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Transparency and the Natural Environment

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Transparency is not only being recognised as a core concept of good governance but also as a fundamental human right that is constitutionally guaranteed in many countries. Currently (July 2013) over 90 countries across the world have transparency laws, variously called “freedom of information” (FOI) or “right to information” (RTI) laws.

Fundamentally, such laws allow and facilitate individuals (in some countries only citizens) to access information from public authorities, essentially government bodies. More sophisticated laws allow access of information not only from government bodies but also from non-governmental and private bodies that the government in some way controls, or funds, or even regulates the functioning of. Therefore, under such transparency laws you can seek information from government about its functioning in relation to private bodies, and from each of these private bodies in relation to their own functioning.

All laws prescribe some restrictions on information that can be accessed. International standards¹ require that only where it is reasonably anticipated that disclosure would result in real harm, should such information be denied. However, the expected harm needs to be balanced against possible public interest in disclosure. The exclusion of certain types of agencies, like military and security agencies, courts, legislatures, or heads of government and monarchs, from under the purview of the RTI Act, is also not considered acceptable. Similarly, the exclusion of certain types of information, like deliberative information, or financial information, or all information about security issues, is also not desirable. Each bit of information must be assessed on its specific merit to qualify for being excluded.

Typical exclusions include information that would harm the integrity or security of a country, or its economic or other critical interests, would inhibit the prevention, investigation or prosecution of a crime, would endanger someone’s life or physical safety, would be an unwarranted invasion

¹ See, for example, Article 19’s *The Public’s Right to Know: Principles on Freedom of Information Legislation*, <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

of privacy, or would compromise the competitive position, or legitimate commercial secrets, or intellectual property rights, of an individual, group, or body.

Generally, countries set up RTI regimes which involve designating information officers in all offices of each public authority, who have the responsibility of receiving requests for information and processing them, and either denying with reasons, or providing, the information. There is also usually an appellate process, ideally with the final appeal resting with a body (commission or tribunal) independent of the government and all other public authorities. In many countries, a ultimate appeal lies with the higher judiciary (high courts and supreme courts).

Good laws not only prescribe time limits within which the information must be provided, typically between 15 to 30 days, but also charge little or no fee for the request and only the cost of making copies, when copies of documents have to be provided. Some laws, especially those in the poorer countries, have a provision to waive all fee for the poor and allow illiterate persons to register their request orally. They require the concerned information officer to reduce the oral request to writing and then act on it. Many recent laws are providing for penalties to be paid by the information officers if there is an unreasonable delay, illegitimate refusal, or other specified violation. Some laws allow for compensation to be paid to the applicant if a delay or illegitimate refusal has caused the applicant loss or undue harassment.

An important part of the RTI regime is the legal requirement to make specified categories of information proactively (*suo moto*) public and to disseminate this widely. Proactive disclosures not only makes access faster for the applicant but also lessens the load on a public authority, who might otherwise be inundated by a large number of applications². Where sensitive information is involved, especially when it is sought by members of a disempowered community and might expose powerful vested interests, there is often a danger to the life and safety of the applicants. Providing such information proactively protects the applicant who does not have to reveal herself by filing an application.

Transparency and the Environment

Interestingly, in many parts of the world the first systemic demand for greater transparency came from the environmental movements and out of environmental concerns. In Europe, the United Nations Economic Commission for Europe (UNECE) [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (the Aarhus convention) was signed in 1998³ and ensured that all the signatory countries set up and maintain a transparency regime for environmental information.

In many other countries, environmental movements were the first to demand a right to access information⁴. In India, for example, the movement was born in 1984 as a result of various gas leakages from chemical plants, including the leak of MIC gas from the Union Carbide plant in Bhopal. These led the environmental activists in India to link up their right to environmental

² It is estimated that in 2012 between two and three million RTI applications were filed in India.

³ <http://ec.europa.eu/environment/aarhus/>

⁴ For further details, see

http://policydialogue.org/publications/working_papers/transparency_and_the_natural_environment/

information to their fundamental human right to life, arguing that as they had a constitutionally protected right to life, this implied that they had a right to know what and whom threatened their life, what was the government doing to protect them, and what they could do to protect themselves.

Proactive public disclosure of air and water pollution levels has been long recognised as an important factor in building up public awareness about environmental dangers. Additionally, where possible adverse impacts of elevated levels of pollutants, along with a listing of the sources of pollution, have been made public, there has been huge and often successful public pressure to clean up the environment.

Transparency laws are being extensively used to monitor the environmental impact assessment process of governments, and the public is not only accessing, often proactively, the final assessment report, but also the detailed information on the basis of which these reports were made. Also being accessed are the subsequent monitoring reports of projects during construction and operation. This is making it increasingly difficult for governments to clear environmentally destructive projects and activities and, more importantly, for such projects and activities, once they have received the statutory clearances, to operate in disregard of the prescribed environmental safeguards and standards.

Public monitoring of forests and other wilderness areas, and of wild populations of species, is also being subjected to increasing public scrutiny and in many countries the historical tradition of using fictitious data to reassure government leaders and the public, is being questioned on the basis of information accessed by using RTI laws. Apart from the heightened public scrutiny and institutional accountability, RTI laws are also proving to be important means of raising public awareness and education about nature and natural ecosystems.

The plight of communities that are still living in their traditional natural homes has also got highlighted because of transparency laws. Governments are being questioned on why they are in violation not only of international conventions and treaties, to which they are signatories, but also of their own laws. In many parts of the world, the greatest use the RTI Act is being put to is to force governments to, perhaps for the first time, be in compliance with their own laws.

Informative Websites on Transparency in General

Freedominfo: <http://freedominfo.org/>

Centre for Law and Democracy: <http://www.law-democracy.org/live/>

Open Society Foundations: <http://www.opensocietyfoundations.org>

Access Info Europe: <http://www.access-info.org/>

Transparency and Accountability Initiative: <http://www.transparency-initiative.org/>

Transparency Advisory Committee: <http://transparencyadvisorygroup.org/>

Some Helpful Publications

- Singh, Misha and Shekhar Singh. 2006. Transparency and the Natural Environment. Economic and Political Weekly Vol - XLI No. 15, April 15, 2006. <http://www.epw.in/authors/misha-singh>.
- Darby, Sefton. 2012. Natural Resource Governance: New Frontiers in Transparency and Accountability. Transparency & Accountability Initiative, London. http://www.transparency-initiative.org/wp-content/uploads/2011/05/natural_resources_final1.pdf
- Biermann, Frank, and Philipp Pattberg. 2008. Global Environmental Governance: Taking Stock and Moving Forward. Annual Review of Environment and Resources 33: 277–294.
- Fung, Archon, Mary Graham, and David Weil. 2007. Full Disclosure: The Perils and Promise of Transparency. New York: Cambridge University Press.
- Gupta, Aarti. 2008. Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance. Global Environmental Politics 8 (2): 1–7.
- . 2010. Transparency to What End? Governing by Disclosure through the Biosafety Clearing House. Environment and Planning C: Government and Policy 28 (2): 128–144.
- Mol, Arthur. 2006. Environmental Governance in the Information Age: The Emergence of Informational Governance. Environment and Planning C: Government and Policy 24 (4): 497–514.