requests

One of the concerns when implementing RTI legislation is always that the volume of requests will cause the system to grind to a halt. In fact in India there were 2 million applications in a year (at both state and national level) but due to the size of the country it only meant that one official on an average had to deal with 2 or 3 FOI applications a week. One way to reduce the administrative burden is to step up proactive disclosure and secondly to analyze the requests that are being made, and remove the grievances that are generating those requests.

In Indonesia, the Central Information Commission was established to help reduce bottlenecks in processing these requests. From May to December 2010 the CIC received [120 requests for information dispute](#) resolution. 29% of requests were about finance and budget reports, state revenue and expenditure. 25% of requests were about how governing bodies are performing, their organizing structure. 29% of request was about index of public information. 17% others (e.g. MoU between private sector and local state enterprise).

The level of compliance in government agencies is very low however – there was a rejection from 39 public bodies about budget and expenditure requests, and often in these cases the House of Representatives will support the denial. For the same period 56% of requests came from individuals, 42% from NGOs, and 2% from other groups.

5. Contradictions with other laws

In Mongolia, one of the major obstacles to FOI implementation has been the provisions of the law on state secrecy. One of the basic principles of the Indonesian FOIA is to be an instrument to harmonize different law related to public access to information. The way India has solved this problem is by stating in the transparency legislation that if there is a conflict, including with the secrecy law, that the RTI will prevail. The objective is to open government and make sure that the people have access to information; there also should be some adjudication process.

a. Harm provisions

There was much discussion about the use of harm provisions in RTI laws and how to work with them. The best practice is maximum access, limited exemptions - the only exemption should be when the disclosure of information would cause real harm, harm that would be greater than the public interest served by the disclosure. General clauses like "exemption in public interest" can defeat the law. The onus of justifying refusal to disclose would always be with the refuser, who has to prove the harm.

Summary

In his summary comments at the end of the video conference, Joel Turkewitz highlighted three key issues from the discussion:

- There are existing ranges of information initiatives before FOI including work at the local government level on requirements and areas to share information. Therefore, the movement towards national transparency regime could take advantage of this existing structure.
- The World Bank will continue to explore ways to use our engagement to support the movement that demonstrates to government and citizens that would enhance flows of information towards greater access to information in the region.
- There is lots of expertise and experiences in the EAP region which could be tapped into to support the transparency movement. In this regard, Shekhar agreed to share [Report of People's RTI Assessment 2008](#) and [methodology](#).

Further resources

- ∴ [Synopsis and agenda](#)
- ∴ [Understanding the “Key Issues and Constraints” in implementing the RTI Act - PriceWaterhouseCoopers](#)
- ∴ [Safeguarding The Right To Information Report Of The People’s RTI Assessment 2008 - Executive Summary](#)
- ∴ [Indonesian CSOs’ Experiences in Advocating FOI Law – Indonesian Center for Environmental Law](#)

Speakers

Shekhar Singh is a founding member and former convener of the National Campaign for People's Right to Information in India. He was co-chair of the international Task Force on Transparency, set up as a part of the Initiative on Policy Dialogue by Professor Joseph Stiglitz, in Columbia University. He has been advising the World Bank and other international agencies on their governance and transparency programmes in various parts of the world. As an academic, Professor Shekhar Singh has taught for over 30 years at St. Stephen's College, University of Delhi; the North-Eastern Hill University, Shillong; and the Indian Institute of Public Administration, New Delhi. Areas of work include Ethics and Administration, and the Management of the Environment. He has also worked with the Government of India and was Advisor to the Planning Commission of India, Chairperson of various Government of India committees and task forces, and a Commissioner to the Supreme Court of India.

Dr. Usman Abdhali Watik has been a Commissioner with Indonesia's Central Information Commission (CIC) since June 2009. CIC is an independent body, established under the Public information Law. The main function of the Commission is ensuring access to the information held by all public bodies in Indonesia, and resolving public information disputes. As the commissioner who specializes in information on government finance and budgeting, Dr. Usman cooperates with a number of government agencies that are concerned with finance, health, education, communications, home affairs, foreign affairs, the judiciary, and local government. Commissioner Usman holds a Bachelor's Degree in Public Administration from the University of Hasanuddin in Makassar, and a Master's Degree in Political Communication from the University of Indonesia in Jakarta. Before joining the CIC, he was a lecturer teaching political communication and research communication at the University of Indonesia, the University of Paramadina, the University of Pelita Harapan, and the University of Tarumanagara.

Ms Josi Khatarina is the Senior Researcher, Indonesian Center for Environmental Law (ICEL), former member of the NGO Coalition for Advocating FOI Preparation. Ms. Khatarina, an environmental lawyer, has helped shape Indonesian policy and legislation on governmental transparency/freedom of information. She is a Senior Researcher with the Indonesian Center for Environmental Law (ICEL), and through ICEL, a participant in a presidential taskforce on judicial corruption. Also through ICEL, she is working with Indonesia's National Planning Agency and the Center for International Forestry Research on deforestation problems, and for the Supreme Court, training judges on access to information issues. Previously, Ms. Khatarina worked with a number of government agencies and institutions on improving environmental governance. She obtained a Bachelor's Degree in Law from the University of Indonesia in 1999, a Master's Degree in Environmental Law from the University of Kent in the United Kingdom in 2005, and a Master's Degree in Law from the University of Melbourne in Australia in 2009.