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## Paraguay is 100th nation to pass FOI law, but struggle for openness goes on

As millions of freedom of information requests are filed, Toby McIntosh takes stock of the global shift towards transparency

Toby McIntosh

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Paraguay's president, Horacio Cartes. His signing of the new law is a milestone for the transparency movement. Photograph: José Villaba/Xinhua Press/Corbis  
Paraguay has become the 100th country in the world to have a freedom of information (FOI) law, a milestone for Paraguay and for the transparency movement. A bedrock of government openness, FOI laws (also called right to know laws or access to information laws) have experienced several decades of explosive growth.

Despite having an ancient root – Sweden's Freedom of the Press Act of 1766 granted the public access to government documents – FOI laws did not sprout up again until 200 years later when an FOI law was passed in the US. .

Since the late 70s, there has been a steady adoption of FOI laws, which guarantee public access to government records subject to certain exemptions. By 1997, 22 countries had passed FOI laws. After that, growth accelerated to about four a year, and more are on the way.

The path has not been easy. FOI laws, despite having a non-ideological



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appeal, often provoke resistance, particularly from incumbent governments.

Campaigning for the Paraguayan law started almost 10 years ago. The effort took a dramatic turn in 2014 when the supreme court ordered the disclosure of public officials' salaries, relying on a ruling of the Inter-American Court of Human Rights that access to government information is a fundamental right, also spelled out by the United Nations.

“This series of events was known in Paraguay as the transparency spring and it is contributing to alter the power equation between citizens and public servants,” says Ezequiel Santagada, executive director of the Instituto de Derecho y Economía Ambiental (Idea).

Senior politicians often voice their support for FOI bills – recently for example in the Philippines, Ghana, and Bermuda – then drag their feet.

Still, four new laws have passed since October 2013: in the Maldives, Ivory Coast, Spain and Sierra Leone. Promising prospects exist in the Bahamas, Bhutan, Morocco, Mozambique, Tunisia and elsewhere. Campaigns are active in about 20 countries.

Access laws are key legal tools to expand government transparency. They mandate proactive disclosure of information and set rules for requests and replies. New technology is facilitating transparency – including the increased digitisation of records, online systems for disclosing information and software to facilitate FOI requests.

The growing, vibrant and multifaceted international openness movement includes many speciality components: open data, open budgets, open contracts, open foreign aid, open extractive industry payments, open parliaments, and open government generally, as embodied in the [Open Government Partnership](#).

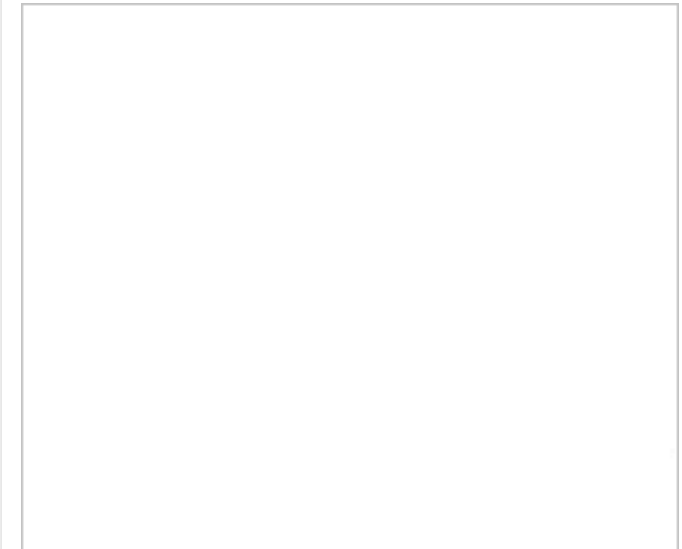
The drive for access to information laws has blossomed at the local and state level, too. International organisations such as the World Bank and other development banks now have access to information policies, although many other international bodies still do not.

The strength of access laws varies dramatically. In a major international

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assessment of the legal structures surrounding FOI laws in 92 countries, the [average score was only 86 points out of a possible 150 \[pdf\]](#) (57%), according to a respected rating system developed by the Centre for Law and Democracy and Access Europe. The [top scorer was Serbia with 135 points](#), followed by India and Slovenia with 130 each.

Promisingly, the quality of newer right to information (RTI) laws has been improving. More information commissioner positions are being created. “100 is a massive milestone for the right to information community. More than half of UN member countries now have RTI laws,” said Toby Mendel, executive director of Centre for Law and Democracy. “But there are still approximately another 100 countries that do not have laws, and of course implementation is an ongoing challenge everywhere, so our struggle is not over yet.”

In countries with FOI laws, efforts to amend existing laws are increasingly frequent with both negative and positive outcomes. In Japan and South Africa, greater restrictions are being placed on disclosure of national security information. This is a prime area for debate, with openness advocates in 2013 issuing a statement of principles, the Tshwane Principles.

Some amendments are chipping at the laws. In Australia, the conservative government is seeking to eliminate the office of the information commissioner.

More positively, in the US, pending legislation would reduce the overuse of an exemption designed to protect free discussion among officials. In 2013, Mexico further empowered its information commissioner. In Croatia, an information commissioner post was created.

A pervasive challenge is the implementation of access laws, which is uneven across nations. There’s no international measurement for performance, but it’s recognised that some laws are null in practice. Audits by national pro-disclosure watchdogs often point to poor response rates, inadequate government websites and adverse court decisions.

“After access laws are passed, there are many stories of disappointment,” says Mukelani Dimba, executive director of the Open Democracy Advice Centre in South Africa. When the first Liberian



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information commissioner was appointed in 2013, he worked out of his garage for months until a budget was approved. The first big case under the Liberian law, to obtain the financial statements of the anticorruption commission members, is still languishing in court.

The 2005 Indian RTI law has had monumental social effects so far, but faces many challenges. A major backlog of RTI appeals exists. Chronic poor performance exists at the state level. The national political parties are defying an order from the Central Information Commission to comply with the law.

Implementation problems often reflect questionable commitment by politicians and bureaucrats to transparency. "As we celebrate getting to 100 laws, it's important to pursue training of officials, improved records management, and continued political commitment and resources to ensure full implementation," said Laura Neman of the Carter Centre, who headed a project to create a [comprehensive implementation assessment tool](#).

Despite the challenges, the overall impact of FOI laws is widely considered to be positive, if hard to quantify. Access to information is recognised as a human right and is being included as a goal in international environmental and development agreements.

Access laws provide the keys to many discoveries, routine and sensational – turning up evidence of minor local waste and proof of genocide. Requesters ask about government plans, programme performance and what's being spent. Users include businesses, civil society groups, academics, the media and citizens.

There's no reliable tally of how many requests are filed worldwide, but it's in the millions. India logged about 900,000, according the last annual report. Researchers are striving to measure whether FOI laws deliver on their promises of greater accountability and better governance.

A [2010 study](#) in the UK confirmed a positive effect on accountability, but not necessarily on trust in government. One study in India, for example, showed that making an FOI request [works as well or better](#) than paying a bribe to obtain certain government services.

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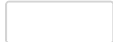
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The view at the 100 mark indicates that campaigns for new and improved right to [information are unlikely to fade](#). As forcefully expressed by a leading advocate for the 2005 Indian law, Aruna Roy says: “Right to information is the right to life.”

*Toby McIntosh is the editor of [freedominfo.org](#), a portal for freedom of information advocates*

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20 September 2014 10:38am

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