

Global Right to Information Update

An Analysis by Region
July 2013



FOIANet

Freedom of Information Advocates Network
www.foiadadvocates.net



About the Freedom of Information Advocates Network

The Freedom of Information Advocates Network (FOIANet) is an international information-sharing network of organisations and individuals working to promote the right to access information held by public authorities or simply the right to information (RTI). It was founded at a meeting in Sofia, Bulgaria, in 2002, which brought together civil society groups from around Europe, as well as representatives from India, Mexico, South Africa and the United States. Together, the groups agreed on the importance of forming a global network to promote RTI.

The members of FOIANet are civil society organisations with active programmes to promote the right to information. FOIANet runs a discussion list for news and debate on the right to information. This is available to members, but also to individuals who register, and there are currently over 600 such people on this list. These include civil society organisation (CSO) representatives and lawyers, academics, information commissioners and others with a specialised interest in the right to information. The network launched and promotes International Right to Know Day, which takes place on 28 September every year.

Note: The historical term describing laws which give individuals a right to access information held by public authorities is 'freedom of information' (or FOI), and it is from this term that the name of FOIANet is derived. As the idea of a human right to information has evolved, the term 'right to information' (or RTI) has become a preferred term among those who advocate for this key democratic right. Another commonly used term is 'access to information'.



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The report was edited by Lydia Medland of the Secretariat of the FOIANet, based at Access Info Europe, and by Toby Mendel, Chair of the FOIANet Steering Committee, and Executive Director of the Centre for Law and Democracy, who also worked together to prepare the Introduction.

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Some of those who have contributed information compiled in this report: Daniel Metcalfe, Faculty Fellow in Law and Government of the American University's Washington College of Law, United States; Helen Darbishire, Executive Director, Access Info Europe; Lilia Saúl Rodríguez, México Informate, Mexico; Mar Cabra Valero, journalist, Spain; Priscila Castello Branco, Contas Abertas, Brazil; and Saša Šegrt, Transparency International Croatia.

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The photos displayed on the front cover of this report and on pages 2 and 4 were the winners of the 'I have a Right to Know!' photo competition held to celebrate Right to Know Day 2012:

- 1st Place: 'The other access' by Ranaivosoa Tolojanahary, Antananarivo, Madagascar (page 2).
- 2nd Place: 'I have a right to know' by Ramesh Soni, Dhar, India (page 4, top).
- 3rd Place: 'The Godfather' by Rajarshi Chowdhury, Bangalore, India (page 4, bottom).

The other photos in the document (with the exception of the photo for East and Southeast Asia) were also submitted to the 'I have a Right to Know!' photo competition. Although they were not awarded prizes they have been included in this report due to their high quality and great capacity to communicate what the right to information means for citizens. Credits for these photos are included within the body of the report.

Each regional section of this report includes a map of that region, designed to help situate the reader. The countries in the maps are colour coded according to whether they have an RTI law or not, and according to the strength of the laws where they exist. The data on the strength of the RTI Laws has been sourced from the RTI Rating, (www.rti-rating.org), a project by Access Info Europe and the Centre for Law and Democracy under which experts and lawyers analysed all national RTI Laws and comparatively rated them. The rating and maps in this report are therefore based on the strength of the legal protection for RTI in each country and should not be understood as an overall reflection of respect for RTI in practice. The RTI Rating is updated on a yearly basis and the country information included in the maps in this report is correct as of September 2012.

The design and layout for the report was done by Rubén Miján.

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Introduction

Ten Years of FOIANet

The Freedom of Information Advocates Network has now been active for 10 years. Its members believe that transparent and accountable government is possible only where the right to information has been enshrined in law and implemented in practice. In 2002, when the network was first founded, just 40 countries had passed RTI laws. Today, that figure has more than doubled with 95 countries recognising the right to information.

As a result, billions of people around the world now enjoy the right to access information held by their governments and national public bodies. Millions of people around the world have used these laws and policies to access public information, to expose and prevent corruption, to enhance their ability to participate in public affairs, to protect other human rights, to hold governments to account, to improve on service delivery, to facilitate their businesses and to further their own personal goals. A growing number of international institutions have also recognised the right to information through policies giving individuals a right to request and receive information from them.

The right to information is also one of the founding ideas behind a broader movement for open and accountable government which is gaining ever more impetus and recognition. A notable development in this area has been the launching of the Open Government Partnership in 2011 which has the potential to provide a new opportunity for civil society to push for greater recognition and respect for the right to information.

FOIANet and its members do not claim credit for all, or even for most, of these developments. However, in many cases national RTI laws have come into place, or been improved, due to the campaigning, research and perseverance of civil society groups and advocates from across the world. Without the efforts of these advocates, it would also not have been possible to achieve international recognition of the right to information as a human right.

A list of FOIANet's achievements over the first ten years of its existence, as well as remaining challenges and its goals for the next ten years are found in Annex I, which contains FOIANet's **10-10-10 Statement: Achievements, Challenges and Goals**. This **Global Right to Information Update** looks at the work of FOIANet and its members through a different lens, namely by assessing developments from the perspective of civil society in the sense both of being written by civil society organisations and of focusing on developments of relevance to civil society.

Taking Stock

The **Global Right to Information Update** has been prepared by the FOIANet as part of the network's mandate to share information in support of the work of our members. The exchange of information, news and developments –through our discussion list and our website– has always been the main strength of the FOIANet. The aim of this Update is to go beyond the news and questions that are shared on a daily basis through our discussion list. Specifically, it aims to probe more deeply into a key issue for our members, namely the way in which civil society working on right to information (RTI) issues has developed in the different regions of the world. In this way, we hope to foster a deeper understanding of the nature of challenges and opportunities for advocates across the network, as well as to facilitate the development of stronger relationships between advocates within and among different regions, and with FOIANet itself.

Beyond the very general goal of fostering a better understanding among our members, the Update has a number of more specific objectives. Many RTI advocates around the world face common challenges; sharing information about successful solutions or strategies for tackling these challenges is an important way to help others solve them. We believe that the regional nature of the Update is particularly important in this regard. The FOI movement has developed in different ways in different regions, and each region has its own particular trajectory towards realising RTI.

The Update reveals that the challenges faced by advocates, and the campaigning tactics used in each region, are at times remarkably similar. National civil society coalitions, for example, are mentioned by many authors as having made a central contribution to campaigns. In other cases, challenges differ greatly depending on cultural context. For example, in South Asia, a problem has been identified of a lack of NGO transparency, which has created an environment where some civil society groups are leading by example; this issue is further complicated by the fact that, in some countries in the region, civil society is formally covered within the scope of the national RTI law.

In many regions there are relatively strong relations among advocates from different countries; the Update seeks to foster better understanding and to stimulate international dialogue among the different regions of the world about this core human rights issue and its development going forward. We note that while there are plenty of national publications about RTI developments, this is far less true at the regional level. The Update also aims to draw attention to the global nature of the movement for the right to information. We hope that this will assist advocates both within and outside of FOIANet find out about each other, and thereby further build and strengthen the movement.

Finally, for individuals and groups fighting for RTI, particularly those working in difficult contexts who find themselves outnumbered by advocates for secrecy, we hope that stories from other areas of the world will serve as encouragement in their struggles to open closed doors. For FOIANet, this sharing of experiences is a step towards working evermore closely with our members to further work in solidarity to promote the realisation of a strong and effective right to information worldwide.

Generating Knowledge Together

The Update is a compilation of civil society experiences reported directly by advocates themselves from seven regions of the world. This is what makes the Update perhaps the most comprehensive qualitative resource currently available for understanding the global movement for the right to information. At the same time, the extensive geographical reach of the Update means that it cannot be comprehensive in terms of covering every country or campaign. Rather, the Update aims to provide an overview of the overall civil society and advocacy movement in each region.

The main body of the Update comprises sections covering seven regions of the world which have distinct experiences of the right to information. The regions covered are Africa, the Americas, Australasia and Oceania, East and Southeast Asia, Europe, the Middle East and North Africa and South Asia¹. The Update follows an agreed general structure, with each section giving a brief contextual overview of developments in the region, followed by a 'strengths, weaknesses, opportunities and threats' or SWOT analysis, a presentation of success stories and lessons learned, and finally, a section which looks forward on how to address challenges. At the same time, the style of presentation varies, and the choice of content for each region reflects the judgement by contributors of what they felt was important.

The presentation of regional material is complemented by case studies, sometimes of individual successful requests and in other cases with stories of campaigns and historical developments. Case studies are often able to transmit an effective snapshot of the situation to readers. Focused accounts also help us understand the impact of the right to information on communities and democratic development.

The choice of authors was participatory from the beginning. Members of FOIANet were asked to nominate themselves as writing groups, and of those nominated, lead organisations were chosen by the FOIANet Steering Committee, which is elected by the membership. Where no active groups from a region nominated themselves, the Steering Committee identified known experts in the field to contribute the relevant sections.

The struggles and successes of advocates outlined in this Update are part of a bigger picture, as outlined in FOIANet's 10-10-10 Statement. The Update sets the stage for what is the beginning of a process for meeting those challenges and achieving those goals. We hope FOIANet members and others will find it useful as a resource towards that end.



Africa

Africa



101-135	■	Countries with strong legal protection for the right to information
81-100	■	Countries with moderate legal protection for the right to information
61-80	■	Countries with poor legal protection for the right to information
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No score	■	Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

Africa

Sub-Saharan Africa (SSA) comprises 48 countries all of which are members of the African Union that brings together a family of 54 countries. SSA has five different regional economic communities: the Economic Community for West African States (ECOWAS), East African Community (EAC), Southern Africa Development Community, Economic Community of Central Africa States (ECCAS) and Intergovernmental Authority on Development (IGAD). With many States having gained political independence from colonial rule in the 1950s and 60s, the continent is relatively politically young in several respects. Africa is becoming a significant player in global affairs in part due to a young and increasingly educated population, natural resources and fast-growing economies. In some regions Africa is recovering from long years of conflict and in others, new opportunities and challenges make the need for transparency evermore pertinent.

The right to information is currently recognised in six African Union treaties: Article 9 of the African Charter on Human and Peoples Rights, Article 19 of the African Charter on Democracy, Elections and Governance, Articles 9 and 12(4) of the African Union Convention Against Corruption, Articles 10(3d) and 11(2i) of the African Union Youth Charter, Article 6 of the African Charter on Values and Principles of Public Service and administration, and Article 3 of the African Statistics Charter.

It is not clear how many civil society organisations are currently working on RTI issues in Africa, but advocacy, research and networking on RTI is growing. Right to Know Day is an important event which demonstrates this increase in advocacy for the RTI. Only three organisations reported undertaking right to know day activities in September 2010, while the number increased to fourteen in 2011². In 2012, there were activities across the continent, with specific events in the South African Development Community (SADC), and Eastern and Western Africa. In Uganda, for example, the day was jointly marked by CSOs and Government and the Minister of Information promised that the Government was considering officially recognising the day. On the same day, the Minister of Lands, Housing and Urban Development launched his ministry's access to information manual.

There is growing recognition and application of the right to information across the continent, and particularly in sectors such as natural resources, education, health and public procurement, and this is expected to strengthen over the coming years. Africa Freedom of Information Centre (AFIC) is the largest membership-based organisation bringing together civil society groups working on RTI issues in Africa. It is a pan-African civil society membership organisation and resource centre, with 29 CSO members from sixteen countries³.

The authors

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The notion of secrecy as safe was therefore carried by many liberation movements into government when they won freedom from colonial powers

SWOT Analysis

Sub Saharan Africa is a diverse continent that has had different colonial and post-colonial influences that affect the strengths, weaknesses, opportunities and threats to RTI on the continent. The matrix below summarises the situation.

Regarding the region's strengths, a number of civil society organisations in Africa received early exposure and training on RTI prior to their government counterparts, enabling them to provide leadership and advocacy on RTI. In countries like Uganda, Kenya, Botswana and Mozambique, civil society organisations initiated and drafted RTI Bills. In Nigeria, years of repressive regimes galvanised civil society to form strong movements for right to information advocacy. South Africa, the first African country to adopt an RTI law, in 2000, was used as a reference point for civil society and public officials alike throughout Africa in drafting their own bills or ideas on implementation. In addition, a number of coalitions have been formed at the national level to coordinate efforts, and share capacities and strategies.

The major weaknesses of civil society organisations involved in RTI work in Africa emanate from historical circumstances as well as country specific contexts. The oppressive nature of the former colonial regimes in Africa left a lasting legacy of a culture of secrecy that was largely maintained in the post colonial environment and which therefore continues to affect the current development of RTI and the work of civil society organisations. Part of the reason for this is that liberation movements were forced to operate underground, making secrecy a way of life within those movements, and central to their survival. The notion of secrecy as safe was therefore carried by many liberation movements into government when they won freedom from colonial powers. The relatively recent nature of this history and the continued presence of many liberation movements as present-day governments in Africa presents a unique challenge for RTI activists.

Generations of oppression have also created a citizenry that in many instances does not believe it has the right to know about the actions of government. Furthermore, many citizens feel indebted to the movements, now governments, that liberated them from colonial oppression and are hesitant to speak out against them. This poses significant challenges for civil society organisations, which must educate the public about the right and the power it affords them.

For a long time many African governments and indeed members of the media and other stakeholders considered the right to information as being for the exclusive benefit of the media, rather than an enabling basic human right for everyone. This misunderstanding has negatively impacted on efforts to recognise and advance RTI.

Strengths

- Strong regional and national RTI networks
- CSO experience in initiating and drafting RTI Bills
- Growing RTI knowledge base
- Reasonable regional policy environment
- 11 countries with RTI laws
- Understanding of RTI's utility in various sectors
- Special mechanisms such as the ACHPR Special Rapporteur on Freedom of Expression and Access to Information

Weaknesses

- Secretive culture left by colonial regimes and liberation movements
- Weak laws and poor enforcement mechanisms and capacity
- Inadequate political will for RTI in the majority of countries
- Weak institutional mechanisms at regional and national level
- Restrictive legal and operational environments for civil society
- Slow democratisation and lack of human rights culture
- Limited funding base for CSO and government programmes

While it is recognised that RTI is a crosscutting issue, an absence of CSOs dedicated exclusively to the promotion of this right at the country level has undermined its development by limiting opportunities for mainstreaming, coordination and focused attention. In Angola, for example, lack of effective coordination among CSOs, combined with a lack of political will by government, has thwarted implementation of the country's RTI law.

The restrictive environment for civil society in many African countries has also posed a challenge for RTI. In Ethiopia, for example, the Charities and Societies Proclamation Act restricts foreign funding yet there are very few other fundraising opportunities within the country. A more recent law

Opportunities

- Improving policy environment underpinned by 6 African Union treaties that recognise RTI
- Large number of CSOs with Observer status with ACHPR
- Special initiatives like APAI Declaration, Open Government Partnership
- 17 countries have constitutional guarantees for RTI
- Model Law on Access to Information for Africa
- The Open Contract Initiative

Threats

- Militarism and lack of democratic space
- Competing global interests and emergence of new powers.
- Economic hardships leading to the sacrifice of human rights agendas and the prioritisation of economic issues over RTI
- Terrorism and emergence of secretive regimes

An improving policy environment has favoured the growth of RTI on the continent

in Ethiopia prohibits the use of Skype and other voice over the Internet programmes⁴. In Uganda, NGOs are required to renew their licenses every year, while fears abound that stringent immigration policies could be used to intimidate human rights NGOs, based on their funding sources, staff coming from abroad, and their international work. Other weaknesses in the region relate to lack of skills, limited funding for civil society and poor capacity to manage information inside public bodies.

At the same time, there have been important successes. Over the past two years in Uganda, human rights CSOs have intensified campaigns for transparency and accountability, leading to the resignation of three senior ministers and trial of three other ministers in court against corruption charges, and three other ministers facing a parliamentary inquiry on corruption. These events have altered the political environment, with the ruling party losing nine out of eleven parliamentary by-elections. During the consideration of Angola's state of human rights report at its 51st Session, the African Commission on Human and Peoples' Rights asked the government to explain why, despite the overwhelming needs of the population and the human rights situation in the country, so few civil society actors were mentioned in the report. An improving policy environment has favoured the growth of RTI on the continent. The number of African Union instruments that recognise the right has increased to six, as noted above.

The origin of RTI laws in Africa is mixed. In Uganda and Nigeria, civil society organisations campaigned for RTI laws and secured this as part of the struggle for recognition of democratic rights. On the other hand, the governments of Angola, Guinea-Conakry, Niger, and Zimbabwe adopted RTI laws on their own initiative and not as part of a democratisation process. The Angolan law is a direct copy of the law of Portugal, the former coloniser; it is not clear what motivated military juntas in Niger and Guinea-Conakry to adopt RTI laws a few months before handing over power. In Zimbabwe, President Mugabe's ZANU-PF government adopted the restrictive Access to Information and Protection of Privacy Act (AIPPA)⁵ in response to the media's exposure of numerous scandals involving senior ZANU-PF leaders at a time when the opposition Movement for Democratic Change was gaining strength and visibility. The law was designed to control the free flow of information, rather than to facilitate it, and contains provisions which give the government extensive powers to control the media and suppress free speech by requiring the registration of journalists and prohibiting the 'abuse of free expression'. These powers have been widely abused.

At the time of publication, Rwanda is the most recent country in the world to have adopted an RTI law, which took place in March 2013. Rwanda

has had a troubled past characterised by conflict and genocide which has inevitably impacted on governance, transparency and accountability. Rwanda is, however, taking steps to promote openness, being the first East African Community (EAC) partner state to ratify the African Charter on Democracy, Elections and Governance and the second EAC member to adopt an RTI law. It is essential that for the realisation of the right to information that the government create a conducive environment for the media, civil society groups and ordinary people to be able to use the RTI law, and ask even the most difficult questions.

The African Commission on Human and Peoples' Rights, through its Special Rapporteur on Freedom of Expression and Access to Information, has made RTI a central focus of the Commission's agenda. Principle IV of the Declaration of Principles of Freedom of Expression in Africa, adopted by the Commission in 2002, has become a central point for the Commission and human rights groups when assessing the compliance of State Parties to the African Charter on Human and Peoples' Rights in relation to RTI.

Close collaboration between the current Special Rapporteur, Pansy Tlakula, and CSOs has resulted in the adoption of the African Platform on Access to Information declaration and the Model Law on Access to Information for Africa, which was adopted very recently by the Commission. Through her efforts, RTI is now a common feature in the Commission's conclusions and recommendations in country state of human rights reports.

RTI advocacy has grown significantly in Africa thanks to the engagement of civil society organisations. However, to increase the impact, these organisations need to document their work better, and to share information about their achievements and failures. This process should make full use of advances in information and communication technologies on the continent.

At the national level, 17 countries have constitutional guarantees for RTI, with Kenya being the most recent country to do so. Eleven African countries –namely South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Niger, Nigeria, Guinea Conakry, Tunisia and Rwanda– have adopted RTI laws. The government of Zambia has promised to prioritise the passage of the RTI bill. The governments of Botswana, Rwanda, Sierra Leone and Ghana have at various times made clear public declarations of their intention to adopt RTI laws, although the passage of a significant period of time since many of those declarations raises concerns about whether or not they can be taken seriously. Kenya's RTI bill has been revived and could be passed soon. The Open Government Partnership, launched on 20 September 2011, appears to have re-invigorated initiatives for transparency across the region.

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The emergence of terrorism and insurgency in many parts of Africa has provided a convenient excuse for national governments to put in place counter terrorism measures which impact negatively on RTI. The recent move by the South African Government to introduce the Protection of State Information Bill, commonly known as the 'secrecy bill', is another threat to RTI on the continent, as it may lead a number of other African countries to consider adopting secrecy laws or delaying the adoption of RTI laws. Some commentators believe that the South African secrecy bill has its origins in attempts to stop the publication of leaked information about corruption scandals involving senior ANC leaders⁶.

'I have the right to know, to learn, to find out what is going on' by Patricia Chica in Mali.



Success Stories and Lessons Learned

Africa has recently celebrated a surge in the recognition of the right to information. Since 2005, RTI laws have been passed by six Sub Saharan African countries, tripling the number of laws in place. In the last two years alone, Liberia, Guinea, Niger and Nigeria have all introduced RTI laws. This flurry of laws is in large part due to the successful campaigning of RTI activists within those States.

However, while the passage of laws is a positive achievement, the failure in many countries to implement effectively those laws remains a concern throughout the region. Regulations to support the implementation of the Ugandan law were only passed in 2011, six years after the passage of the RTI law in 2005. In Ethiopia, regulations to support the 2008 RTI law are still to be finalised. In South Africa, despite the existence of the right for over a decade, recent civil society research indicates that forty per cent of requests for information go unanswered by public authorities⁷.

These implementation challenges highlight the need for RTI activists in the region to continue their advocacy work beyond the adoption of laws to ensure implementation, including through training both public authorities and the public to exercise the right. It is hoped the efforts currently underway in Nigeria to train public officials will provide an example of an effective implementation strategy for the region.

The response of South African civil society to the threat to the RTI law posed by the secrecy bill is an example of successful RTI activism on the continent. In response to the bill's introduction, civil society launched the Right2Know campaign⁸ in September 2010. The campaign consists of over 400 civil society organisations and thousands of individuals and has been very successful in raising awareness about the bill among members of the public and in effecting amendments to the draft legislation. When it was introduced, it appeared that the government intended to rush the bill through parliament with little opportunity for public comment. However, as of the date of publication of this Report, the bill, already substantially amended from its initial form, remains before parliament, currently subject to committee debate concerning further amendments. While the bill continues to pose a risk to RTI in South Africa, and possibly the region, as other governments keenly watch how it develops, the work of civil society in delaying adoption of the bill and winning substantial amendments reflects the growing power of civil society on RTI issues.

The response of South African civil society to the threat to the RTI law posed by the secrecy bill is an example of successful RTI activism

Case Study - Uganda

Information Request Produces Long Awaited RTI Regulations

Uganda adopted the Access to Information Act in 2005. The responsible Minister, pursuant to Section 47, was supposed to issue regulations that would facilitate implementation of the Act. The Government did develop regulations in 2008, but these were never published in the **Official Gazette**, and so never came into force. The lack of regulations hindered access, as most public bodies would simply not answer information requests (i.e. respond with mute refusals).

On 25 November 2010, AFIC made an information request to Parliament for copies of the reports ministers were supposed to provide under Section 43, detailing the compliance of their ministries with the Act. Parliament responded with a telephone call confirming a lack of compliance in terms of reporting to Parliament, and advised that the request should be filed with the Leader of Government Business and Prime Minister of Uganda.

On 21 February 2011, AFIC filed an information request with the Prime Minister for copies of the reports. On 16 March 2011, both the **New Vision** and

Monitor newspapers carried the headline: "I will not tolerate lazy ministers - Nsibambi". The Prime Minister was quoted as telling a cabinet retreat that he would not tolerate ministers who do not report as required.

A few days later, AFIC received a copy of the Prime Minister's letter dated 17 March 2011 directing the Minister of Information to respond to AFIC's request. In a letter dated 15 April 2011, the Minister of Information replied to the request by indicating that the lack of compliance with Section 43 was due to the lack of implementing regulations for the RTI law, which she promised would be gazetted within two months. A week later, on 21 April 2011, the regulations were indeed gazetted and they took effect immediately.

AFIC did not get the reports they had requested, because they were nonexistent due to non-compliance by ministers with Section 43 of the law. But the request led to the adoption of the Access to Information Regulations under Section 47 of the Access to Information Act, which was a considerable success.

Looking Forward

RTI focused CSOs should work with organisations working on issues such as housing, health, education, agriculture and construction to help them recognise RTI as a strategic advocacy tool for promoting their issues. Research has shown that many African countries have RTI provisions in sector specific laws, and yet there is limited usage of these provisions by activists and citizens. It is of particular importance in the context of Sub Saharan Africa to utilise RTI to realise socio-economic rights such as housing, education, health and so on. In Zimbabwe, the Media Alliance of Zimbabwe has been working to build a broad-based coalition of groups working in different social sectors to push for the adoption of a new (and genuine) RTI law.

Popularisation of the right through recognition and utilisation of its power as an enabling right is central to any campaign to expand legal recognition of the right on the continent. As the Minister for Cabinet Affairs of the Office of the Prime Minister of the Republic of Rwanda, noted at a conference on RTI in Nairobi, Kenya on 29 August 2011, when RTI is viewed as a tool that can be used to achieve poverty reduction, food security and economic development, no African government will oppose it.

Civil society should be more receptive to experiences from beyond the continent. Emerging countries like India, with a dynamic civil society and successful history of advocacy for RTI, can provide valuable lessons for Africa. Civil society should identify success stories of this nature to emulate and improve advocacy on the continent. This approach, however, should not be at the expense of improved creativity to advance the right based on country-specific realities.

Americas

Americas



- 101-135 ■ Countries with strong legal protection for the right to information
- 81-100 ■ Countries with moderate legal protection for the right to information
- 61-80 ■ Countries with poor legal protection for the right to information
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- No score ■ Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

Americas

The Americas, like many other regions of the world, can be divided along many lines; historical, political, social and geographical. However, there are also features that unite this region. A history of colonisation has left the legacy of the dominant use of three major European languages –English, Spanish and Portuguese– and widespread adherence to Christianity as a significant religious and cultural influence. Today, in some respects, the Americas is a region of extremes with both poor and rich nations and some of the most influential and controversial political and cultural models and figures. The region is home to vibrant and politically engaged communities in many countries in both the north and south.

The United States became the third country in the world, following Sweden and Finland, and the first country in the Americas to adopt an RTI law in 1966. The United States was followed by Canada in 1982 and then by a wave of countries from Central and Southern America during the last 20 years. In Central and South America, RTI has sometimes been introduced in the context of a broader reform of democratic mechanisms, for example after the collapse of authoritarian regimes.

The first full access to information law in Latin America was the Mexican law adopted in June 2002, following the shift away from the 70-year rule of the PRI (Institutional Revolutionary Party). The development of this law was facilitated by the so-called Grupo Oaxaca, a group of civil society activists, journalists and academics who pressed for the adoption on an RTI law from 2001 onwards.

RTI has been recognised progressively not just at the national level but also at State level in some federal countries such as the United States and Mexico. Its recognition and implementation has been extended greatly during the last several years. The movement for RTI was in many cases inspired by transitions away from authoritarian rule and the fight against corruption. The movement for a right to information was in some cases also linked to the search for a ‘Right to Truth’ following human rights abuses in previous decades. For Mexico, in particular, the close proximity of the United States and its functioning Freedom of Information Act also helped serve to inspire those promoting RTI while Mexico, in turn, helped inspire other countries in the region.

The Organisation of American States also played a supportive role. In 2004, the OAS Rapporteur for Freedom of Expression, Eduardo Bertoni, issued a dedicated report on access to information that helped pushed the agenda forward. The oversight body for the Inter-American Convention against Corruption, MESICIC⁹, also contributed to the movement for RTI due to the fact that the questionnaires used in the oversight of implementation included questions on access to information and regular recommendations were made calling for a right to information.

The author

Karina Banfi, Secretary General of Alianza Regional, led on the research and writing of the Americas section of this report. Case studies and additional material was contributed by other RTI advocates.

There is fairly strong civil society activism around the right of access to information in the Americas

Twenty countries in the Americas have RTI laws, namely Antigua and Barbuda, Belize, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Jamaica, Honduras, Mexico, Nicaragua, Panama, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, United States and Uruguay. The implementation of the law varies considerably between the countries, among other things because only eight of the twenty have an administrative body with the power to receive and decide on complaints, and to promote compliance with the law.

Countries that do not have an RTI Law are: Costa Rica, Paraguay, Venezuela and Bolivia. Argentina has a decree that regulates RTI but not a full law on this issue.

There is fairly strong civil society activism around the right of access to information in the Americas, although this is weaker in some countries –such as Canada, Colombia and Panama– and stronger in others –such as Mexico, Peru and the United States.

'Police brutality and harassment: The suppression of Freedom of Expression' by Mehman Huseynov in Chile.



SWOT Analysis

Strengths

- Most countries have RTI laws, with some recent adoptions
- The countries which have RTI laws are working on implementation, with strong track records in some countries
- CSOs are working together to build more pressure for implementation
- Civil society groups have participated in the development of some RTI laws
- CSOs share experiences across countries and work together to achieve the objective of making RTI laws as strong as possible

Weaknesses

- Some governments have little respect for economic, social and cultural rights
- Governments consider that information is property of the State
- Some countries of the Americas fail to protect freedom of expression and RTI
- A culture of secrecy remains strong in many of the countries of the Americas generating obstacles to openness

Opportunities

- There is demand from the general public for more RTI because governments try to hide or manipulate information.
- There is a need for more transparency in government administration.
- Positive experiences with RTI in some countries produce upward pressure to create positive regulatory frameworks in other countries
- CSOs are working together and collaborate internationally, which enhances their capacity and impact
- The Internet is a powerful tool for CSOs to create pressure for better RTI

Threats

- Civil society funding for advocacy and monitoring is being questioned in some countries such as Ecuador, Nicaragua and more recently Venezuela¹⁰
- Economic crises may make it more difficult for civil society to access funding to work on RTI, whereas there is a need to increase campaigning for RTI
- Vestiges of political instability or return of undemocratic government in some countries

Success Stories and Lessons Learned

The progress and setbacks regarding RTI in the Americas shows the high value that RTI has as a democratic tool which allows citizens to oversee government activities.

An important regional development was when the Member States of the OAS asked the body to develop a model Inter-American law on RTI, to serve as guidance for Member States as they develop and improve their own RTI frameworks¹¹. The law was developed by a Group of Experts on Access to Information, coordinated by the Department of International Law, of the Secretariat for Legal Affairs of the OAS. The Model Inter-American Law on Access to Information and its implementation guide is based, among other things, on the principles articulated by the Inter-American Court of Human Rights in the case of **Claude Reyes vs. Chile**¹². An international assessment

of the Model Law indicated that it was very strong in terms of giving practical effect to RTI, and stronger than any existing national law globally¹³.

The debate around the Model Law strengthened the promotion of legal standards on RTI throughout the Americas. Among other things, it has strengthened the capacity of local groups to monitor and evaluate their national laws, as it provides a guide for the elaboration of RTI laws based on the best standards. The RTI laws in Peru and the Dominican Republic are being reviewed with reference to the Model Law, including with a view to adding enforcement bodies and more efficient system of resource allocations.

Laws do not only require public bodies to respond to demands for information, but also create obligations on public bodies to proactively publish information, put in place systems of implementation, protect

Case Study - United States of America

Impact of nearly 50 years of Civil Society Advocacy on RTI

In the United States, which became the third nation of the world to adopt an RTI law, in 1966¹⁴, the influence of civil society groups has been indispensable. It is no secret that after the struggle to get the law through Congress, United States President Johnson, being no fan of information sharing, was strongly inclined to veto the landmark legislation and signed it on the last possible day, due to successful campaigning by media freedom advocates.

As the Freedom of Information Act (FOIA) took hold and developed in its early years, a number of civil society groups, then known as public interest groups, began to advocate for its full and proper implementation, particularly through the pressure of aggressive litigation. Foremost among them was the Public Citizen Litigation Group, an organisation of young attorneys co-founded by consumer activist Ralph Nader. Early litigation successes, coupled with the strong 'public interest' and public support following the Watergate scandal, led to enactment of several very pro-disclosure amendments to the FOIA in 1974 (not to mention enactment of the FOIA's

companion legislation, the Privacy Act of 1974), which strengthened the right to information enormously.

Early bold civil society actions were to set the stage for what became the classic dynamic between FOIA advocate groups and the United States administration: civil society pressing for greater and more timely disclosure in a tug and pull with government bodies that often resisted disclosure and as a rule failed to comply fully with the law's timeframes. The range of civil society actors involved quickly expanded to include media organisations, litigation advocates, environmental groups, government watchdogs and others.

While the challenges and opportunities for civil society have changed with the various changes in government, at no point has the challenge to defend FOIA been greater than in the aftermath of the 2001 terrorist attacks which, in the United States, are simply called 9/11. Following the 'Ashcroft Memorandum', and led by the Department of Justice, federal agencies were encouraged to view information through 'a new

post-9/11 lens' and to employ exceptions to greater effect. In reaction to a second memo a proliferation of 'safeguarding labels' was devised and used by agencies across the federal government, such as 'sensitive but unclassified information' and later 'controlled unclassified information', that created a whole new realm of 'pseudosecrecy'. After 9/11, many federal agencies reduced the amounts and types of information that they regularly posted on their websites, which led to further public perceptions of excessive government secrecy.

Standing as a vocal bulwark against this were the many civil society organisations that worked tirelessly to combat what was seen as an overreaction to new security threats. Groups such as the American Civil Liberties Union, the National Security Archive and the Project on Government Oversight sprang to action to publicly challenge undue secrecy wherever they saw it. Notable successes included some landmark court cases as well as an eventual concession by the Bush Administration, which after sustained civil society pressure over the lack of timeliness and other defects

of FOIA issued an unprecedented executive order on FOIA backlog reduction to deal with significant delays in responding to citizens' requests.

With the advent of the Obama Administration in early 2009, civil society groups rejoiced at the idea that they at last had a friend of government openness in the White House. Expectations were high, especially after President Obama's remarkable 'Day One' pronouncements about having 'the most open administration in American history'. After nearly four years of at best mixed results, advocates of government openness in the United States are no longer rejoicing; however, they are still as active as ever looking to what will come next as the United States FOIA approaches its 50th anniversary.

Case Study contributed by Daniel Metcalfe, Faculty Fellow in Law and Government of the American University's Washington College of Law.

There is a diverse and active transparency community in Mexico. The country has a federal RTI law and 32 sub-national laws

personal data and create effective information management systems. An important indicator for assessing the efficiency of RTI laws is the political will of government employees in providing information. The existence of enforcement bodies, the specification of permitted exceptions and a sufficient allocation of administrative and judicial resources so as to ensure access to information works in practice are all important in order to have RTI laws that benefit citizens.

Pressure for the adoption of a national law in Argentina continues, and various campaigns are being conducted there to this end. Civil society campaigns are also active in Colombia and Paraguay in order to get RTI laws amended or approved. In the past, a strategy of coalition building among civil society groups has been used in Nicaragua (2006), Guatemala (2007) and Colombia (2010).

Civil society groups are also active in Ecuador, Peru and the Dominican Republic to promote the process of reform of the laws. Although there are only a few civil society groups focusing on RTI in Canada, there has been longstanding debate about the need to reform the RTI law there, which is assessed as being weak¹⁵.

Some of the other strategies adopted by civil society groups have included parliamentary advocacy (El Salvador); providing technical assistance to government and sharing this sort of expertise among civil society (in countries such as Argentina, Mexico, Chile and Guatemala); and working together across the region, including through the regional network, Alianza Regional. This last strategy was founded to some extent due to the difficulties that civil society faced in several countries to get RTI laws adopted, which led to civil society groups identifying the importance of working together in order to create greater pressure for reform.

In El Salvador, participation in the forum of experts during the parliamentary debates on the RTI law organised by the Presidency Secretariat in 2010 was key, because it gave a space to local stakeholders to present their views.

There is a diverse and active transparency community in Mexico. The country has a federal RTI law and 32 sub-national laws, and RTI is also recognised in the Constitution. Members of civil society, academia and the media have been vital in promoting RTI and were involved in the articulation of the federal and local RTI laws and the constitutional reform of 2007.

Several proposals to modify the institutional and legal framework for RTI are now being discussed in Mexico. Civil society organisations (CSOs) have been actively analysing the propositions of the incumbent president, as well as those presented by different political parties. The newly elected president has also presented proposals regarding transparency and access to information. CSOs have provided technical analyses and guidance to

the different actors involved in the discussions of reforms. Moreover, with the experience garnered since 2002, when the federal RTI law was passed, civil society is working towards achieving a comprehensive legal and institutional framework in which RTI is part of a system that promotes greater accountability.

Mexican CSOs are constantly working to ensure proper implementation of transparency laws through the exercise of RTI at the federal and local levels. Civil society is made up of several networks which use different types of advocacy and awareness raising to promote and defend RTI. México Infórmate, for example, is a network of journalists and activists with representation in 22 states and the nation's capital. Each year they make the most of Right to Know Day with a week of activities throughout the country, including around 25 local events and workshops around the country and a Transparency Fair (Fería de la Transparencia) organised with other local groups. The occasion is used as an opportunity for the organisation to present key findings and concerns of the network to the government and the public.

Looking Forward

RTI work in the Americas is centred on both improving existing RTI laws and promoting better implementation of them. A third strand is working in countries that do not have a law yet so as to ensure that these countries can progress to recognising RTI in accordance with the standards established by the Model Inter-American Law on Access to Information.

While solid regional networks and relationships already exist, these objectives can be further promoted by searching for new key actors –such as media, regional and local activists– as well as more solid and long-standing relations with governments. Civil society groups in the region are searching for new opportunities to work together, including on subjects of regional relevance, to facilitate local work and to create greater positive impact on RTI.

The two case studies in this section (United States of America and Brazil) show how in two very different countries in this region civil society advocacy has been used in order to promote and defend advances in RTI.

Each year they make the most of Right to Know Day with a week of activities throughout the country

Case Study - Brazil

New Laws and Hopes – Advocates Will ‘Keep Monitoring’

The long-awaited Brazilian RTI Act (enacted in November 2011) came into force in May 2012 and was much celebrated, notwithstanding obvious flaws, ranging from vagueness of several provisions to the lack of an independent oversight body.

Irrespective of the quality of the legal text, the good news is that in the first six months of its implementation, over 460,000 requests for information were made just to federal bodies. Of these, approximately 85% were responded to positively. This represents an impressive start in terms both of civil society participation and of official responsiveness. At the local level, however, the story is significantly different, with many municipalities not managing to upload basic budget information to their websites, as required by related laws adopted two years earlier. National advocates report that they are dealing with ‘Two Brazils, worlds apart’ and say that many citizens are still unaware of their access to information rights.

While advocates have high hopes that the new legislation will live up to its potential, they also hope that it will help establish a broader culture of transparency between citizens and public officials. Priscila Castello Branco, from the national organisation Contas Abertas, said:

“Thankfully, the secrecy tradition long-observed in Brazil seems to be in decline. Right to Information is much more than the content of a law. It is also, and most importantly, the combination of actions taken by civil society and citizens alongside the support of responsible public officials in order to work towards transparency and other overall objectives of the law. We trust Brazil is on the right path when we see groups campaigning for information that is essential for democracy and accountability.”

The passing of the RTI law coincided with many targeted initiatives relating to transparency and corruption. For example, an electoral court judge started a movement in his municipality by demanding the publication of lists of campaign donations received by each local candidate **before** elections took place. This went beyond established disclosure obligations which only required publication of such information when elections were over (although candidates were required to present data throughout the campaign). Following the ‘transparency trend’ and in view of the pressure from civil society, particularly by an organisation named MCCE (Movement to Combat Electoral Corruption), the president of Brazil’s Superior Electoral Court decided to adopt the measure at the national level.

Corruption scandals have also helped raise awareness about, and probably wider use of, the new RTI Act. Scandals unveiled in recent years, including a major corruption scheme involving high profile politicians, have ignited a nationwide trend of public awareness about RTI issues which advocates hope will be further pursued with instruments such as the RTI Act. As Priscila Castello Branco noted: “We are optimistic but remain realistic... and keep monitoring.”

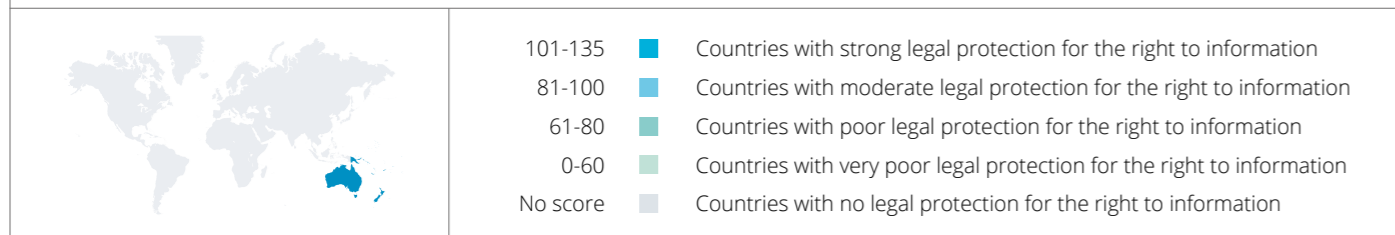
Links to the case:

1. <http://www.cgu.gov.br/Imprensa/Noticias/2012/noticia12312.asp> (Office of the Comptroller General, the RTI oversight body in Brazil)
2. <http://www.marlonreis.net/?pag=reportagens&cao=exibir&id=17> (website kept by the judge noted above)

Case Study contributed by Priscila Castello Branco, Contas Abertas, Brazil.

**Australasia
and Oceania**

Australasia and Oceania



Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

Australasia and Oceania

The region covered in this chapter includes Australia and New Zealand and the island States and territories across the Pacific between continental Asia and the Americas. Australia and New Zealand are developed nations with many similarities that include long established, stable parliamentary systems of government. Both were early adopters of national RTI laws in the early 1980s. The twenty-two Pacific Island States and territories are a highly diverse group of developing nations for which democracy and democratic practices are relatively new¹⁶. The constitution in some cases includes a right to information, but enabling laws have not been introduced. Only one, Cook Islands (population 11,700) has an RTI law. Tonga (100,000) adopted a government wide administrative RTI policy in June 2012. The Papua New Guinea National Anti Corruption Strategy 2010-2030 includes a commitment to enact comprehensive RTI legislation and to take other measures to promote disclosure, including by signing and implementing the Extractive Industries Transparency Initiative (EITI). Throughout this section the two parts of this region, Australasia and Oceania, will be analysed separately.

SWOT Analysis: Australasia

Australian and New Zealand national RTI laws emerged from public sector and public or administrative law reform initiatives, which were the subject of discussion and debate through the sixties and seventies. Legal academics, public sector reformers and a small group of civil society activists were key advocates at the time.

Lawyers engaged in public or administrative law, law and journalism academics, media organisations, and civil liberties, human rights and anti-corruption groups continue to contribute significantly to public discussion and debate on the issue, as do a small group of critics and commentators, bloggers and interest groups involved in issues such as social welfare, environmental and public health.

However, the absence of high profile civil society groups that focus solely or largely on RTI issues contributed to a long period through the 1980s to mid-1990s where excessive government secrecy, particularly in Australia, re-emerged despite the existence of a reasonable right to information law. Inquiries into the adequacy of the law by government law reform institutions promoted public discussion and debate in Australia in the mid-1990s and more recently in New Zealand. Media organisations and journalists played an important role in advocacy that led to substantial improvements in the RTI law in Australia in recent years. New activists around RTI, including ICT professionals with a focus on access to and use and reuse of digital information and data, have joined the open government cause in recent years.

The author

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Strengths

- Widespread public support and a strong, robust free press supporting accountable, transparent government
- RTI laws used to good effect by a wide range of community groups with special interests such as the environment, health and social welfare issues
- A strong history of professional public administration leading to officials who (mostly) accept and recognise the need to comply with the law
- Relatively recent positive internal leadership from information commissioners in Australia as a result of legislative change
- Access laws seen in broader context of government wide information policy and pro-active publication of data

Weaknesses

- No high profile, on-going civil society advocacy that informs, educates or shapes national discussion and debate
- Some State jurisdictions in Australia are yet to modernise laws first framed 20-30 years ago
- Legacy of a culture of secrecy is reflected in other laws, and in RTI implementation in some government agencies
- RTI laws are middle ranking in quality by international comparison, with considerable scope for improvement
- Charges for access and external review backlogs are issues particularly in Australia

Opportunities

- Interest in and initiatives on Open Data promote Open Government issues and ensure they remain on the agenda
- Australian membership of the Open Government Partnership renews interest in big picture reform and enlivens civil society
- There is a positive synergy between New Zealand and Australia in terms of following the leader

Threats

- A comprehensive review of Australian national RTI law currently underway sees government agencies arguing 'blow-back', citing cost, workload and other issues
- The Australian national election in September 2014 is likely to result in a tight rein on post election government expenditure regardless of who wins, with information access and review mechanisms already stretched for resources
- Reform prospects in New Zealand fade as the government put large-scale reform on the back burner in early 2013, declining to act on most Law Commission recommendations for changes to the law

SWOT Analysis: Oceania

Basic principles of democratic rule appear to be widely accepted and valued throughout the region. However, there are problems in this region as well. Papua New Guinea, by far the largest country in the region (7 million), has experienced periods of significant instability, hopefully brought to an end through a recent election. Fiji, the second most populous country (900,000), currently operates under military rule with a commitment to elections in 2014. The Solomon Islands, the third largest (580,000), is governed with the assistance of a regional assistance mission following the breakdown of government in 2003.

There are also some positive signs. RTI features in discourse among government and non-government actors. This includes consideration of constitutional and government reform, freedom of speech, freedom of the press and human rights generally, anti-corruption measures, and development, particularly concerning extractive industries and national resources.

Good governance and development goals are linked and referred to throughout the region as high government priorities. The main regional body, the Pacific Islands Forum (from which Fiji has been suspended), actively promotes and supports programs and initiatives for governance improvement including increased transparency and accountability. The Forum's Pacific Plan includes steps to 'bolster government and accountability institutions to enhance the transparency of political and economic processes' and action to promote human rights and strengthen oversight institutions such as anti-corruption agencies and auditor-general offices.

Aid donors including the UNDP Pacific Centre, AusAID and the Commonwealth Pacific Governance Facility support the good government goal through a variety of grants and country programs. The Pacific Islands Forum Secretariat, the UNDP Pacific Centre and AusAID organised the 2008 Freedom of Information for Pacific Policy Makers Workshop. The UNDP Pacific Centre has conducted national RTI awareness workshops for government representatives and parliamentarians in Solomon Islands and Palau, and included sessions on RTI as part of social accountability training for civil society organisations and government officials in Fiji, Vanuatu, Federated States of Micronesia and Samoa. The UNDP Pacific Centre Regional Anti-Corruption Project will also promote transparency and accountability through RTI.

NGOs are also active in the region. The Commonwealth Human Rights Initiative, based in New Delhi, has raised awareness about the importance of RTI, including through the publication of a report, **The Status of the Right to Information in the Pacific Islands of the Commonwealth**, in 2009.

Washington based Global Integrity, which focuses on corruption, conducted dialogues about key governance and anti-corruption challenges with civil society and other stakeholders in Vanuatu and Papua New Guinea in 2008, and Solomon Islands and Tonga in 2009. Corruption is a major concern in many countries in the region and transparency is seen as an important anti-corruption measure.

Initiatives to assist media organisations and journalists to improve investigative reporting skills and to play a role in promoting right to information have included the Pacific Islands News Association (PINA) 2009 Media Summit on Access to Information, and regional media training events in 2010 and 2011, organised by the UNDP Pacific Centre and the International Federation of Journalists, Pacific.

Strengths

- Governments, including the military regime in Fiji, acknowledge the importance of good government and transparent and accountable public administration
- Most governments accept the need to address widespread corruption
- Some interest has been shown in countries faced with major natural resource issues in the Extractive Industries Transparency Initiative
- Signs of strengthening media interest in regional and national advocacy concerning information rights
- Aid donors and non-government organisations are seeking to promote RTI as a pre-requisite to participation in local, provincial and national affairs
- Advances in telephone communication, radio, and social media use are increasing opportunities to improve information flows, and to assist those who seek to broaden awareness, discussion and participation in civic affairs including about RTI

Opportunities

- The 'good governance' agenda remains central to development with accountability, transparency and advancement of human rights part of the mix
- Official government aid donors and international NGOs remain committed to assisting development of this kind in ways respectful of the regional and cultural context
- The Tonga experiment with a government wide policy approach to improved access to information as a step towards legislation provides a 'pacific way'
- The Extractive Industries Transparency Initiative and interest in anti-corruption measures draw attention to the need for more and better disclosure of government information
- Regional ties strengthen and enable media organisations and civil society groups to lift the profile of RTI issues and concerns

The Pacific Freedom Forum is a regional network in the Pacific of journalists, academics and others committed to the defence and implementation of Article 19 of the **International Covenant on Civil and Political Rights (ICCPR)**¹⁷ and to raising awareness of, and advocacy for, the right of Pacific people to enjoy freedom of expression and be served by a free and independent media. In May 2012 the Federation of Journalists –Pacific, and the European Commission supported the Forum in publishing **Fragile Freedom**, a survey of media freedom in 12 countries in the region, including information about RTI issues.

Weaknesses

- Government performance throughout much of the Pacific, particularly at the local level, is constrained by limited technical capacity, public service infrastructure, political interference, and limited financial resources
- Formal record keeping and management has had a low priority throughout the region
- Differences in population size, spread and densities, history, culture, society, language, education, the stage of development, and available resources mitigate against regional one-size fits all initiatives
- Civil society, while visible and engaged at local community level, is less influential at regional and national level
- Legislative bodies are often ill-equipped to exercise effective oversight of executive branch agencies
- Transparency regarding the workings of the executive is not a well-established tradition
- Cultural contexts often discourage the questioning of authority
- Human rights advocacy, literacy and protection is not a high priority, central feature or concern in practice in many countries in the region

Threats

- The Fiji demonstration of 'strong man' government can deliver stability and development with few human rights strings attached, in contrast to the record elsewhere in the region
- The provision of 'no questions' assistance by China leads to resistance to the governance reforms advocated and assisted by democratic friends of the Pacific nations

Success Stories and Lessons Learned: Australasia

Hundreds of thousands of Australians and New Zealanders successfully use RTI and privacy laws to access information held by government agencies (for example concerning health, welfare and other benefits), or information about dealings with agencies such as the police, immigration, education, land use planning authorities, and in the case of privacy laws to correct or amend incorrect or incomplete government records. Most of these cases are not reported on in the media, but nevertheless relate to issues of public concern.

The main lessons learned from 30 years of experience with RTI in Australia and New Zealand are that the passage of an RTI law is the start, not the end of the journey; that a culture of excessive secrecy and caution concerning disclosure of government information will not easily or automatically change; that strong and ongoing leadership that reinforces the message is necessary at the highest levels of government; that speedy access to a respected independent external review mechanism is a vital element if such laws are to achieve their purpose; and that media, civil society and other stakeholders need to maintain vigilance as information access gains can be easily lost in practice.

Case Study - Australia

RTI for Investigating Foreign Bribery

Richard Baker and Nick McKenzie of **The Age** (Melbourne) have produced more than 60 exclusive reports on Australia's leading case of foreign bribery, a story they originally broke in May 2009 when they revealed that a subsidiary of the Reserve Bank of Australia had paid million-dollar commissions to win global banknote contracts. Their stories are still running having forced a parliamentary inquiry.

Baker and McKenzie's investigation involved RTI requests and led to the uncovering of a complex

money trail which spans Asia, Europe and Africa. The reports sparked raids, arrests and the creation of an Australian-British taskforce to investigate alleged bribery in three continents.

In July 2011, the Australian Federal Police publicly acknowledged the Baker and McKenzie investigation, saying the case sent "a very clear message to corporate Australia" about avoiding bribery overseas (see <http://www.walkleys.com/2011winners#all-media-investigative-journalism>).

Success Stories and Lessons Learned: Oceania

The Cook Islands experience to date suggests caution before rushing to adopt legislation from other jurisdictions without sufficient regard to cultural and practical issues that affect both the supply and demand side of the access to information equation.

The Official Information Act 2008 was largely borrowed from New Zealand, public awareness, training and records management issues were not addressed, and leadership and oversight functions were assigned to an underfunded and understaffed Ombudsman's office.

According to the **Fragile Freedom** report of May 2012:

The two years since gradual implementation of the OIA began have not provided much evidence of change to entrenched systems and public sector behaviour. The OIA remains a cumbersome and largely ineffective tool for local media, who have come dangerously close to losing confidence in its value. Media criticism of the law has ranged from the State's failure to invest sufficient resources in its ownership and awareness building, to perceptions that it is an awkward tool that suffers from a convoluted mix of conditions, such as delays and exemptions...

The Office of the Ombudsman has publicly acknowledged the persistence of a culture of secrecy within official circles. However, no attention is paid to investigating the deeper motives for persistent secrecy, and thus helping to lift the veil.

A different approach was taken in Tonga where, with support from the Commonwealth Pacific Governance Facility and UNDP Pacific Centre, a government-wide access to information policy was adopted as a step towards legislation. Action on this issue emerged from consideration of broader political and governmental reforms, including the first democratic election in 2010. The policy came into effect on 1 July 2012, following extensive consultation to promote awareness and support within government involving record managers and others, and with external stakeholders including media and civil society groups. The policy provides for proactive publication of a wide range of information and free access to other information by request. The oversight function is likely to be assigned to a previously unfunded anti-corruption commission. There is a commitment to legislate a proper RTI law in the future.

"The Office of the Ombudsman has publicly acknowledged the persistence of a culture of secrecy within official circles"

In Papua New Guinea, the constitution recognises RTI, subject only to the need for such secrecy as is reasonably justifiable in a democratic society. Thirteen years ago, Transparency International Papua New Guinea proposed a bill to give effect to this provision, but it has not been acted upon. The National Anti Corruption Strategy holds out the promise of action on an enabling law.

In Papua New Guinea and other resource rich countries, the Extractive Industries Transparency Initiative provides an opportunity for improved transparency regarding payments by resource companies to government and revenue received by those governments. Australia, through AusAID, has committed \$17.45 million (2007 to 2015) to the World Bank administered Multi-Donor Trust Fund and the EITI Secretariat to assist with this initiative.

'Spreading the word in Papua New Guinea's forests' by Alice Harrison in Papua New Guinea.

A government-civil society committee in Vanuatu is preparing legislation for cabinet consideration. RTI legislation has been mooted or discussed at various times in Nauru and Fiji, but this has not been acted upon to date.



Looking Forward

In February 2013, the New Zealand Government responded to a Law Commission report following a three year review of the Official Information Act, choosing to act only on a handful of the commission's 137 recommendations and indicating major reform was off the agenda for the time being. A comprehensive review of Australia's Freedom of Information Act commenced in November 2012, with a report due in 2013. The terms of reference seem skewed in the direction of questioning the positive but limited reforms undertaken in 2010.

In Oceania there are signs of stirring regional media interest in pushing for more and better access to information rights. Writing in *Fragile Freedom*, Forum Founder Lisa Williams-Lahiri issued this call for action:

At this point in time, a fractured and poorly managed Pacific media regionalism is itself providing the biggest threat to media freedom and FOI. We will always have our dictators and tyrants to deal with, but we need to set our house in order... Without a resourced and effective monitoring, advocacy and coordination effort owned and endorsed by all of us, from our different parts of the region, we will continue to remain in crisis mode. We will not be able to dream of excellence and standards outside the ad hoc pockets that do exist. We will not be able to hope to grow media literacy amongst our youth, leaders and communities so that the Right to Know is an accepted flip-side to the right to ask the taboo questions.

While media advocacy on RTI may often appear as self-interest flying the flag of the public interest, experience elsewhere suggests that the media can play an important leadership role, particularly in the absence of other strong external pressures on government to promote RTI.

Communication means and capabilities in the region are changing rapidly, new and old media are being more assertive, and civil society is building on strong traditional local roots. While global practices and experience remain relevant, progress on extending advocacy for improved RTI will depend heavily on ensuring that what is proposed is contextually relevant.

"We will always have our dictators and tyrants to deal with, but we need to set our house in order..."

**East and
Southeast Asia**

East and Southeast Asia



101-135	■	Countries with strong legal protection for the right to information
81-100	■	Countries with moderate legal protection for the right to information
61-80	■	Countries with poor legal protection for the right to information
0-60	■	Countries with very poor legal protection for the right to information
No score	■	Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

East and Southeast Asia

East and Southeast Asia comprises just 17 countries –namely the ten members of the Association of Southeast Asian Nations (ASEAN) and China, East Timor, Japan, Mongolia, North and South Korea, and Taiwan– but also contains tremendous diversity. The region defies generalisation with six of the 20 most populous countries in the world, and nearly one-third of the world’s population, but also some of the world’s smallest countries. The region also includes vast inequalities in both socio-economic and political terms: some of the world’s richest countries and also some of the poorest ones; some long-standing democracies and several countries that remain under tight authoritarian control; and countries with incredibly diverse and active civil societies while independent organisations are all but banned in others.

It is not clear how many civil society groups are working on the right to information (RTI) in East and Southeast Asia. Depending on whether we consider only organisations that focus specifically on RTI or those who support it as part of a broader strategy, the number probably ranges between 20 and 50 groups in most countries. The countries in this region with more active civil societies working on RTI are Indonesia and the Philippines, and to a lesser extent Cambodia, Malaysia, Japan and Mongolia. Limited civil society activity is also found in South Korea, China and Thailand, while there is very limited civil society activity on this issue in Taiwan, East Timor, Myanmar and Singapore. It is difficult or impossible for civil society to operate in North Korea, Laos, Vietnam and Brunei.

Seven of the seventeen countries in this region have RTI laws, starting with South Korea in 1996 and followed by Thailand (1997), Japan (1999), Taiwan (2005), China (2007), Indonesia (2008) and Mongolia (2011).

Some civil society activism around RTI dates as far back as the early 1980s, for example in Malaysia and Japan, but it is only fairly recently that civil society has become more active across the region. Thus, some of the earliest laws in the region –for example in Thailand– were adopted in a top-down fashion, coming from government with little civil society involvement. Civil society has been active on RTI in the Philippines, Mongolia, Indonesia and Cambodia for around ten years, and efforts have increased significantly in recent years.

There is a rough correspondence between the level of civil society work on RTI and the overall level of civil society activity, with Indonesia and the Philippines demonstrating particular strength in both sectors. For the most part, civil society activism in the region is spearheaded by NGOs which are funded as opposed to operating on a voluntary basis, with the funds coming largely from foreign donors.

The author

The East and South East Asia section of the Update was prepared by Toby Mendel, Executive Director of the Centre for Law and Democracy (CLD) (www.law-democracy.org).

SWOT Analysis

It is difficult to analyse overall strengths and weaknesses for a region as diverse as East and Southeast Asia, because there are so few characteristics which are common to all in countries across the region. The lists below are thus based on indicators that are found in at least a few countries and this also explains the presence of a few apparently contradictory points.

As noted, this region is so varied that it is very difficult to draw general conclusions. However, several countries have strong civil societies, and

Strengths

- Strong and diverse civil society movements
- Trend towards greater democracy and interest in being seen as doing well on openness
- Strong and growing popular belief in the importance of openness, in part based on governments of the past abusing secrecy
- Independent court systems
- Constitutional guarantees for RTI

Weaknesses

- Weak to very weak RTI laws
- Lack of democracy, poor respect for human rights
- Extreme restrictions on civil society
- Low levels of development
- High levels of corruption
- Weak regional relationships among civil society groups working on RTI

Opportunities

- Strong popular orientation towards technology
- OGP members or interest in joining
- Civil society groups working on a range of issues with potential interest in RTI
- Federal States providing an opportunity for progress at the sub-national level
- Regional organisation (ASEAN) with nascent human rights bodies
- Sense of being in a regional group and desire not to be left behind others
- Interest in open data and its economic potential

Threats

- Strong economic growth can lead to complacency
- Economic rollbacks could disrupt democratic progress
- Attacks on civil society and the right of association
- Risk of democratic rollbacks and presence of democratic instability

these are getting stronger in other countries. This is likely to be a key strength in terms of promoting RTI. Perhaps the most pervasive weakness is high levels of corruption across the region. This undermines RTI because those engaged in corruption have a very strong vested interest in secrecy. The weak relations among civil society groups is another weakness. However, this is something that could reasonably easily be addressed through programmatic interventions (i.e. by bringing groups together to forge closer relationships). In terms of opportunities, two of which special mentions are to focus on work at the sub-national level (i.e. among provinces and states within a country or even municipalities) and at the supra-national level (i.e. through the ASEAN).

Success Stories and Lessons Learned

The struggle for RTI in East and Southeast Asia can be roughly divided into two phases, advocating for a law and working on implementation of the law once one is adopted. As noted above, in several countries, laws were adopted without much civil society pressure, largely as top-down exercises. At the same time, in several other countries, strong civil society partnerships have emerged as centres of advocacy, in some cases resulting in the adoption of a law, while in other cases this remains a work in progress.

A key civil society strategy in this region, also witnessed in some other regions, has been the development, by key civil society actors focusing on RTI, of wide civil society coalitions working together to create broad pressure for the adoption of RTI laws. This has happened, for example, in Japan, Indonesia, the Philippines, Malaysia and also to some extent in Cambodia and Mongolia. Working collectively, these groups have been able to achieve far greater successes than might have been possible working alone. In many cases, these national coalitions worked in solidarity with international groups, and with support from the international community, to achieve their objectives.

Another civil society approach that has been reflected broadly in the region has been the development by civil society of draft legislation. In some cases, including Mongolia, the Philippines and Malaysia, governments have built on civil society drafts to present their own versions, while in other cases, including Japan and Indonesia, civil society drafts have influenced government versions.

Another interesting feature of the region is that many countries have seen sub-national laws adopted first, gradually creating the necessary pressure for the adoption of national laws. This has happened, for example, in Japan, China, Indonesia and Malaysia (where a national law has still not yet been adopted). The need to control corruption, rampant in many countries in the region, has also been a strong driver for the adoption of RTI laws.

The need to control corruption, rampant in many countries in the region, has also been a strong driver for the adoption of RTI laws

Many countries in the region have witnessed extremely long campaigns for the adoption of RTI laws

At the same time, many countries in the region have witnessed extremely long campaigns for the adoption of RTI laws, which in some cases have still not resulted in success. Thus, it took some 20 years for campaigners in Japan to have a law adopted, while campaigns in Indonesia and Mongolia took around ten years. Campaigns have also been ongoing in the Philippines, Cambodia and Malaysia, also for around ten years, so far without success. Success seemed imminent in the Philippines, with the apparent support of President Aquino, but this appears to have been more for show than for real and no law was passed in the 15th Congress, which came to an end in early 2013.

In Japan, one of the greatest campaigning successes was the creation of public support through the exposure of corruption relating to **shokuryohi** or 'food expenses'. Interestingly, lawyers played a key role in the campaign, using local rules providing for openness to investigate suspicious expenditures and setting up a network of 'citizen ombudsmen' to investigate these wrongdoings. The campaign, which originally started in Sendai, a city which had been plagued by corruption, touched a nerve as people were outraged over abusive entertainment expenses, especially during a period of fiscal austerity in the country. Over time, this broad popular support fed into a wider campaign to create the necessary pressure to adopt national legislation.

In Mongolia, the creation of a wider network and raising awareness by that network is credited as being one of the key successes. Once the network started its activities, civil society more generally began to demand the adoption of an RTI law. The Mongolian network also worked closely with parliamentarians, another key success strategy. However, the extremely long campaign meant that the process of awareness-raising had to be undertaken anew after each election and subsequent significant change of parliamentarians. It was also a challenge to keep raising funds for the work over such a long period of time.

In Malaysia, again, the approach was to build a strong civil society coalition to push for the adoption of RTI legislation. The group faced a significant challenge in the form of a complete lack of interest in the issue on the part of the main national governing coalition, the Barisan Nasional (BN). The coalition had been focusing its advocacy attention on the adoption of a law in the state of Kelantan prior to 2008. However, when BN lost control of five states in the 2008 elections, the coalition immediately took advantage of this. It worked with the governments of Selangor and Penang, helping them prepare legislation and undertaking advocacy efforts alongside this, contributing to the adoption, by Selangor, of an RTI law in April 2011.

In terms of implementation efforts, the recent vintage of many of the laws in the region means that efforts are still fairly nascent. Some initial

Case Study - Philippines

Campaigning for RTI in the Philippines

In the Philippines, one of the campaigning successes has been the creation of a very broad-based movement, currently boasting over 150 members, the **Right to Know. Right Now!** Coalition. The campaign overcame some initial resistance from key sectors, including the media, which originally feared that the adoption of an RTI law would undermine their traditional sources of information. In addition to recognising the importance of RTI and supporting the adoption of a law, the campaign has been able to build a good level of appreciation of the nuances regarding RTI, which has helped with advocacy around specific issues with government. This has been developed through a series of outreach and awareness-raising activities, initially organised by the central campaign but then spreading outwards and downwards through the activity of member organisations.

Another success factor in the Philippines has been the utilisation of a good combination of activist forms of campaigning on the one hand, and high level direct engagement in/access to formal processes – such as legislative processes and formal dialogues with

the executive– on the other. Thus, the campaign has worked directly with Congressmen and Senators to develop and improve RTI legislation, and with the office of the President to build support for the law, while also fostering direct action, for example in the form of demonstrations and popular campaigns.

Finally, the campaign has been able to engage in a positive way with the international RTI community, while maintaining its independence. This led, among other things, to the presentation of a letter with nearly 90 signatures from groups and individuals from around the world to the Philippine President and Congress in July 2012, urging them to adopt an RTI law urgently (available at: http://www.law-democracy.org/live/wp-content/uploads/2012/08/12.07.19.Phil_FOI_let_final.pdf).

Unfortunately, despite the strength of the campaign and its high level of international support, the government of the Philippines has failed to take the necessary steps to see an RTI law adopted in the country.



'Right to Information Demonstration' by 'Right to Know. Right Now!' Coalition in the Philippines.

One of the key challenges for civil society is the region's incredible diversity, which touches almost every aspect of life

successes in Thailand were followed by serious backsliding by the Thaksin government, and the virtual abandonment of the law by civil society and the media. In South Korea, extensive litigation, including by civil society groups, has played an important role in promoting strong implementation of the RTI law, and the same is true in Japan.

Some of the most extensive civil society activities around implementation are found in Indonesia, where civil society started to get more involved after the law was adopted in 2008, and especially after it came into effect in 2010. Although progress has been slow, it has also been steady. Civil society efforts, including a major programme by the Centre for Law and Democracy in collaboration with local civil society organisations, now include a significant component of outreach to a wider network of civil society organisations and media outlets to encourage them to use the law more widely. They also include supply side interventions, notably in the form of training programmes for officials, working with public bodies to assess implementation challenges and then to address them, and various forms of support for the network of information commissions across the country, including studies relating to their work, for example providing comparative material on the application of exceptions.

Looking Forward

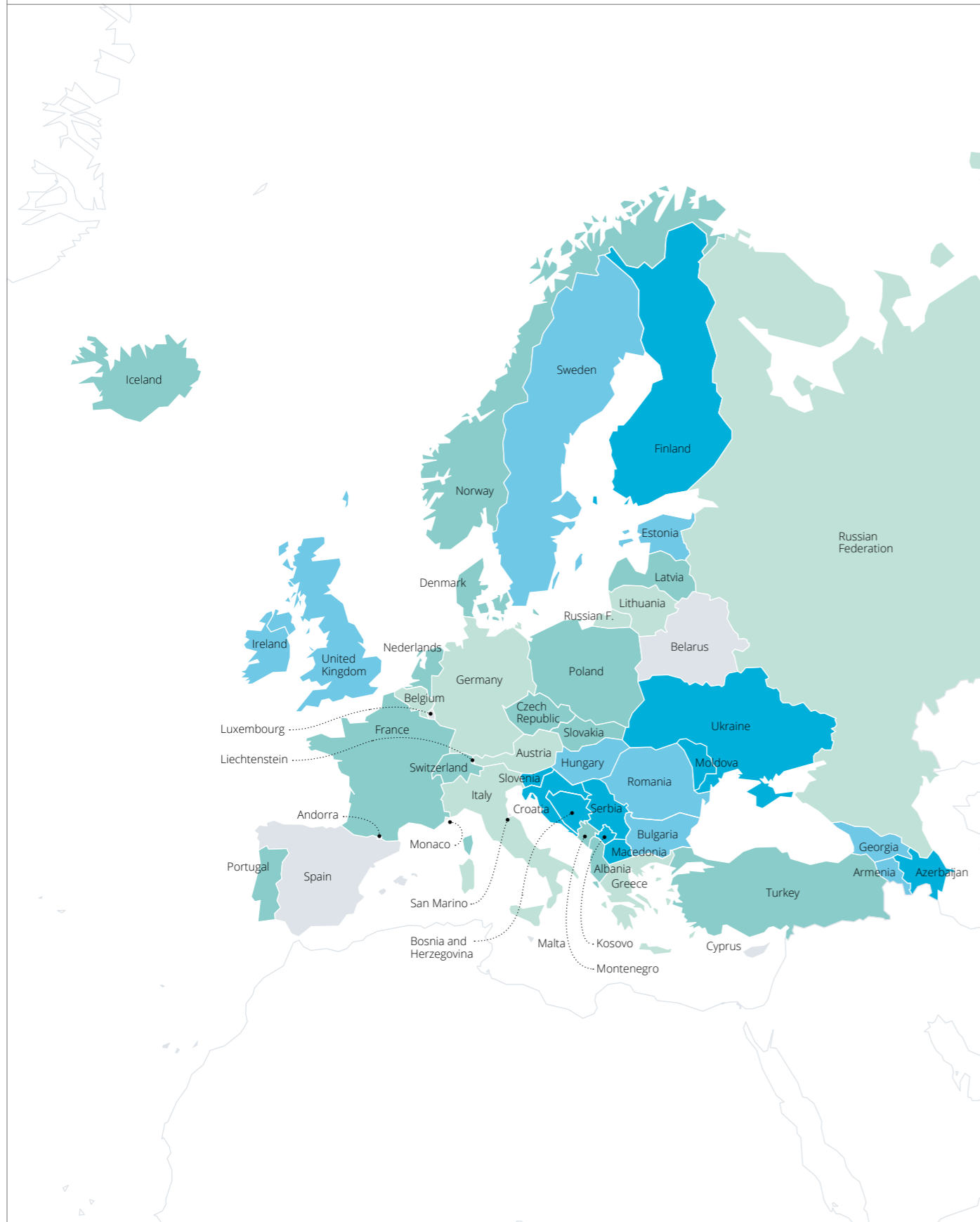
There has been a strong growth in civil society working on RTI in the region, at least in those countries where such a focus is possible (i.e. outside of the most repressive countries, such as North Korea, Vietnam and Laos). This has led to the adoption of RTI legislation in seven countries which, although less than one-half of the total of 17 countries in the region, is still impressive given the huge political barriers.

One of the key challenges for civil society is the region's incredible diversity, which touches almost every aspect of life. Despite this, more could be done to bring leading civil society groups working on RTI in the different countries together so that they can learn from each other and provide mutual support. There is also a need to undertake further outreach work to continue to build and strengthen demand-side activity in countries with RTI laws, along with advocacy for the adoption of a law in the other countries. Perhaps the greatest need, however, is for civil society to try to form constructive relationships with public bodies to help build their capacity, and break down other barriers to supply side activity on RTI.



Europe

Europe



101-135	■	Countries with strong legal protection for the right to information
81-100	■	Countries with moderate legal protection for the right to information
61-80	■	Countries with poor legal protection for the right to information
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No score	■	Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

Europe

The wider Europe region, which stretches from Iceland in the Northwest to Azerbaijan in the Southeast, comprises 49 countries of which 42 have RTI laws (those that don't are Belarus, Andorra, Cyprus, Luxembourg, Monaco, San Marino and Spain). The two main political groupings in the region are the 27 States which form the world's most integrated supra-national body, the European Union (EU), and the 47 member States of the Council of Europe (CoE). The Organisation for Security and Cooperation in Europe (OSCE) reaches beyond European borders to include the United States, Canada and the Central Asian States.

Historically, Europe has often been considered to be the cradle of democracy, although political progress has suffered frequent and significant setbacks, including the two World Wars, which devastated Western Europe in the 20th century, and the Cold War, which divided Europe on either side of the 'Iron Curtain'. The 21st century has brought a range of new challenges to democracy, including the 'war on terror' and the recent financial crisis.

The right to information has historic roots in Europe. The world's first RTI law was passed in 1766 in Sweden, thanks to the recognition that the press needed to access information held by governments in order to be able to report on their activities.

Civil society activity, however, and the recognition of the right in most of Europe, developed much later. A significant early call for recognition of RTI in Europe was the founding of the Campaign for Freedom of Information in 1984 in the United Kingdom. This was greatly inspired by the adoption of RTI laws in Australia, Canada and New Zealand, all in 1982.

Civil society advocacy for the right to information in East and Central Europe was only really possible after the fall of the Berlin Wall. Having experienced control of information by governments under authoritative communist regimes, emerging civil society in Central and Eastern Europe were quick to call for the right to information. In 1992 the right was recognised in Hungary due to effort by pre-1989 dissidents who later became activists and government representatives. The first organisation dedicated to working on the right to information in East and Central Europe was the Access to Information Programme in Bulgaria, which started in 1996. Significantly, the Freedom of Information Advocates Network was founded at a meeting held in Sofia, Bulgaria in 2002, a sign of the activity in the region.

In contrast with the civil society activism around RTI in Central and Eastern Europe, the early development of RTI laws in most of Western Europe was not initially accompanied by civil society activity. In the late 1970s, France and the Netherlands developed laws later recognised as right to information laws, although they were designed primarily to increase administrative efficiency in the relationship between citizens and State.

The authors

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*'Curiosity in discovering the world'
by Karen Sukiasyan in Armenia.*

Laws giving limited access to administrative information by articles on access to information embedded in general administrative codes were put in place in countries such as Greece.

In Southern Europe, some people link the lack of transparency to experiences of right wing authoritarian dictatorships well into the 20th century, although the status quo is now being challenged. The establishment of the regional organisation Access Info Europe in Spain in 2006, has contributed to a strong civil society campaign on RTI, in particular in Spain, while the first dedicated RTI group in Italy, *Diritto di Sapere*, was founded in 2012. Open data activists in Austria are now engaged in promoting a stronger RTI law there, and in France new groups are forming around transparency and participation issues.

Some Northern and Western European countries are characterised by relatively higher trust in government, which has led to lower levels of civil society attention to issues of anti-corruption and transparency issues in recent decades. In countries such as Switzerland and Germany, despite a relatively open administrative culture, RTI laws were only adopted recently (2004 and 2005 respectively). Among other factors, however, the growing Open Data movement and the increasing awareness of the need for anti-corruption measures in Western Europe have contributed to expanding awareness of, and demand for, access to information.

The countries where RTI is most difficult remain those where democracy is least developed or struggling, notably Azerbaijan, Belarus and Russia. Belarus does not have an access to information law, and 2012 has seen the government of Azerbaijan undercutting the RTI law. In Hungary changes to both the RTI law and the constitution in 2011 have resulted in significantly weakened protection for the right in a country which had been a pioneer after the fall of the Berlin wall (Hungary was the first country in the region to have an access to information law in 1992). These examples underline the need for constant civil society vigilance and action to defend this core democratic instrument.

SWOT Analysis

The current situation of civil society advocacy on RTI in Europe cannot be separated from the wider political and economic context of the region. At times, it is the very strengths of the region that lead to difficulties for civil society and the development of RTI. The relatively strong democratic context can diminish perceptions of the urgency of reform, and this can lead to difficulties in securing financial support for civil society.

In Eastern Europe, many countries are still struggling to overcome the cultural and political heritage of the communist period, including the culture of secrecy. In countries accustomed to excessive bureaucratic formalities, such as France, Portugal and Italy, public bodies are sometimes unwilling to respond to email requests for information, making the process unnecessarily lengthy and costly.

Europe is now experiencing movement and change. The economic problems which have dominated the agenda for most European governments since the start of the financial crisis in 2008 and austerity programmes are affecting civil society groups which depended on government funding. In addition to reduced opportunities for funding, civil society often needs to defend more rights which are increasingly being put at risk as European governments prioritise economic growth over social and democratic protection.

This context does, however, bring new opportunities, including the support for anti-corruption and transparency measures by the large citizen and social movements springing up across the continent. As citizens are told there are fewer public resources, they become ever more concerned that these are not lost to malpractice and corruption.

Civil society in Europe working on RTI is perhaps more interconnected than ever, and is creating new networks and ways of working together. Just one example of this is the activity around the issue of open government data, where a community of on-line activists has joined with those working on RTI to maximise the transparency opportunities offered by the Internet.

Strengths

- Largely stable democracies
- High levels of education and engagement in political debate and decision making
- High level of access to the Internet and internet literacy
- Active support from some governments, as part of the open data movement
- Strong independent review bodies in some countries (Germany, Ireland, Portugal, Scotland, Serbia, Slovenia, Switzerland and the UK) as well as effective Ombudsman oversight in Nordic countries and the EU
- In Central and Eastern Europe, RTI is highly valued by citizens who have experienced life under repressive governments
- There has been a long history of respect for RTI in parts of Northern and Western Europe (e.g. Sweden and Finland)

Weaknesses

- Significant problems often exist regarding implementation of RTI laws
- Closed administrative culture in some Southern European countries
- Confidence in democratic systems can lead to complacency in some countries
- Lack of freedom of expression in some countries (with deteriorations in Azerbaijan, Hungary, Russia and Turkey)
- Limited scope of RTI: some countries and the EU restrict access to 'official documents' rather than 'information' and in some the right does not fully apply to legislative and judicial branches (e.g. France, Germany)
- Civil society is weak and CSOs have difficulty raising funds for work related to democracy

Opportunities

- Financial crisis draws more attention to need for transparency
- Financial crisis has opened debate about corporate transparency thus pushing the boundaries of RTI to include non-State actors
- Concerns about a 'democratic deficit' in the EU may lead to new impetus to improve transparency mechanisms to build participation
- Governments are increasingly making use of the Internet to disseminate information
- Civil society movements are using ICTs to make governments more transparent (e.g. the Alaveteli information request platforms)
- Civil society is increasingly collaborating across borders, including via making international information requests
- Transparency and corruption are important issues for social movements
- Open Government Partnership offers new advocacy platform
- Some strong national CSO organisations and coalitions

Threats

- Privatisation of public bodies and services taking them outside of the ambit of RTI laws
- New economic imperatives for rapid decision-making across countries may weaken political will for RTI
- Negative impact of government spending cuts on bodies in charge of responding to requests.
- Difficulties faced by the media including concentration of ownership and limited funds for investigative journalism
- Difficulties in showing impact of RTI work, including because civil society often does not find out how information has been used once access has been gained

Success Stories and Lessons Learned

In recent years, civil society in Europe has developed various ways of working which have led to some significant achievements in advancing RTI. A principal area of civil society impact has been legal recognition of RTI. A large number of European constitutions recognise RTI as a fundamental right, along with the EU, where RTI has been enshrined in the European Charter of Fundamental Rights since 2009.

An important success factor has been the combination of strong national coalitions alongside the use of international expertise and networking to promote best practices. Groups such as the Campaign for Freedom of Information in the UK, the Coalición Pro Acceso in Spain and Platform 112 in Croatia typically engage civil society groups working on a range of social issues, as well as unions and consumer groups.

Coalitions both help to create a broad support base and also raise awareness and use of the right once a law has been adopted. Coalitions, often formed to campaign for the adoption of laws, have in many cases moved on to promote better implementation and improved legal protection. For example, Platform 112 led a highly successful campaign resulting in the recognition of RTI in the Croatian constitution in 2010.

Europe is the only region of the world where a significant proportion of laws and policies are set at the supranational level, by the European Union. This makes access to information beyond national borders crucial. The EU has recognised a fundamental right to information (Lisbon Treaty 2009) but 2012 saw threats of back-tracking on regulation 1049/2001¹⁸ which implements this right, although EU-focused CSOs have so far been successful in preventing this.

Within the Council of Europe, significant progress has been made in recent years in the form of the adoption of the first binding treaty on RTI, the Convention on Access to Official Documents, on 18 June 2009. To date the treaty has been signed by 14 countries and ratified by six; it will come into force when there are 10 ratifications.

Litigation has been another important tool in defending and promoting RTI in Europe. In a 2009 case brought by the Hungarian Civil Liberties Union against Hungary, the European Court of Human Rights recognised the right to information as part of the wider guarantee of freedom of expression. The judgement noted the particular importance of disclosing information to civil society.

Monitoring and comparative analysis have also been used across Europe. Laws have been monitored and rated, hundreds of requests have been made as part of practical monitoring efforts, and information on websites

RTI has been enshrined in the European Charter of Fundamental Rights since 2009

A new and growing area of campaign work is that of open government data

has been checked to assess proactive transparency. Information request monitoring is also helping link RTI with campaigning on other issues. For example, the Transparency International Secretariat and Access Info Europe conducted a monitoring in 20 countries to find out more about the implementation of the UN Convention against Corruption, linking RTI work to the anti-corruption agenda (Tell us What You've Done, October 2011).

A new and growing area of campaign work is that of open government data. RTI groups are increasingly collaborating with groups working on open government data, and governments are also increasing their efforts in this area. The beginning of 2012 witnessed active CSO participation in the Open Government Partnership (OGP), an international multi-stakeholder initiative founded by the Presidents of the United States and Brazil, which currently has 59 Participating States. Many CSOs in Europe have been actively engaged in preparing national OGP Action Plans, and now plan to monitor implementation of those Plans. For example, in Ukraine, the creative union TORO initiated a coalition of 34 organisations to prepare proposals for the country's action plan.

Finally, perhaps one of the most significant changes in the way civil society and citizens use RTI has been due to an outburst of online request sites through which requests can be made and responses can be received and seen publicly. These have been spearheaded by the group MySociety which developed the Alaveteli software behind the UK website WhatDoTheyKnow.com and has been replicated in a range of contexts in collaboration with other specialist RTI groups such as Access Info Europe (at the EU level with AsktheEU.org, as well as in Spain, Bosnia, Kosova, Lithuania, Hungary, and in Latin American countries including Brazil, Chile and Uruguay).

'Debate for the right' by Tatevik Vardanyan in Armenia.



Case Study - Spain and The European Union

Mar Cabra: Exposing the Misuse of Public Funds

In 2011, when 27-year-old journalist Mar Cabra returned to her native Spain after two years in the United States, she was shocked to find that no equivalent to the US Freedom of Information Act existed back home. Working with Access Info Europe, the International Consortium of Investigative Journalists and other local investigators and activists, Mar turned to the EU access to documents regulation.

Spain is one of the biggest recipients of EU fishing subsidies, and Mar made requests for information about how this money had been used. The fishing industry in Spain is well known for rule breaking and many had suspected for some time that EU subsidies had been abused to subsidise illegal fishing and corruption. Mar requested communications between the European Commission and Spain about a Spanish ship owner who had received more than €8.2 million in subsidies, even though his company and its affiliates had been charged with US\$5 million in fines and had faced more than 40 accusations of illegal fishing.

Government departments in Spain refused to provide the information, basing their refusal on Spain's deficient legal framework. The EU's Directorate-General for Maritime Affairs and Fisheries, however, provided her with all the correspondence that they had sent to Spain about that company. The EU correspondence revealed that the company was being investigated for recent alleged illegal fishing. This contradicted company claims that illegal fishing

allegations were a thing of its past. Armed with the EU correspondence, Mar convinced the company, which had not previously spoken on the record, to speak directly to her, adding a first-hand account of one of the owners to her investigation.

The result was a story in **El País**, Spain's largest national newspaper, which highlighted how fishing companies engaged in illegal activity continued to receive public funding. The issue was later investigated at the EU level and is currently being reviewed in the new EU Common Fisheries Policy.

Convinced of the value of RTI, Mar has gone on to campaign for RTI in Spain, and during 2012 worked as director of a new pro-transparency organisation, Fundación Ciudadana Civio. When asked about the importance of the letters from the EU, Mar noted: "This experience has played a tremendous role in my life not only personally as a journalist, but also now, as a campaigner. It would be impossible to convey to other journalists here in Spain the power of access to information if I had not had my own experience of getting access to information and then having my work featured in a top newspaper."

Mar's story is available at: <http://www.icij.org/projects/looting-seas-2/spain-doles-out-millions-aid-despite-fishing-companys-record>.

The financial crisis has opened up a huge debate in Europe around public and corporate accountability

Looking Forward

Civil society has taken some great steps forward in recent years in Europe. To ensure that progress continues, civil society will need to address threats to transparency such as the financial crisis and, with it, the potential rise of populist, less democratic governments in a number of countries. Civil society will also need to campaign to prevent RTI being denied through privatisation of the functions on public bodies or cuts in government spending.

Dangers can also be opportunities. The financial crisis has opened up a huge debate in Europe around public and corporate accountability. Civil society has to ensure that RTI remains central to this debate and that progress is made on corporate accountability. Right to information CSOs will need to work with and support allied sectors such as independent media, and other sectors of civil society, such as open government data, anti-corruption and human rights groups. Comparative analysis and monitoring across the region is not yet comprehensive, so, in order to better target their efforts, civil society should work towards getting a clear picture of how the right to information is working in practice.

Finally, weaknesses should be addressed. Sustainable funding is a huge issue in a continent which is usually at the bottom of the list for international donors. Civil society should attempt to protect itself from vulnerability to sudden funding shortages. Impact also needs to be better recorded and presented. This may need to include finding ways to connect individual requesters to civil society in order to better communicate how work on RTI is assisting Europeans in their everyday lives.

**Middle East and
North Africa**

Middle East and North Africa



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No score	■	Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

Middle East and North Africa

The author

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The Arab World: Is it the RTI Spring?

The Arab world is a mosaic of cultures and presents a diversity of socio-economic and political conditions. The 21 Arab States plus the Palestinian National Authority have in common the Arabic language, geographic proximity, Islam as a dominant religion, and the authoritarian political regimes which ruled for several decades resisting change and crushing many basic human rights and freedoms. Lack of political freedom in the Middle East has been associated with high levels of inequality and restricted economic opportunities, and youth unemployment is now at a record high.

In 2011, a new dynamic of change swept many countries in the region, popularly known as the ‘Arab Spring’. This gave hope to millions of people who aspired to regain their dignity and freedom, and the right to freely choose their governments. There are now great expectations for these new governments to respect human rights, including the right of everyone to access information.

RTI is a new right in the agenda of civil society organisations. The first organisations to deal with RTI were press unions, particularly in Egypt and Morocco. While their advocacy was limited to demands that RTI be guaranteed in the press laws, this represented a starting point for advocacy in the region. Later on, NGOs started to get more involved on this issue. In 2005, the first advocacy for citizens’ RTI was launched in Morocco and Jordan. This was followed by the first regional programme, Arab Freedom of Information Network (AFOINET), in 2008, which brought together NGOs from Bahrain, Egypt, Palestine, Lebanon, Morocco and Jordan.

The number of organisations that have implemented dedicated projects on RTI in the Arab world does not exceed 20. These can be found in Morocco (5), Egypt (2), Lebanon (5), Bahrain (1), Kuwait (1), Yemen (2), Iraq (2) Jordan (2), Palestine (1) and Tunisia (1). Of these, the number of organisations dedicated solely to the issue can unfortunately be counted on one hand. A new initiative led by the World Bank was launched in March 2012, and aims to strengthen capacity and build a regional dialogue between civil society in Jordan, Lebanon, Morocco and Tunisia. Numerous countries in the region –including Algeria, Libya, Saudi Arabia, United Arab Emirates, Qatar and Oman– have no civil society group working on RTI.

The Arab blogosphere and citizen media often circulate reports and articles on RTI issues when they are published by NGOs. However, although slogans against government corruption and the lack of transparency were popular during the ‘Arab Spring’ protests and marches in some Arab countries, this has not yet led to citizen groups, student groups or social movements playing a major role in advocating for RTI.

Thanks to the Arab Spring, the overall political situation in the region has now matured and presents an opportunity for local NGOs

The groups that do exist have started to conduct activities such as: training of NGOs or journalists on RTI principles (Palestine, Yemen); lobbying government to adopt and implement RTI laws and constitutional provisions (Tunisia, Lebanon, Morocco and Iraq); formulating and debating a model law and constitutional provisions (Egypt); and lobbying for reform of the law (Jordan). However, these groups face a challenge inasmuch as RTI is a complex issue that most people do not understand. Also, due to their recent emergence, these NGOs have not yet been able to connect as much as they might wish with groups working in other sectors who might support their advocacy efforts. As a result, much remains to be done to establish strong national coalitions.

SWOT Analysis

The development of RTI advocacy in the region is very recent and is led by a few organisations, so it is premature to conduct a comprehensive evaluation. It would be more realistic to speak about the history of engagement between international organisations and local civil society which has just started to establish the foundations of an advocacy movement. Thanks to the Arab Spring, the overall political situation in the region has now matured and presents an opportunity for local NGOs to push for RTI to be a priority in the reform agendas of different countries.

The international community's commitment to assist this transition is also a strong factor of strength and opportunity for regional advocacy. However, civil society also has to deal with its own weaknesses, most importantly its difficulties in reaching out to other sectors of society. Threats to RTI advocacy are still present in many countries, especially those where rulers do not tolerate any questioning of their position or the way they manage public affairs, or where the bureaucratic machinery resists modernisation due to the benefits of secrecy in terms of hiding illegal corruption.

Strengths

- The Arab Spring bringing radical changes in governance in many countries
- People rising against corruption and bad governance
- High levels of access to the Internet and communication technologies
- Some governments have adopted RTI laws and others are debating draft laws
- Many NGOs are aware of the need for regional cooperation
- Inter-governmental organisations and private foundations are supporting NGOs (World Bank, UNESCO, USAID and EU)
- Many international NGOs support RTI through training, awareness raising and critiquing draft laws
- Local media supporting advocacy for RTI
- Existence of a number of individual experts

Weaknesses

- Dependence on short term and fluctuating foreign funding
- Limited geographical scope of regional coalitions
- Many important human rights groups are not aware of RTI or hesitant to promote it
- Absence of independent civil society in many countries
- Failure to link RTI with other rights such as the environment, health, housing and employment
- The public does not understand the link between RTI and realisation of rights and needs
- Other actors, such as trade unions, political parties, businesses, lawyers and sector specific groups are not yet involved in RTI advocacy
- Absence of local literature on RTI

Opportunities

- Arab Spring in many countries leading to demands for change
- Pressure on governments by international financial institutions to adopt RTI (i.e. World Bank)
- Impact of the Open Government Partnership (OGP) which will isolate governments that refuse to adopt RTI laws
- Continuing commitment of some international NGOs and funders to supporting RTI advocacy
- Media support for RTI
- Information and communication technology is facilitating exchange and dialogue
- A few new democratically elected governments are leading the way which could inspire others

Threats

- Theocratic rulers with significant economic wealth and influence oppose transparency
- Huge power of the bureaucracy, the culture of secrecy and widespread corruption
- Long tradition of human rights violations, including freedom of expression and association
- Emerging radical Islamist political organisations
- Political instability and sectarian strife
- Draft RTI laws have been prepared without input from local NGOs but with technical assistance from International Governmental Organisations (IGOs)
- Risks for civil servants who release classified information
- Legal protection of whistleblowers nonexistent or ineffective

Success Stories and Lessons Learned

There are too few success stories on RTI in the region. Three countries have adopted RTI laws –Jordan in 2007 followed by Tunisia in 2011 and Yemen in 2012. Morocco was the first country to integrate a provision on RTI in its Constitution in 2011. The examples of Morocco and Yemen can be considered success stories for civil society groups who played an important role calling for these measures. In Jordan and Tunisia, the laws were adopted without civil society involvement, although now a small number of groups are advocating for reform of the ineffective RTI law in Jordan and for proper implementation of the RTI law in Tunisia. In Egypt, the government has established a consultative group involving officials and civil society to prepare a draft RTI law for adoption by parliament.

'My right to listen to any orator, his duty to be honest' by Piruzha Khalapyan in Armenia.



In Lebanon, Iraq and Palestine, civil society groups are struggling to push for the adoption of draft laws by the legislature. The abolition of the Palestinian parliament presents a particular challenge, with the only option for adoption being a presidential decree. In Iraq, slow progress is being made with NGOs forming part of a State commission who are in the process of making final edits to a draft law.

There are other success stories that can be identified looking back at how advocacy has developed in the past seven years:

- RTI is no longer perceived solely as a privilege handed out by governments to journalists to facilitate their coverage of State activities. It is now increasingly understood as a human right enjoyed by every individual regardless of his or her place of residence or social status.
- Many dedicated NGOs now exist and have produced reports and studies on RTI, both in itself and in relation to other sectors such as business, the environment, Parliament and the media. They have also carried out training activities directed at other NGOs, officials and the media.
- NGOs from a number of Arab countries are attempting to establish a regional coalition for exchange of information and expertise. There is a strong belief that regional cooperation would advance the human rights agenda and bring in isolated countries.
- Last but not least, more international non-governmental organisations, national governments, NGOs and funders are now assisting governments and civil society to develop their expertise and carry out their activities. The outside world is keen to see the transition of these societies lead to transparent and accountable governments and to see citizens exercising their right to know what their governments are doing in their name.

An important challenge is for NGOs to understand the complexity of RTI and to communicate it in a way that people understand. RTI is not just a right we advocate for, it is a key to new governance, so once adopted, NGOs must understand how it should transform the workings of the State and its relationship to citizens.

RTI is no longer perceived solely as a privilege handed out by governments to journalists

Looking Forward

RTI in the region is also having its own 'Spring'. It is one of the major demands for reform of the State institutions in countries that have gone through radical changes or have adopted significant reform policies. Secrecy and corruption are perceived as the pillars of the old regimes, so transparency and accountability are called for as the foundation of new governments. RTI is now understood by many as the key to the democratic transformation of government.

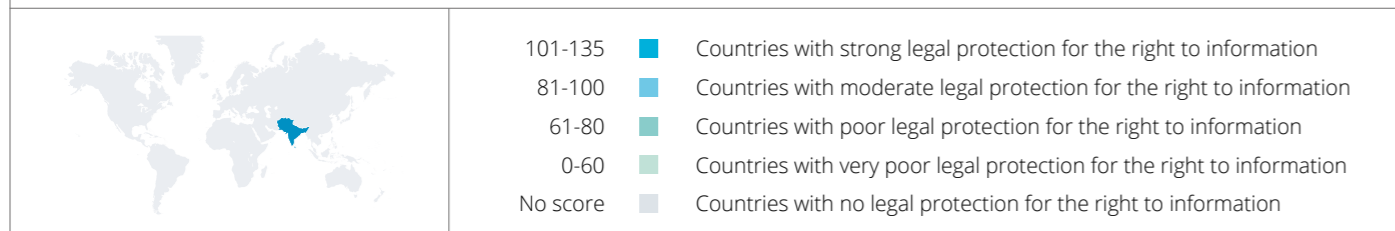
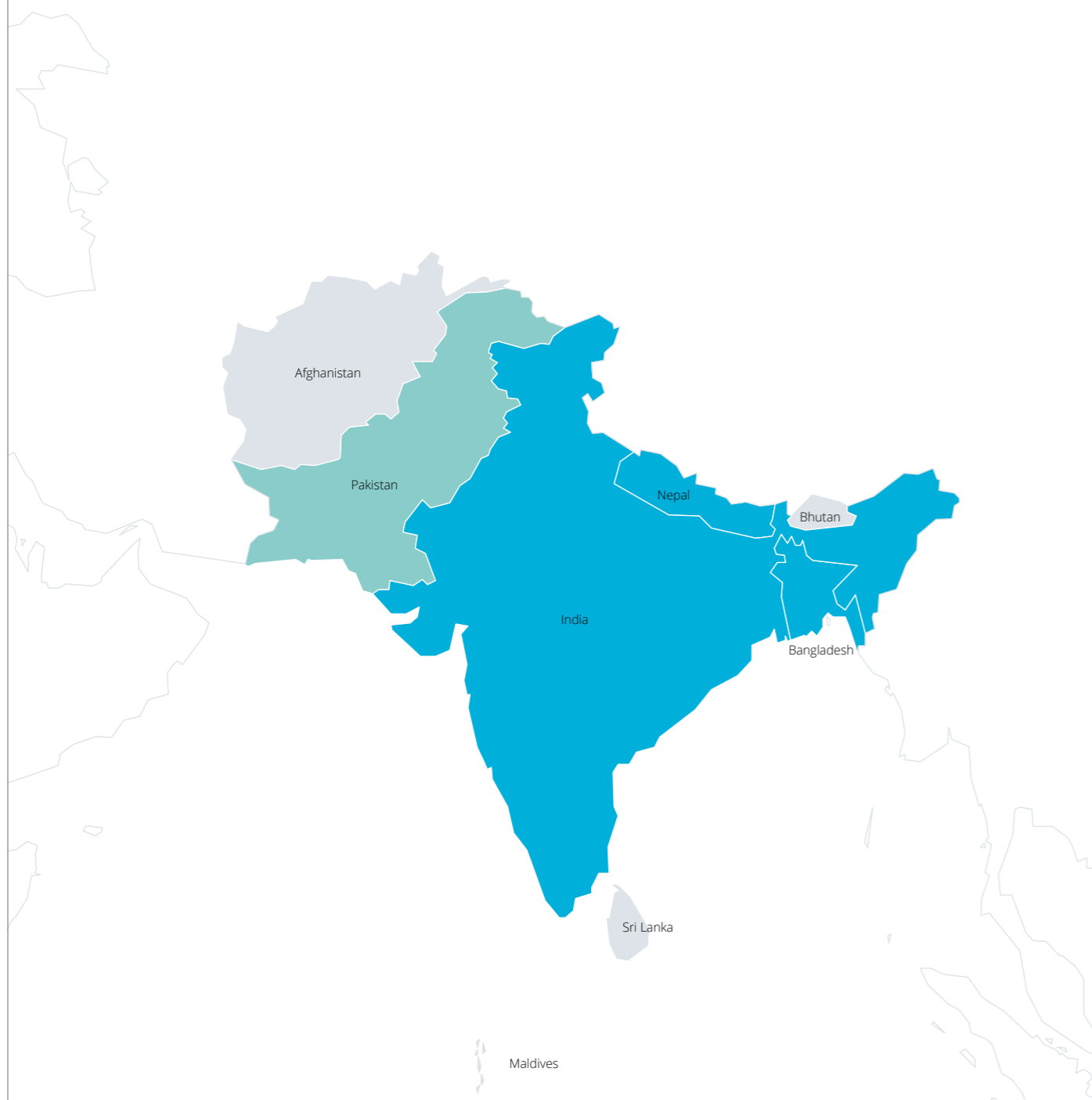
Strategies for change are linked to, and often limited by, the capacity to translate them into long term operational projects with secure funding. RTI is still in its infancy, however, and there is much potential. In order to make progress towards a real recognition and enjoyment of RTI future advocacy efforts could consider adopting new strategies such as the following:

- Formation of strong national coalitions involving dedicated stakeholders such as media and businesses, as well as popular social organisations, political parties and trade unions.
- Conduct research that addresses the information needs of different sectors of society and link RTI to the needs of the poor, vulnerable and marginalised groups in society.
- Encourage lawyers and academics to be involved in RTI research and advocacy. It is important to build a pool of national and regional experts for future activities such as evaluation and litigation.
- Raise public awareness about the links between RTI and other economic, social and cultural rights.
- Regional advocates should collaborate to build bridges with NGOs and media in countries where governments resist change.



South Asia

South Asia



Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

South Asia

The eight countries in South Asia –namely Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka– are all members of the South Asian Association for Regional Cooperation (SAARC). The region is characterised by high levels of poverty and high overall population density, as well as strong recent economic growth and a mixture of more and less democratic States.

While there are no definite figures available, India has the largest number of civil society groups working on right to information, more than any other country in the region. Forty civil society groups are estimated to be working each in Bangladesh and Pakistan directly or indirectly on right to information, followed by Nepal and Sri Lanka, where the number of civil society groups working on this issue is estimated to be ten or less in each country. A couple of groups are working on RTI in Afghanistan and the Maldives, while researchers were unable to establish whether or not any groups are working on RTI in Bhutan.

Civil society groups started working on RTI in the mid-1990s in South Asia. With the exception of India, where Mazdoor Kisan Shakti Sangathan (MKSS, an organisation established in 1990 that works with workers and peasants in the villages of Central Rajasthan) and the National Campaign for People’s Right to Information (NCPRI, established in 1996) have played a significant role in the right to information movement, the contribution of civil society groups in other countries of the region is far more muted.

SWOT Analysis

With the exception of India, political instability and dependence on institutional funding are some of the major threats faced by civil society groups in South Asian countries. Military influence has dominated the political scene in countries such as Pakistan and Bangladesh, and the national security sector, comprising military, security and intelligence agencies, is still very powerful in these countries. Another military take-over or military-judiciary take-over cannot be entirely ruled out in either Bangladesh or Pakistan. A prolonged civil war with Tamil separatists in Sri Lanka has led to the strengthening of the national security sector, with many journalists alleged to have been killed by security agencies.

Afghanistan has effectively been in a state of war for three decades. The country witnessed bloody resistance movements against Soviet occupation during the 1980s, while the 1990s was dominated by the fighting amongst warlords after the withdrawal of Soviet forces. A brief peace, albeit of a most repressive nature, under the Taliban was followed, in the aftermath of the terrorist attacks of 11 September 2001, with a new form of internal conflict, also involving many NATO countries as part of global efforts to

The author

Zahid Abdullah, Program Manager for Freedom of Information, Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan) researched and wrote the South Asia section of this Report.

Strengths

- Networking at local, regional and international level
- Institutional memory of advocacy groups
- Dedicated and motivated RTI activists
- Success stories of linking RTI with basic needs of people especially in India
- Ability to use social media to create awareness about RTI

Weaknesses

- Dependence on institutional funding
- Lack of transparent functioning of some of civil society groups
- High turnover of RTI professionals
- Low level of engagement on the demand side of information at the grassroots level
- Inability to tap resources from local corporate sector and philanthropists

Opportunities

- RTI recognised as a constitutional right in four countries, incentive for the remaining four to follow the suit
- Disconnect between citizens and the State
- Recognition of RTI in international law
- Space for civil society groups to use RTI as an anti-corruption tool
- Lack of proactive disclosure of information by governments

Threats

- Political instability
- Likelihood of donor's changing priorities
- RTI activism can be a life-threatening endeavour because of powerful mafias
- Existence of laws like Official Secrets Act, strengthening national security sector
- Danger of bureaucracy watering down RTI laws

combat terrorism. In India, different threats have emerged to RTI activists, with a number having been killed in recent years when they tried, backed by the powerful Indian Right to Information Act, to expose corruption and other wrongdoing.

In most countries in South Asia, civil society groups working on RTI are largely dependent on institutional funding from western donors, and there are few civil society groups or individuals in the region working on RTI that are not dependent on Western funding. If this source of funding were to be cut off, it would deal a severe blow to RTI movements in these countries.

Lack of transparency in their operations and poor governance structures are two major weaknesses that some civil society groups working in the area of RTI in South Asia suffer from. Some civil society groups have been founded mainly to promote personal interests, and, in these cases, one common practice is the appointing of friends and relatives onto largely ineffective governing boards. These groups have therefore become

commonly referred to as MoNGOs (My Own NGO). These groups reflect negatively upon other groups. This has led to a realisation within the civil society groups working in the area of RTI that they should set an example to governments by becoming more transparent and open in their functioning.

This is consistent with provisions in the Nepali and Bangladeshi RTI laws which include NGOs within their scope. The inclusion of NGO's alongside public bodies within the scope of RTI laws has also been proposed in a private member's RTI bill in Pakistan, as well as in the model right to information law put forward by the Centre for Peace and Development Initiatives (CPDI). At the same time, these rules have created problems in implementation of the RTI laws in Nepal and Bangladesh, as they have meant that an important potential demand side presence, namely civil society, has been reluctant to engage with the law.

Networking, institutional memory and high levels of motivation of some RTI activists are some of the major strengths of civil society groups in South Asia. Most of these belong to national, regional and/or international RTI networks. As a result, not only do these groups benefit from in-depth discussions and information sharing about latest developments on RTI, but these networks also generate a sense of camaraderie. Most of the civil society groups working on RTI in South Asia are members of Freedom of Information Advocates Network (FOIANet). Recently, in collaboration with the Affiliated Network for Social Accountability, South Asia Region (ANSA SAR), the Commonwealth Human Rights Initiatives (CHRI) launched the South Asia Right to Information Advocates Network (SARTIAN).

Some groups in the region have now been working for a decade on RTI issues and, as a result, have long institutional memories about the various developments that have taken place not only in their own countries, but also at the regional level. Finally, a core strength of civil society groups are highly dedicated and motivated RTI activists, some of them well known at the national, regional and international level, who not only take their work on RTI as a profession but as a personal commitment.

The disconnect between citizens and the state, while an important weakness, can also be seen as a great opportunity for civil society groups working on RTI issues. This disconnect is one of the legacies of the colonial era which is prevalent, in varying degrees, in India, Pakistan, Bangladesh and Sri Lanka. Owing to this colonial legacy, the relationship between officials and citizens is not one of 'public servants' and 'citizens' but one of 'the rulers' and 'the ruled', which is strengthened and nurtured through secretive ways of functioning and denial of RTI. This relationship needs to be changed, which is possible only if transparent functioning of public bodies and greater access to information is ensured. To achieve this, a lot needs to be done. There is a recognised need for higher transparency standards and further work by groups specialising on RTI.

A core strength of civil society groups are highly dedicated and motivated RTI activists

Instead of paying bribes, which had become almost a norm in the past, people are submitting information requests

Success Stories and Lessons Learned

Constitutional protection accorded to the right to information in Pakistan and Nepal, and the enactment of RTI laws in Pakistan, India, Nepal and Bangladesh, are some of the major achievements to which civil society groups working on the right to information have contributed in South Asia.

In India, when encountering problems in exercising their rights, or with the functioning of the administrative system, instead of paying bribes, which had become almost a norm in the past, people are submitting information requests. In other words, people are submitting information requests in order to obtain access to basic services like the issuance of official documents (such as passports or ration cards), installation of electricity and gas meters, or obtaining their pensions, which in the past was often difficult without offering bribes. Many requests are successful and a recent study by Yale university students showed that submitting information requests to get ration cards was almost as effective as offering bribes.

The effectiveness of the Indian RTI Act is serving as a beacon of light for other South Asian countries. This can be gauged, for example, from the fact that recently the Chief Minister of Punjab stated in an official meeting that he wanted to enact in Punjab an RTI law which was as effective as the Indian one. However, the Indian success story of connecting RTI with the issues of the common people has not yet been replicated in other countries in South Asian.

Initiatives by civil society groups have greatly contributed to RTI being given explicit constitutional protection in Article 50 of the Constitution of Afghanistan, 2004, Article 27 of the 2007 Interim Constitution of Nepal, Article 7 of the Constitution of the Kingdom of Bhutan, 2008 and through the insertion of Article 19-A in the Constitution of Pakistan, through the 18th Amendment in 2011.

In addition to constitutional developments, civil society efforts have led to the recent enactment of RTI laws in different countries in the region, in the shape of the Indian Right to Information Act, 2005, the Nepal Right to Information Act 2007 and the Bangladesh Right to Information Act 2010.

In Bhutan, Sri Lanka, the Maldives and Afghanistan, RTI laws have been drafted but not yet enacted. In Sri Lanka, the Justice and Legal Reforms Minister announced on 5 April 2010 that the draft Freedom of Information Act had been finalised, but this law has still not been enacted. The same is the case in the Maldives, where a draft Freedom of Information law was prepared as far back as 2005. but has not yet been enacted (there is, however, a 2008 regulation on RTI). In Bhutan, a draft RTI law was sent to the Legislative Committee for comment on 16 March 2012. In Afghanistan, after consultations with civil society organisations, the government prepared a draft RTI law in 2000, but it has not yet been enacted.

Case Study - India

Access to Information and Access to Food

This case study is about access to food and is based on the efforts of an 18-year-old boy from India, utilising the power of RTI to assist his villagers gain access to their rightful food rations and, more importantly, to stimulate the state government to take a policy decision on this issue.

India has the largest number of people living in poverty of any country. One government measure to ensure that people escape the harshest affects of severe poverty is the granting of ration cards, granting people subsidised food supplies.

In 2008, the state of Gujarat issued nearly 8.95 million Above Poverty Line (APL) food ration cards and 3.55 million Below Poverty Line (BPL) cards. The latter category included some 0.81 million cards for those in the Antyodaya Anna Yojna (AAY) category, which caters to the poorest of the poor. In all, nearly 13.3 million ration cards were issued to ensure the availability of wheat, rice, sugar and kerosene to the poorer sections of society at highly subsidised rates¹⁹.

Bhadresh Wamja of Saldi village, around 225 km from Gandhinagar, Gujrat's state capital, was a Bachelor of Commerce student. Falling into the APL category, Bahdresh's family was entitled to receive 10kg wheat at Rs10 per kg, 2kg rice at Rs7.25 a kg and 2 litre of kerosene per person at Rs12.53 to Rs13.43 a litre²⁰. On hearing his friends' complaint that they never got their rations, Bahadresh visited the fair price shop to try out his own ration card.

The shopkeeper informed him that he had not received stocks from the government for many months. In February 2011, Wamja filed an application with the tehsildar (tax collection officer), but before an

inspection could be conducted, the shopkeeper had already moved the stock out of the shop. Therefore, normal controls were not able to verify what the problem was with food supplies in the shop.

Wamja phoned a local NGO in Ahmedabad, Mahit Adhikar Gujarat Pahel, which advised him to file an RTI request with the deputy tehsildar and make a police complaint. Wamja also visited the office of the district supply officer (DSO), where he found out to his great surprise that the shopkeeper was supplied with 8,306 kg of wheat on a regular basis and 1,599 kg extra wheat between August 2010 and January 2011. According to the documents which Wamja received from his RTI request, the shopkeeper had supplied the entire stock to ration card holders. This indicated that the shopkeeper was lying to the villagers when he had stated that the government had not provided him with any stock²¹.

Due to these efforts, the tehsildar was forced to investigate again, and he found that nine out of 10 villagers had received nothing. Clearly, rations had been diverted, indicating corruption. A report was filed and an inquiry was held. Both found that corrupt practices had taken place. The shopkeeper was, however, not prevented from distributing the food rations but was given a strict warning to mend his ways²².

Following other similar cases, the Food, Civil Supplies and Consumer Affairs Department issued an order, dated 4 March 2011, to all tehsildars and fair price shop licensees in Gujarat, directing them to disclose on a proactive basis ration supply information on the walls of fair price shops as well as at the tehsil level²³.

There is an ongoing need for imaginative initiatives from civil society groups regarding disclosure policies

Looking Forward

The civil society groups mentioned in this chapter have played a pivotal role in the right to information movement in South Asia, from raising demand for the enactment of RTI laws, to according RTI constitutional protection, to building the capacity of other civil society groups, of communities at the grass root level and of individuals on using RTI laws. In Pakistan, India, Nepal and Bangladesh, RTI legislation has already been passed, and individuals and civil society groups working on RTI issues have been using these laws to address issues regarding the delivery of public services, such as health, education and the provision of basic food supplies, as well as systemic governance issues.

There is an ongoing need for imaginative initiatives from civil society groups regarding disclosure policies. One area of need is to impress upon governments the need to disclose information on a proactive basis. There is also a need to promote greater openness and good governance by civil society groups, especially those working on RTI issues, so that they can set a good example for others.

Other needs include advocacy to see RTI laws adopted in the countries in the region, which still number 50% of all countries, namely Afghanistan, Bhutan, the Maldives and Sri Lanka, that have not yet adopted such laws. There is also a huge need for better implementation of laws in those countries which have adopted legislation.

'What's in the News Today?' by Ramesh Soni in India.



Annexes

Annex I: 10-10-10: Statement

Achievements, Challenges and Goals on the 10th Anniversary of the Freedom of Information Advocates Network (FOIANet)

Published on the 10th Anniversary of the FOIANet and of International Right to Know Day, 28th September 2012.

Achievements

FOIANet and its members have achieved an enormous amount over the last ten years, of which we can be very proud. Some of our main achievements are listed below. The international right to know movement includes many diverse organisations and individuals, all of whom have contributed to these achievements. At the same time, FOIANet and its members claim an important role in delivering the following achievements:

International Recognition as a Human Right

RTI is now firmly recognised as an internationally guaranteed human right, with decisions at the Inter-American Court of Human Rights and European Court of Human Rights, and global recognition by the UN Human Rights Committee.

Rapid Increase in National Legal Recognition

The number of national RTI laws has more than doubled since 2002, from 42 to 93 countries, comprising over three-quarters of the world's population, with a concomitant growth in constitutional recognition for RTI.

Holding the Line

In countries around the world, attempts to scale back RTI legislation have been defeated.

Standard-setting

There has been strong consolidation of standards regarding what constitutes a good RTI law and good implementation (for example in the form of official and NGO statements and standards, model laws, court decisions and development of better practices).

Building the Network

There are ten times as many members of FOIANet, from less than 20 in 2002 to over 200 today, and over 600 people sharing information on our dynamic discussion list.

We have an effective track record of sharing information and experiences, and of providing mutual support in addressing challenges and problems. Regional networks have developed in Africa, Latin America, the Middle East and North Africa, and South Asia.

Media Interest

There is significant engagement by the media on RTI in terms both of reporting on it and using it.

Increase in Capacity

Civil society groups have developed strong capacity and expertise on RTI at both the national and international levels.

A similar growth in expertise has occurred in other communities, such as officials, academics and journalists.

Increase in Profile

There have been positive developments in terms of the profile of RTI in many countries, including overall public awareness, use of RTI laws, and public debate about the issue.

Engagement of International Community

Many bilateral donors and inter-governmental development bodies –including institutions like the World Bank, UNDP and OSCE– now have substantial programmes in place promoting RTI, while others –including the special international mandates (rapporteurs) on freedom of expression, UNESCO and the COE– have done important standard-setting and monitoring work in this area.

Openness of the International Community

A number of IGOs, including most of the international financial institutions (IFIs), have adopted or significantly enhanced their own openness commitments.

Challenges

Despite these achievements, many challenges remain, while some new ones have arisen. Some of the key challenges are:

The Other Half

Less than one-half of the countries in the world have adopted RTI laws, despite long-standing local campaigns in a number of these countries.

Implementation

Implementation remains a significant challenge in many countries, including in the following areas: poor proactive disclosure; failure to process requests (either at all or in accordance with the rules); poor record management systems; weak oversight systems; low levels of demand; low levels of awareness.

Backlash on Exceptions

There is a growing trend to apply some exceptions –notably national security and privacy– increasingly broadly in many countries, and some countries have adopted or are trying to adopt overbroad general secrecy laws.

Backlash Against Oversight Bodies

In some countries, there have been attempts to undermine the effectiveness of oversight bodies –for example through reducing their independence or funding– while other countries have refused to establish such bodies in the first place.

Maintaining Momentum

After a long period of rapid progress, it may become increasingly difficult to maintain the level of effort on RTI issues, for both civil society and officials.

Attacks on RTI Activists

Physical attacks are being perpetrated on RTI activists in too many countries, while whistleblowers are too often subjected to legal or other forms of reprisal.

Funding

Groups promoting RTI already face challenges in securing funds and there is a risk that the funding available for this sort of work will diminish.

Relating to Other Communities

RTI groups need stronger relationships with other support communities, such as IT experts who can help us build tools to enhance RTI and journalists who can tell positive stories about RTI.

Managing Growth

FOIANet has expanded significantly; it needs to ensure this growth remains sustainable.

Openness of the International Community

Serious commitments to openness by inter-governmental organisations (IGOs) remain very limited outside of some IFIs.

Goals

Much remains to be done to realise the universal right to information. Some of the key goals for the upcoming years are listed below. As with **Achievements**, FOIANet and its members understand the need to work with other actors to promote the following goals:

Legal Expansion

Law reform leads to most countries in the world having strong RTI laws which are in line with international standards.

Development as a Human Right

The full potential of recognition of RTI as a human right is realised, with all of the implications of this in terms of scope of the right, fees and reuse of information, and exceptions.

Advances in Implementation

Effective efforts are made to address implementation challenges, including the culture of secrecy which still prevails within many public authorities.

Better Practices (legal and implementation)

Research is conducted to identify better practices, in terms of both legal frameworks and implementation.

Awareness

Effective awareness raising efforts are undertaken so that a majority of people in most countries are aware of RTI and how this right enables them to fulfil other rights.

Strengthening FOIANet

There is continued and sustainable growth of the network, and stronger links are made to different communities.

Strengthening Regional Networks

The system of regional RTI networks expands, these networks grow and there is increasing cross-fertilisation among them.

Support for Advocates

FOIANet and its members provide effective support to RTI advocates globally in the form of advice, expertise, and solidarity when they come under attack.

Recognition

FOIANet and its members are widely recognised as the leading sources of expertise and civil society outreach on RTI.

Funding

Adequate, longer-term funding is available to FOIANet members, and to FOIANet itself to continue its work, including in terms of facilitating the work of its members.

Annex II: About the Authors

Africa

This Chapter was prepared by **Gilbert Sendugwa**, Head of Secretariat of Africa Freedom of Information Centre (AFIC) (www.africafoicentre.org), and **Tammy O'Connor**, Advocacy and Training Outreach Officer of the Freedom of Information Programme, South African History Archive (www.foip.saha.org.za).

AFIC is a pan-African NGO and resource centre that promotes RTI through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building.

The Freedom of Information Programme is dedicated to extending the boundaries of RTI in South Africa by: creating awareness about RTI and its power as an enabling right that can be used to protect, promote and fulfil other human rights; empowering individuals and organisations to understand and utilise the Promotion of Access to Information Act (PAIA) as a strategic advocacy tool; and increasing compliance with, and the use of the right to information.

The Americas

The **Alianza Regional por la Libre Expresión e Información, (Alianza Regional)** is a platform for advocacy comprising 23 organisations from 19 countries in the Americas, which work as a network to achieve greater impact. The working agenda is agreed by consensus, taking into account geographic diversity and local problems. Activities include exchange of experiences, training of key actors and advocacy campaigns. Recently, in El Salvador and Brazil, international support from Alianza Regional helped support local organisations in getting laws on the Right to Information adopted. The organisations that are part of the Alianza Regional are specialists and leaders in the Americas in the implementation and promotion of RTI laws²⁴. **Karina Banfi**, Secretary General of Alianza Regional, led on the research and writing of the Americas section of this report.

Further information and case studies were contributed to this section by Daniel Metcalfe, Faculty Fellow in Law and Government of the American University's Washington College of Law, United States; Lilia Saúl Rodríguez, México Infórmate, Mexico; and Priscila Castello Branco, Contas Abertas, Brazil. The editors, Lydia Medland and Toby Mendel, also contributed information.

Australasia and Oceania

Peter Timmins is a lawyer and consultant based in Sydney Australia who writes the Open and Shut Blog (www.foi-privacy.blogspot.com.au). His career has included time in the Australian Foreign Service with postings in Korea, Vietnam and the United States, in the finance industry as chief executive of the industry body representing credit unions, and as a public policy and public management consultant. Peter Timmins has over 25 years experience with RTI and related issues, was deputy editor of a major report on the state of free speech in Australia, and a member of the advisory committee to the Australian Law Reform Commission for its inquiry into secrecy laws.

East and South East Asia

The East and South East Asia section of the Update was prepared by **Toby Mendel**, Executive Director of the Centre for Law and Democracy (CLD) (www.law-democracy.org). Toby has over 15 years of experience working on RTI issues, and is widely recognised as a leading global expert on this issue, and is also the Chair of FOIANet. He has published widely on RTI and is often asked to provide advice on the development and implementation of RTI laws by civil society groups, inter-governmental organisations and governments. CLD, an international human rights organisation based in Canada, has worked extensively in Asia and globally on RTI issues, and includes the promotion of RTI and, in particular, the provision of legal and policy expertise on this issue, as one of its core mandates.

Europe

Lydia Medland, Research and Campaigns Coordinator, Access Info Europe (www.access-info.org), and **Rūta Mrazauskaitė**, Project Coordinator, Transparency International Lithuania (www.transparency.lt), prepared the European section of this report.

Access Info Europe is a human rights organisation dedicated to promoting and protecting RTI in Europe and globally as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making and for holding governments accountable. Lydia has been working with Access Info Europe since 2008. Based at the Access Info office in Madrid, she is also the coordinator of the FOIANet.

Transparency International Lithuania is a non-profit organisation, established in 2000. The goal of TI Lithuania is to analyse the phenomenon of corruption, promote civic anticorruption initiatives and inform the public about anticorruption activities in Lithuania. RTI has been in the focus of the chapter's activities ever since 2000, and is regarded as part of the holistic approach to creating integral and transparent society.

Middle East and North Africa

Said Essoulami, Director of the Centre for Media Freedom in the Middle East and North Africa (CMF MENA) since it was founded in 1998, wrote the Middle East and North Africa section of this report. CMF MENA is dedicated to research, training and advocacy on media freedom and RTI issues in the MENA region. Said Essoulami worked for 11 years as Head of the MENA programme at ARTICLE 19. He is also the President of the Arab Freedom of Information Network, coordinator of the Moroccan Freedom of Information Network, member of the African Access to Information Network and a Steering Committee member of FOIANet and of the African Freedom of Information Network.

South Asia

Zahid Abdullah, Program Manager for Freedom of Information, Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan) researched and wrote the South Asia section of this Report. CPDI-Pakistan is an independent, non-partisan and not-for-profit civil society organisation working on issues of peace and development in Pakistan. It was established in September 2003 by a group of concerned citizens who realised that there was a need to approach the issues of peace and development in an integrated manner. The CPDI-Pakistan is the first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch and legislative watch and development.

Notes

- 1 In one region, Central Asia, we found it difficult to collect information on civil society activity. As a result, and to our regret, we were unable to include this region in the Update.
- 2 Freedom of Information Advocates Network, Over 50 Events Celebrate 8th International Right to Know Day, 2010, available at: http://www.foiadvocates.net/dmdocuments/News_Documents/RTKD.update.2010.pdf
- 3 AFIC Members: ACREDITAR (Mozambique), African Network of Constitutional Lawyers, Article 19 East Africa, Article 19 West Africa, Association for Media Development in South Sudan, Centre for Human Rights, Center for Media Studies and Peace Building, Citizens Governance Initiatives, Comité des Droits de l'Homme et Développement, Centre for Media Freedom-Middle East and North, Commonwealth Human Rights Initiative, Human Rights Network, International Commission of Jurists (Kenya), International Federation of Journalists, Media Foundation for West Africa, Media Institute for Southern Africa, Media Rights Agenda, MISA, Open Democracy Advice Centre, Open Society Justice Initiative, Public and Private Development Centre (Nigeria), Right to Know Nigeria, Society for Democratic Initiatives, South African History Archive, Tanzania Citizens' Information Bureau, Uganda Road Sector Support Initiative, and the University of Botswana (Botswana).
- 4 Lardinois, F., Ethiopian Government Bans Skype, Google Talk And All Other VoIP Services, Tech Crunch, available at: <http://techcrunch.com/2012/06/14/ethiopian-government-bans-skype-google-talk-and-all-other-voip-services/>
- 5 Access To Information and Protection of Privacy Act, Chapter 10:27, Acts 5/2002, 5/2003, available at: <http://www.sokwanele.com/pdfs/AIPPA.pdf>
- 6 Mail & Guardian investigating team, Keeping it in the family, 19 March 2010, available at: <http://amabhungane.co.za/article/2010-03-19-keeping-it-in-the-family>
- 7 O'Connor. T., PAIA Civil Society Network Shadow Report 2011, available at: http://saha.org.za/news/2011/September/paia_civil_society_network_releases_shadow_report.htm
- 8 Right2Know campaign website: www.r2k.org.za

- 9 Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, see further, http://www.oas.org/juridico/english/mesicic_intro_en.htm
- 10 Alianza Regional, Comunicado respaldando el trabajo de Transparencia Venezuela y Monitor Legislativo en el fortalecimiento de las ONGs que luchan contra la corrupción y la transparencia, available at <http://www.alianzaregional.net/acciones/comunicacion/comunicado-respaldando-el-trabajo-de-transparencia-venezuela-y-monitor-legislativo-en-el-fortalecimiento-de-las-ongs-que-luchan-contra-la-corrupcion-y-la-transparencia/>
- 11 General Assembly Resolution AG/RES. 2514 (XXXIX-O/09).
- 12 19 September 2006, Series C, No. 151.
- 13 Centre for Law and Democracy, RTI Rating Examines International RTI Frameworks, 10 March 2012, available at: <http://www.law-democracy.org/live/rti-rating-examines-international-rti-frameworks/>
- 14 Behind Sweden, 200 years earlier, and Finland.
- 15 RTI Rating website: www.RTI-Rating.org
- 16 The Pacific island States include the Federated States of Micronesia, Fiji, Kiribati, Nauru, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Palau is a presidential republic and American Samoa, Guam and the Commonwealth of the Northern Marianas are territories each with links to the United States. New Caledonia, French Polynesia (Tahiti) and Wallis and Futuna, have links with France. The Cook Islands and Niue are parliamentary democracies in free association with New Zealand.
- 17 Adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.
- 18 Regulation (EC) No 1049/2001 of The European Parliament and of The Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at: http://www.europarl.europa.eu/register/pdf/r1049_en.pdf
- 19 Gaurav Sharma, Half of Vibrant Gujarat goes to sleep empty stomach, 2008, available at: <http://www.indianexpress.com/news/half-of-vibrant-gujarat-goes-to-sleep-empty-stomach/401073/>

- 20 Vinita Deshmukh, 18-year-old's persistence leads to mandatory stock disclosure for fair price shops in Gujarat, 2011, available at: <http://moneylife.in/article/78/18619.html>
- 21 Ibid.
- 22 Rishi Raote, Open Secrets, 2011, available at: <http://business-standard.com/india/news/open-secrets/457373/>
- 23 Vinita Deshmukh, note 22.
- 24 The member organisations are: Acción Ciudadana (Guatemala), Article XIX (Brazil), Asociación de Periodistas de El Salvador, Asociación Nacional de la Prensa (Bolivia), Asociación por los Derechos Civiles (Argentina), Cainfo (Uruguay), C Libre (Honduras), Consejo Nacional de Periodismo (Panama), Fundación Democracia sin Fronteras (Honduras), Fundación para la Libertad de Prensa (Colombia), Fundación para el Desarrollo Económico y Social (El Salvador), Fundación Proacceso (Chile), Fundación Violeta Barrios de Chamorro (Nicaragua), Fundamedios (Ecuador), Fundar (Mexico), IDEA (Paraguay), Instituto de Prensa y Libertad Expresión (Costa Rica), Instituto de Prensa y Sociedad (Peru), Participación Ciudadana (Republica Dominicana), Transparencia Venezuela (Venezuela), Transparencia por Colombia (Colombia), Trust For the Americas (U.S.A.)