

RIGHT TO INFORMATION IN ASIA PACIFIC

How 11 countries perform on SDG 16.10

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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INTRODUCTION

Freedom of information is not only a human right, but also an essential tool to engage and empower citizens to demand accountability from governments and fight corruption. Globally, around 120 countries have a right to information act. This indicates that the majority of countries consider it important to spell out in detail how this right is exercised and to set obligations for public authorities to promote, protect and implement it in practice.

After the end of the Cold War, this global norm spread to the Asia Pacific and the majority of countries in the region adopted right to information laws. However, the quality of laws varies across countries, as does the implementation and compliance with the regulations. A well-formulated law does not necessarily mean that the right to information is widely known and upheld.

Right to information (RTI) has for years been identified as a key area of work for Transparency International chapters in the Asia Pacific region. Chapters have played and continue to play a crucial role in advocating for right to information laws that are in line with international standards, fully applied in practice, and used by citizens to hold government accountable. This regional report serves as a reference document, providing a broad overview of why right to information matters, where it stands in a range of countries in the region and what our key recommendations are. This is Transparency International's first report for the Asia Pacific region on right to information.

In this report, we look into the right to information laws and practice in 11 countries in the Asia Pacific region: Bangladesh, Cambodia, Maldives, Mongolia, Nepal, Pakistan, Papua New Guinea, Solomon Islands, Sri Lanka, Vanuatu and Vietnam.¹ In some of these countries, such as Pakistan and Nepal, right to information laws entered into force more than ten years ago and there has been sufficient time to assess how these function in practice. Right to information laws in other jurisdictions are very new. In Vietnam, for example, the law entered into force in July 2018. At the time of publication of this report, Cambodia has a draft law while Papua New Guinea has a strong constitutional provision on the right to information.

Solomon Islands also has a constitutional provision on this right.

ESSENTIALS OF STRONG RIGHT TO INFORMATION LAWS

- **Covers all public bodies**, as well as those private entities that receive public funds or exercise public authority.
- **Everyone can exercise the right** to request, receive and disseminate information. National or foreigner, individual or legal person. **Anonymous requests are allowed** and the requested bodies do not ask for more than a contact address for the response.
- **No one has to give reasons** for the request.
- There are reasonable deadlines to receive information, **all refusals have to be reasoned and all are appealable**.
- Main rule is **maximum disclosure** and there can be **narrow and clearly defined exceptions**. No information is excluded from the coverage of the law.
- Each exception contains a **harm test**² and public officials have to apply **public interest tests and overrides set by law** when deciding on disclosure.
- There are **effective and timely appeal procedures** before independent forum(s), which may be an information commission(er) or courts or a combination of both.
- Disclosed **information can be freely disseminated** and used without any restriction.
- Public bodies have obligations to **publish without any request and regularly update information** on their functioning, regulations, finances, services, staff.
- Information commission(er) **trains** public officials, judges, promotes the law monitors its application.

This report provides a general assessment of the right to information laws of these countries, compares the quality of their most important features and evaluates nine key areas of these laws in each country. The report also provides a brief overview on how these laws are being implemented in practice. Only the legal provisions are scored, but not the practice. Furthermore, this report provides recommendations to governments to ensure the right to information and its effective enforcement. A brief overview of freedom of the media in the assessed countries complements the evaluation of freedom of information. The two areas cannot be separated and ignoring the situation of freedom of the media would give a distorted picture. However, freedom of the media is not considered in the scoring. The report builds on the content provided by the national chapters of Transparency International in the eleven countries assessed. In this report, we use the same methodology as in the preparation of civil society parallel reports which assess each government's progress towards Sustainable Development Goal 16.³

The country reports have importance beyond the national contexts, as three separate review processes of the United Nations can evaluate the right to information in laws and in practice. However, these UN reviews often remain cursory on this topic due to breadth of the areas they cover. The Universal Periodic Review is part of the core duties of the UN Human Rights Council, which conducts the review to ensure that each state fulfils its human rights obligation and commitments.⁴ The United Nations Convention against Corruption (UNCAC) review mechanism in its current second cycle (2015–2020) looks at the anti-corruption preventive measures that countries have taken, including to what extent countries implement UNCAC provisions on access to information. The third UN process is the follow-up and review of the 2030 Agenda for Sustainable Development. Under Sustainable Development Goal 16, “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, target 16.10 seeks to ensure that citizens have access to information and their fundamental freedoms are protected in line with international and national legislation and agreements.

Further to these processes, countries of the Asia Pacific region have made right to information commitments under several multi-stakeholder initiatives, such as the Open Government Partnership and the Extractive Industries Transparency Initiative.

IMPLEMENTATION OF RIGHT TO INFORMATION LAWS IN PRACTICE

The global right to information community has been struggling for many years with designing a methodology that could assess the implementation of RTI laws and allow for comparison.

Beyond weak laws and a hostile freedom of expression environment, numerous issues can hamper the exercise of the right to information. These include unnecessary formal requirements for filing information requests, mandatory identification of requestors, high administrative fees, lengthy response timeframes or silence from public bodies, tedious and lengthy appeal procedures, undue influence over review forums, bad information management by public bodies that prevents them from providing answers, insufficiently trained personnel of public bodies and a culture of secrecy.

In “the practice” sections of the country assessments, we provide concrete examples of practical obstacles in the way of exercising the right to information.

Solutions to these obstacles are then addressed in the “recommendations” sections of the country assessments.

RIGHT TO INFORMATION IN INTERNATIONAL LAW

RIGHT TO INFORMATION - A HUMAN RIGHT

The United Nations has recognised the right to access information since its foundation. Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) both enshrine the right to freedom of expression and declare “this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers”.

The right to information is also enshrined in regional human rights treaties in Africa, the Americas and Europe, and there is a growing jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights in this field.⁵ The UN Human Rights Committee recognised the right to information as a human right and provided details on what this right entails.⁶

Although the Asia Pacific region does not have a human rights treaty, a number of international law instruments include the right to information:⁷

- the 1967 ASEAN Declaration sets adherence to the principles of the United Nations Charter, which includes Article 19 of the Universal Declaration of Human Rights, among its aims and purposes
- Principle 23 of the ASEAN Human Rights Declaration
- the ADB / OECD Anti-Corruption Initiative for Asia and the Pacific, Pillar 3 – Supporting Active Public Involvement
- the Pacific Plan endorsed by Leaders at the Pacific Islands Forum in 2005, points 12.3 and 12.4.

RIGHT TO INFORMATION - AN ANTI-CORRUPTION TOOL

Right to information is an essential anti-corruption tool as it enables detection of corruption.⁸ Media, non-governmental organisations, businesses and ordinary citizens can request and receive information and thereby find out about abuses of power in a wide range of areas, including public contracting, use of public funds and exercise of public authority. Freedom of information empowers all users of this right not only to detect corruption, but also to prevent corruption or seek remedies for wrongdoings using the information they have obtained. The right to information can help counter corruption in the delivery of public services such as health care, housing, public education and social benefits, as well as in other interactions with the state, for example when a public body is buying services, provides permits for constructions or industrial activities, sells public property or appoints individuals to public offices

The right to information is not only a practical instrument in tackling corruption. The UN Convention against Corruption (UNCAC) also sets obligations for States Parties concerning access to information, which match the rights enshrined in the ICCPR. UNCAC access to information rules consist of several articles. According to Article 13, States Parties have to provide effective access to information upon request. Article 13 also encourages proactive disclosure of information by governments. Other articles, too, include disclosure requirements: Article 5 (preventive anti-corruption policies and practices), 7 (public sector, election and funding of political parties), 9 (public procurement and management of public finances) and 10 (public reporting).



RIGHT TO INFORMATION AND FREEDOM OF EXPRESSION

Our assessment of right to information laws and practice would be incomplete if it did not consider the rights and realities of information requestors to impart the information that they seek and receive from public bodies. The right of freedom of expression (and of the media) and the right of freedom of information are enshrined in the same article of the ICCPR for a good reason. Both rights build on the other's existence.

As the UN Human Rights Committee highlighted, *"freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights. [...] A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society."*⁹

Individuals, civil society organisations and other legal entities that want to exercise their right of freedom of expression to take part in public debates need access to information so they can rely on facts. The same applies to the media, "the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output".¹⁰

The countries assessed in the region compose a diverse picture in the field of freedom of expression and of the media. Unfortunately, in about half of the countries, severe restrictions are imposed on disseminating information and attacks have been recorded on journalists and media outlets. Good right to information laws have proven to be poor indicators of actual freedom of expression and of the media. Countries may have well designed right to information acts that in theory enable everyone to easily obtain information, but this does not mean that freedom of information and freedom of expression are guaranteed in practice. Public offices may disregard the right

to information law and public officials may refuse to provide information or even try to intimidate journalists, ordinary citizens or civil society organisations that request information. Even when requestors successfully obtain the information they need, they can still face serious difficulties in using it. If activists, citizens, journalists or anyone who wants to initiate or take part in public debates face intimidation through repressive laws, verbal threats or physical assaults, the right to information will be fruitless as it cannot foster democratic participation and accountability.

The present report does not make a full assessment of the freedom of expression situation in the countries surveyed. However, reputable freedom of expression organisations have published such assessments. The following table shows their findings

TABLE ON FREEDOM HOUSE'S FREEDOM IN THE WORLD RATING AND ON 2018 WORLD PRESS FREEDOM INDEX

	FREEDOM HOUSE'S FREEDOM IN THE WORLD RATING - 2018 ¹¹		REPORTERS WITHOUT BORDERS WORLD PRESS FREEDOM INDEX - 2018 ¹²	
	<i>Aggregate Score:</i>	<i>Press Freedom Status</i>	<i>Ranking</i>	<i>Scores</i>
Bangladesh	45/100	Partly Free	146	48.62
Cambodia	30/100	Not Free	142	45.90
Maldives	35/100	Partly Free	120	37.95
Mongolia	85/100	Free	71	29.05
Nepal	55/100	Partly Free	106	32.05
Pakistan	43/100	Partly Free	139	43.24
Papua New Guinea	63/100	Partly Free	53	26.19
Solomon Islands	72/100	Free	n/a	n/a
Sri Lanka	55/100	Partly Free	131	41.37
Vanuatu	81/100	Free	n/a	n/a
Vietnam	20/100	Not Free	175	75.05

In our assessment, existing legislation in some of the countries imposes unacceptably broad limits on freedom of expression, both online and offline. In Bangladesh, Cambodia and the Maldives, criminal defamation legislation serves this purpose. Telecommunications laws and anti-terrorism laws are also widely used to suppress freedom of expression and of the media. In Bangladesh, the Information and Communication Technology Act 2006, the Anti-Terrorism Act 2009 and the Anti-Terrorism (Amendment) Act 2012 serve to limit freedom of expression. A similar effect is observed in Cambodia as a result of the Telecommunications Law 2015, in Mongolia due to the Violations Law 2017 and in Pakistan as a consequence of the Anti-Terrorism Act 2016 and the Prevention of Electronic Crimes Act (PECA) 2016.

In Pakistan, the controversial Pakistan Electronic Crime Bill (PECB) became law in September 2017. Its provisions contain vague language that grant authorities sweeping powers to censor online content in the name of preserving national security. The law also provides for prison sentences of up to three years for disseminating information with “dishonest” intent or which is deemed to harm an individual's reputation.

The Press Law 2016 in Vietnam contains a number of vaguely worded provisions, which imply excessive control by the Communist Party of Vietnam (CPV) over the press and restrict the role of the press and journalists in combating corruption. Article 4(2)(b) prescribes as one of the responsibilities of the press to “propagandise and disseminate, and contribute to the formulation and protection of, the line and policies of the Party, policies and laws of the State, achievements of the country and the world according to the guiding principles and purposes of press agencies”.



New legislative proposals or recently adopted laws in several of the countries covered by this report also threaten to undermine freedom of expression in the region.

The proposed Digital Security Act 2018 in Bangladesh threatens further restrictions, out of step with international standards. In Pakistan, the “Journalists’ Welfare and Protection Bill” requires media organisations to get approval from the government “before deputing a journalist for duty in a sensitive area, which can be potentially harmful to the journalist”.¹³ The draft bill gives government the authority to ban media organisations for up to three months and impose fines

In Vietnam, the new Cyber Security Law was approved by Vietnam’s National Assembly in June 2018 and will become effective in January 2019. Similar to the legislation mentioned above, the Cyber Security Law uses vague language in many of its provisions, which have caused great concern amongst citizens and the international community. Public concern focuses on the exclusive power of government in controlling information on the Internet (especially social networks), violations of citizen privacy and limits on the freedom of speech. More specifically, this law employs the same language as the Press Law in promulgating a list of prohibited types of information and is, in fact, even more comprehensive in this respect. It also grants the Cyber Security Force unlimited power to request access to private information systems or require Internet-based service providers to provide users’ personal information. More importantly, these providers are required to remove any information posted by users when state agencies determine this content to be directed against the party and state. This is particularly concerning in a context in which mainstream media outlets are strictly controlled by the state, as social media networks are often one of the only viable alternative channels for citizens and activists to tackle corruption. Once they become effective, these new regulations could discourage people, especially whistleblowers, from proactively participating in anti-corruption efforts.

In Cambodia, the Ministry of Interior, Ministry of Information and Ministry of Posts and Telecommunications issued an inter-ministerial *prakas* (notification) on website and social media control on 28 May 2018. The *prakas* orders the Ministry of Posts and Telecommunications to “block or close” websites and social media pages containing content “considered as incitement, breaking solidarity, discrimination and wilfully creating turmoil leading to undermining national security, public interest and social order”. These catch-all definitions of “illegal” content are a clear case of government over-reach and censorship – far beyond what can be justified as necessary to maintain public order and national security.

A slew of new laws that restrict civil society space and intimidate civil society representatives are also on the rise across the region.¹⁴

Due to the limitations of the present report, further threats to freedom of expression and of the media cannot be detailed here. However, there are legitimate concerns in the region about direct censorship, soft censorship, pressure to disclose sources, weakness of independent media, unsubstantiated criminal charges, as well as physical assaults, threats, harassment, torture and even killings of journalists and civil society activists by law enforcement agencies, leaders, criminals, and ruling political party members. Equally troubling are the inadequate investigations and punishment for such abuses.

SUMMARY OF FINDINGS

This report provides an assessment of eleven countries. Eight of these have right to information laws in force, one of them has a draft law and two have no right to information laws. The quality of laws varies across countries, as does their implementation. In all countries surveyed, the law and its implementation could be improved. Several findings recurred in the majority of country assessments. Here, we summarise them and give recommendations to governments and lawmakers.

- Most **information commissions** must be improved. Either their independence (for example in Bangladesh) and/or their power to effectively safeguard and promote the right to information (for example in Nepal, Sri Lanka) must be strengthened. More than half of the countries assessed are yet to establish a standalone information commission(er): Cambodia, Mongolia, Papua New Guinea, Solomon Islands and Vietnam. Although the new federal right to information law of Pakistan provides for an information commission, the first commission has yet to be established

Recommendation: Ensure the independence of information commissions and give them effective powers.

- Vague, overly broad or controversial **exceptions** to the right to information are abundant in the laws of Bangladesh, Cambodia, Maldives, Mongolia, Sri Lanka and Vietnam.

Recommendation: Review exceptions to clarify and limit them.

- **Public interest tests** are missing from most laws or cover only a limited number of exceptions in Mongolia, Nepal and Pakistan.

Recommendation: Ensure that public interest tests are included.

- **State security, intelligence and defence** bodies are excluded from the scope of the RTI laws in Bangladesh and Mongolia. In Vanuatu, the law does not cover the system of custom, traditions and practices.

Recommendation: Include all public bodies in the coverage of the RTI law.

- The laws of the Maldives, Mongolia, Nepal and Vietnam require requestors of information to provide **personal data**, which may discourage many from exercising this right. At the same time, making electronic anonymous requests available would pose no technical difficulties

Recommendation: Allow anonymous information requests.

- The laws of Nepal and Vietnam require the requestor to state a **reason for requesting access** to information. Even where this is not the case, in practice public officials are known to demand this information from requestors. This is a clear violation of the right to information as enshrined by the ICCPR.

Recommendation: Remove the requirement of stating a purpose for the information request.

- Several countries have relatively recent laws and the relevant public officials, information office and judges are **not fully trained** to understand and comply with the legislation. In some cases, for example in Cambodia, Maldives, Sri Lanka and Vietnam, civil society groups are also unfamiliar with their rights under the law.

Recommendation: Train public officials and civil society in the use of the RTI law.

- **Insufficient information is available** on the practice of information requests and the relevant complaint and appeal procedures in Mongolia, Nepal and Pakistan.

Recommendation: Collect and publish statistics and details about the application of the RTI law.

COUNTRIES FROM THE ASIA PACIFIC REGION INCLUDED IN THIS REPORT*

Bangladesh, Cambodia, Maldives, Mongolia, Nepal, Pakistan, Papua New Guinea, Solomon Islands, Sri Lanka, Vanuatu, Vietnam



*Highlighted in black

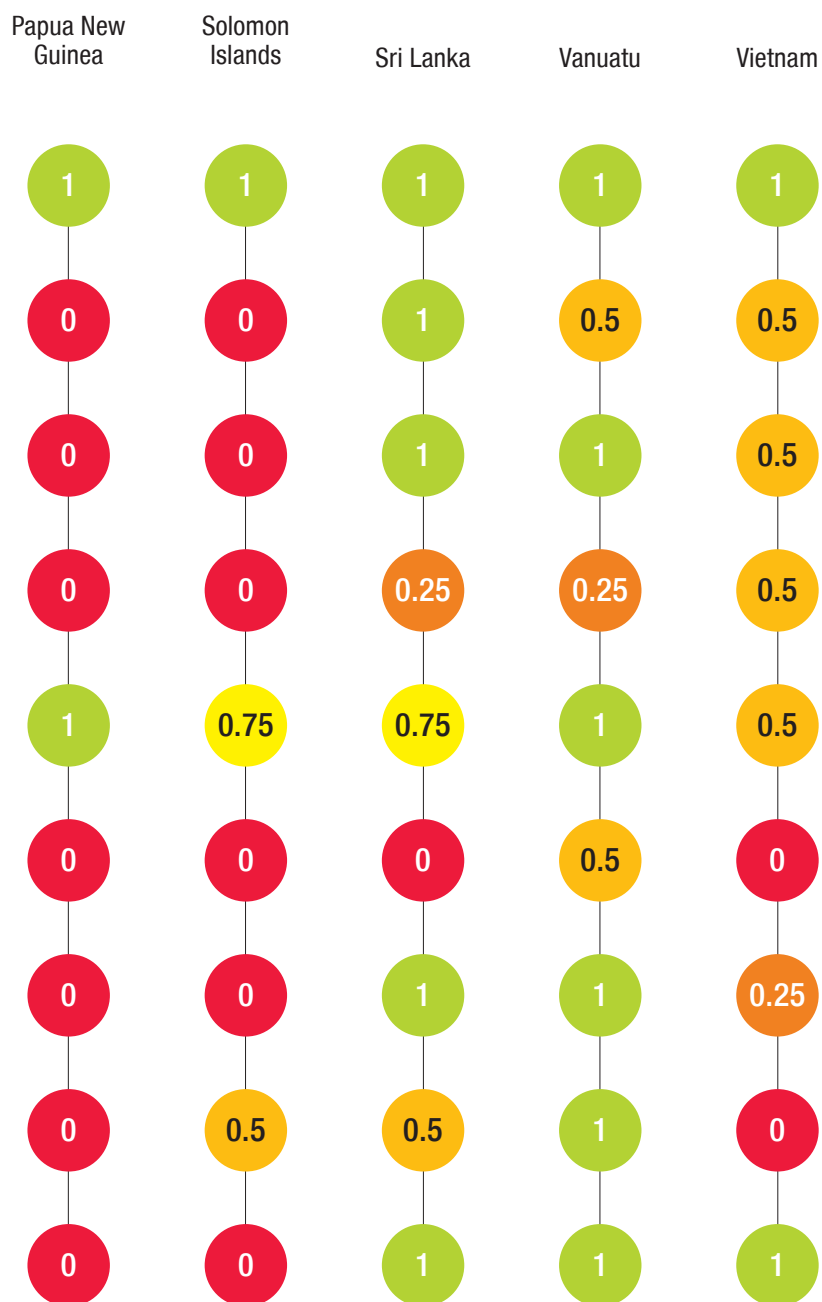
ASSESSMENT OF RIGHT TO INFORMATION LAWS

This table summarises our assessment of the right to information laws in force as of August 2018.

The scoring of '0' means the relevant legal provisions are absent/non-compliant and '1' means the relevant legal provisions are strong/compliant. Please see the chapter on methodology in this report for the detailed scoring.



	Bangladesh	Cambodia ¹⁵	Maldives	Mongolia	Nepal	Pakistan
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	0.5	0	1	1	1	1
SCOPE OF INFORMATION DEFINITION	1	0	0.75	0.5	1	0
SCOPE OF THE LAW	0.75	0	1	0.75	1	0.75
TIMELINES	0.5	0	0.5	1	1	1
EXCEPTIONS	0.5	0	0.5	0.5	1	1
HARM TEST	0	0	0	0	0.75	1
PUBLIC INTEREST TEST	0.25	0	1	0	0	0.25
INFORMATION COMMISSION(ER)	0.5	0	1	0.5	1	0.5
PROACTIVE DISCLOSURE	1	0	1	1	1	1



BANGLADESH

Bangladesh has a fairly good right to information law. It is emblematic of the generally strong approach to access to information legislation found in most parts of South Asia. However, the law could be further improved to ensure the independence of the information commission, as well as with regard to exceptions, harm tests and public interest test. A further challenge is the media and freedom of expression environment, which may deter many from exercising this fundamental right.

THE LAW

Freedom of thought, conscience and speech are identified as significant fundamental human rights Article 39 of the Constitution of the People's Republic of Bangladesh.¹⁶ Having acknowledged the right to information as a prerequisite for civil liberties, the government of Bangladesh enacted the Right to Information (RTI) Act, 2009.¹⁷ However, the right to seek, receive and impart information is not explicitly mentioned in the constitution, although the preamble of the right to information act stipulates that the right to information is an inalienable part of freedom of thought, conscience and speech.¹⁸

Scope of information covered

Article 2(f) of the RTI act holds an expansive definition of "information", which includes raw data, that is any memo, contract, order, report, accounts, project proposal and so on. All documentary materials relating to the constitution, structure and official activities of any "Authority" regardless of its physical form or characteristics (including machine readable records) fall within this definition, which does include official notes (internal notes).¹⁹

Article 2(b) provides a relatively broad definition of "Authority".²⁰ Moreover, the law defines "right to information" in Article 2(g) as "the right to obtain information from any authority". This right is repeated and extended in Article 4, which states that "every citizen has a right to information from the Authority and the Authority shall on demand from a citizen be bound to provide information".²¹

Scope of the law

The RTI law has a broad scope of application, extending to the executive, legislative branch and organisations that undertake public functions.²² It covers any body established by the constitution, namely the presidency, the cabinet, the prime minister, local government institutions, the parliament and the judiciary. The law also includes any body established under any other act or ordinance or receiving public funding or serving a public purpose – so this also covers the archives and local institutions. Private organisations that receive government or foreign funding are also included. This applies to NGOs, international organisations and other private bodies. However, the Act does not cover political parties and public media. Under Article 32, the RTI Act excludes state security and intelligence agencies, that is the Special Branch of Bangladesh Police and the Intelligence Cell of the Rapid Action Battalion, unless information sought pertains to corruption and violation of human rights in these institutions.²³

Timelines

The RTI Act describes the procedure for providing information. A designated officer is bound to respond to an applicant within the stipulated time, from the date of receiving the request. The authority must provide the information within 20 working days, unless the information relates to life and death, or the arrest or release of persons, in which case the deadline is 24 hours. If more than one authority is affected by the request for information, the deadline is extended to 30 working days. If the authority decides to refuse access, the decision must be issued within 10 working days. In case of administrative silence, the request is presumed to have been rejected.²⁴

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN BANGLADESH

Indicators	Achieved
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RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	0.5
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SCOPE OF INFORMATION DEFINITION	1
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SCOPE OF THE LAW	0.75
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TIMELINES	0.5
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EXCEPTIONS	0.5
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HARM TEST	0
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PUBLIC INTEREST TEST	0.25
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INFORMATION COMMISSION(ER)	0.5
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PROACTIVE DISCLOSURE	1
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Having a Right to Information Act, even if it is fairly robust, is only one of the necessary steps towards ensuring people’s right to access information. It is far from sufficient and depends greatly on a number of factors outside the content of the law as such.

These include greater awareness and ownership of the act across society, particularly at the political and administrative levels. There are issues related to lack of financial resources for systemic improvement of information management. There is also a deficit of capacity and skills on both the demand and supply side of those who seek and demand information in line with the law, and those who are mandated by the law to proactively disclose or provide information on demand.

Most importantly, it requires a crucial paradigm shift from a culture of secrecy to that of openness in which everyone has a stake, but the catalytic role rests on political and governmental ownership.

- Dr. Iftekharuzzaman, Executive Director
of Transparency International Bangladesh

Exceptions

The exceptions to the right of access are generally consistent with international standards. The access to information regime put forward by the RTI Act takes supremacy over any impediments laid down in other laws. A list of 20 exemptions under Article 7 of the act broadly protect the following interests: state security; international relations; commercial secrets and intellectual property rights; tax and budget information; law enforcement; judicial activities; investigations; privacy; “secret information” of a person; life or physical safety of individuals; and others. Four exceptions in Article 7 are overly broad and therefore not consistent with international standards. These are: (n) information that is, according to the law, liable to be published only for a certain period of time; (o) information generated through research (i.e. technical or scientific experiment), which is kept secret for “strategic” reasons; (q) information that may be prejudicial to the special rights of the house of the nation (Parliament); and any secret information about a person that is protected by law.

Harm test

Of the 20 exceptions listed in Article 7, only 11 include a harm test.²⁵

Public interest test

The RTI Act contains neither a public interest test nor a mandatory public interest override for the exceptions. However, it provides a limited public interest override against the provision that removes “organisations and institutions which are involved in state security and intelligence mentioned in the Schedule” from the scope of the law. The Right to Information Act still applies to state security and intelligence entities if the requested information pertains to “corruption and violation of human rights in the above-mentioned organisations and institutions”.²⁶

Information commission(er)

Bangladesh has an information commission. It is a statutory independent body accountable to the president.²⁷ The information commission consists of a chief commissioner and two commissioners. The commission’s powers and functions, according to which it handles appeals against refusal decisions, administrative silence, imposition of unreasonable

fees, incomplete, misleading or false information and other violations of the RTI Act, are regulated in details in the act.²⁸ The commission has the necessary mandate and power to perform its functions, and inspect the premises of public bodies, but it cannot inspect classified documents.²⁹ The RTI Act regulates the appointment process of the chief information commissioner and the commissioners, their tenure, their expertise requirements, but it includes no prohibition on politically connected individuals. In addition, the commission reports to the president and the “President shall cause the report to be laid before the Parliament”.³⁰ The commission has limited financial independence as it is only allocated a “specific amount of money to defray its expenses”.³¹

Proactive disclosure

The RTI Act includes a long list of types of information that should be proactively published, although it does not explicitly mention that such information should be available online. This includes information on decisions, activities, policy-related documents and reasons for their adoption. On an annual basis, every authority must publish a report containing information on its organisational structure, activities, the responsibility of its officers and employees, description and process of decision-making, lists of all its laws, acts, ordinances, rules, regulations, notifications, directives, manuals, etc., including the classification of all information that authority holds.³² The provisions further require that public authorities disclose “all information pertaining to any decision they have taken” and the “description and process of decision-making”. They must also “explain the reasons and causes in support of such policies and decisions”. These provisions mark a significant departure from the culture of secretive governance that was common before the 2009 RTI Act.³³ Moreover, under Article 34, the Information Commission of Bangladesh has published RTI rules on disclosure and publicity, which came into force in 2011.³⁴ In 2013, the Cabinet Division issued a circular on the development, expansion and maintenance of the national portal and the information commission issued “Proactive Information Disclosure Guidelines, 2014”, that provided clear instructions regarding the types of information to be published on government websites.

Further features of the law

It is an important feature of the RTI Act that its provisions supercede those of any existing law that create an impediment in providing information if there is any conflict between the two.³⁵

The RTI Act also provides for partial access, as no request may be fully rejected if it is reasonably possible to allow access to non-exempt portions of requested information. The authority must inform the requestor of the reasons for refusal. Information may be refused only with “prior approval from the Information Commission”.³⁶

The act provides a well-defined appeals mechanism. If any person is not given information within the time period specified in the law, they can appeal before the appellate authority (administrative head of the immediate superior office or of the requested unit) within 30 days of receiving the decision or after the expiry of the time period. The appellate authority has 15 days “to direct the concerned office -in-charge to supply the appellant the requested information or to dismiss the appeal”.

It is a shortcoming of the law that it does not allow anonymous requests.

THE PRACTICE

Nine years after its enactment, the law has led to significant progress. However, effective implementation of the RTI Act still needs to improve to realise its full potential.

In Bangladesh, the Deputy Commissioners’ Office represent the national government at the district level and offer hundreds of services. Prior to the Access to Information (a2i) Programme of the Prime Minister’s Office and the “Data 2 Policy” reform, “citizens had to travel tens of miles, spending a lot of time, money and enduring considerable hassle, as the offices only recognized applications written on paper. Moreover, once they submitted the service requests or applications, citizens had no idea about progress made in processing them – the system was completely opaque”.³⁷ From 2009 on, “a2i in collaboration with the Local Government Division, established 5,000+ one-stop service delivery outlets known as Digital Centres throughout Bangladesh in all: Union Councils (Union Parishad) – the lowest tier of the Bangladesh government; Sub-district Councils (Upazila Parishad);

Municipalities (Paurashava); and City Corporations. These last mile access points are about 3 km from the average rural citizen’s home, whereas a government sub-district office is typically 20 km and a district office over 35 km.”³⁸

Although “designated officers” in each of the “information providing units” can now receive online training on RTI Act 2009, a problem remains. These courses are only offered on a voluntary basis, and many designated officers are not interested in taking up the training, thus rendering its provision futile in the long run. To ensure proper compliance with the legislation, authorities and responsible officers need to fully recognise and endorse citizens’ fundamental right to information.³⁹

In addition, information management is a major concern, as poor record keeping and archiving leads to delays in complying with information requests and providing information in a timely fashion. This problem is likely to become more acute as citizens become increasingly familiar with the RTI process over time, leading to requests for more sophisticated and specific information.⁴⁰

When a requestor wants to appeal a decision, the law is ambiguous about the relevant appellate authority. It can either be the administrative head of the superior office immediately above the public body that received the information request or, in cases where no superior office exists, the head of the unit that received the request for information.⁴¹

With the support of the social enterprise Dnet, the information commission took the initiative of creating an online-based RTI tracking system to monitor all applications, as well as complaints and appeals.⁴²

The 2017 annual report of the Information Commission of Bangladesh reveals that 8,167 RTI applications were filed to public and non-government authorities, among them 7,768 RTI applications to public authorities. According to the commission report, due to various awareness-raising activities organised by the commission at the local level, the RTI application trend increased by a third in 2017, compared to 2016.⁴³ Information was provided in 7,808 cases, which amounts to 95.6 per cent of total RTI applications.

While the Sustainable Development Goals tracker of the Ministry of Foreign Affairs states that a total of 29,213 “designated officers” had been appointed by 31 March 2018, the information commission reports having

provided training to 33,554 “designated officers.” The commission provides the training, but it does not know the total number of “designated officers” appointed, as many local institutions do not inform the commission of their appointments. This accounts for the discrepancy.⁴⁴ For context, Bangladesh has a total population of around 166 million.

In its assessment report, the Management and Resources Development Initiative (MRDI) found that “the RTI Act and its use by citizens and journalists has fostered a culture in which public bodies are deliberately disclosing information. The proactive disclosure via websites and other platforms has increased since the implementation of the RTI Act and many documents are now available on websites that were hard to access before.”⁴⁵ Having said that, RTI activists, academics and journalists note that compliance is still far from universal and some public agencies only publish information irregularly and in a disorganised manner.

In many public offices, the spokesperson or public relations department lacks the kind of information that journalists seek and institutions should offer as part of their proactive disclosure. They therefore do not fully comply with their proactive disclosure obligations. Speakers at the national seminar organised by MRDI proposed that all the government offices develop specific and usable communication strategies to encourage proactive disclosure.⁴⁶

RECOMMENDATIONS

- Improve the rules regulating the information commission. Allow the commission to inspect classified documents. Prohibit people with political affiliations from becoming members of the commission and require the commission to report directly to Parliament rather than the President.
- Amend the RTI Act to include the private sector, public media and political parties.
- Review the four overly broad exceptions: information liable to be published only for a certain period of time, information that is generated through research, information that may be prejudicial to the special rights of the house of the nation and any secret information about a person that is protected by law.
- Introduce harm tests for each exception and introduce public interest tests for all exceptions.
- Bring under the scope of the act the state security and intelligence organisations and institutions.
- Eliminate the requirement for requestors to give personal details, with the exception of contact details through which they can receive the information. Allow anonymous requests.



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CAMBODIA

Cambodia does not have a law on the right of access to information, but it has a draft law, which may be adopted after the 2018 elections. Based on the current legal framework, Cambodia would receive very low scores. To take into account the country's ongoing efforts to adopt a right to information law, we assessed Cambodia's draft law.

The drafting process of the Law on Access to Information has been completed at ministerial and technical working group levels. However, there is no clear indication when the legislation will be tabled and passed. The present country report provides an assessment of the draft law. Obviously, implementation of the law in practice cannot be assessed, but it is already evident that the current freedom of expression and media environment in Cambodia is not at all conducive to the free and full exercise of this right.

THE LAW

Although the constitution of Cambodia contains no explicit provision on the right of access to information, it stipulates that “the Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.” In turn, Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide for the right to information.

Scope of information covered and scope of the law

The draft law contains a broad definition of information which applies to all official documents in the possession of public institutions. Its scope is similarly broad.⁴⁷ Although the definition of public institutions is vague, it seems to include the executive, central and local administrative authorities, as well as other entities that perform public functions, such as the parliament, courts and election commission.

Timelines

The draft law contains provisions about the maximum timeframe for responding to a request. The applicant has to be notified within five working days whether the information requested is available or it relates to confidential information. After the requestor pays the service fee, disclosable information has to be provided within 15 working days.

Exceptions

The exceptions stipulated in the draft law are, to a large extent, in line with international standards. The draft law foresees the “exception of a certain number of confidential information laid down by this law” (Article 3). Article 20 provides details of the exceptions and the latest version of the draft law stipulates that public institutions may refuse to provide information to the public if disclosure of the information would cause damage to national security and defence matters, international relations, the national economy and finances, internal meeting and process of appointments, examinations of public institutions, or constitute a violation of the privacy of an individual or obstruct law enforcement officials in the course of their duty.

Harm test

The draft law applies harm tests both as a general rule for all exceptions and, in addition, separately for each category of exception (Article 20). Concerning information constituting a violation of the privacy of a private person, the assumed harm is implicit in the text.

ASSESSMENT OF THE CURRENT LEGAL FRAMEWORK AND THE DRAFT RIGHT TO INFORMATION LAW IN CAMBODIA

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	0
SCOPE OF INFORMATION DEFINITION	1
SCOPE OF THE LAW	0.75
TIMELINES	0.5
EXCEPTIONS	1
HARM TEST	1
PUBLIC INTEREST TEST	1
INFORMATION COMMISSION(ER)	0.5
PROACTIVE DISCLOSURE	1

Public interest test

The latest version of the draft law contains a provision suggesting that confidential information must be disclosed when overall public interest overrides the benefits of keeping it (Article 7). The draft law also gives public institutions discretion to reduce the timeframe on confidential information either in part or in whole as prescribed in Article 23 of the draft law, and make it available to the public, so as to protect and serve the public interest and promote the public's right to information in accordance with legal principles. There are also hard overrides. Article 21 states that for cases related to the crime of genocide, crimes against humanity or war crimes, public institutions shall make the information available to the public once the court of law completely closes the case.

Information commission(er)

Although, Cambodia has no independent information commission and the draft law does not envisage such an institution, the country has ombudsman offices, which aim to promote good governance in the provision of public services and local economic development. They do so by strengthening the roles and responsibilities of sub-national administrations in receiving and mediating out-of-court complaints about public service delivery and sub-national administration.⁴⁸ Once the Law on Access to Information enters into force, ombudsman offices will also receive right to information complaints.

Article 26 of the draft law allows requestors to appeal through existing state complaint handling mechanisms. Requestors have the right to appeal to the head of the public institution to which the request for information was addressed if the information is not provided in the requested form or the application for information was rejected by the public institution without a proper reason.

At the sub-national level, requestors who do not agree with the decision of the officer in charge, may file a complaint to the head of the institution or the local ombudsman in the area where the information was requested. The requestor can further appeal to the capital and to provincial courts of first instance against decisions taken by the head of the concerned public institution. First instance court decisions can be appealed too.

Proactive disclosure

Article 6 of the draft law states that all public institutions shall abide by the principle of maximum disclosure. To further this end, they shall regularly update and broadly disseminate information about action plans, budgeting, fulfilment of tasks, responsibilities and other decisions in connection with national and public interests. The law also provides a detailed list of minimum standards on mandatory proactive publication of information.

THE PRACTICE

As the legislation is still a draft law, its implementation in practice cannot be assessed. It is unclear if requestors will be able to exercise their rights easily, public officials will comply fully and courts will develop a jurisprudence that provides a strong recognition of this human right.

It is noteworthy that some public institutions have already taken the initiative to publish information and documents online. For instance, the Ministry of Economy and Finance has published some budget documents online, which resulted in an improvement of the Open Budget Survey (OBS) score.

In addition to the Ministry of Economy and Finance, other ministries and institutions have made efforts to publish a list of available public services and relevant fees. The Ministry of Civil Service, in cooperation with Transparency International Cambodia and the Ministry of Posts and Telecommunications, has created a mobile application (Cambodia Public Service Mobile App) for sharing information about public service fees on Android and iOS phone. In addition, they have established a calling centre and public service internet gateway (online database) to promote the quality and effectiveness of public services (forms, workflows and fees for each service from seven ministries).⁴⁹

One Window Service Office of the Ministry of Interior also made certain public service fees and the time required to obtain these services publicly available.⁵⁰

The website of the National Committee for Sub-National Democratic Development also contains a lot of information related to sub-national administration. More importantly, the website also contains budget information and project implementation at the commune/*sangkat* level. However, the accuracy and reliability of the information provided are still questionable.

RECOMMENDATIONS

- Improve the draft law and enact the Law on Access to Information.
- Provide the ombudsman with the mandate and resources to review the implementation of the law generally and in individual cases.
- As currently drafted, the exception of national security and defence matters is too broad and vague. Adopt detailed rules on the substance of this exception and the procedure for classifying and declassifying such information.
- Once the law is enacted, provide training to public officials and judges on its implementation
- Raise awareness of the law among citizens, civil society and the media, and enable them to freely use it.
- Ensure the independence and neutrality of the public institutions tasked with handling complaints.
- Produce clear guidelines for implementing the law. The guidelines should engage all relevant stakeholders.



Ensuring public access to information is essential to promoting accountability and fighting corruption in Cambodia.

- Kol Preap, Executive Director
of Transparency International Cambodia

MALDIVES

The Maldives has one of the best right to information laws in the region and it is also in the top tier globally. However, requestors face significant challenges when they exercise their rights. So far, the information commissioner has only developed limited jurisprudence and the courts none. The country's freedom of expression and media environment is not conducive at all to the free and full exercise of this right.

THE LAW

The Constitution of Maldives recognises a fundamental right of access to information. Article 29 of the constitution guarantees everyone the “freedom to acquire and impart knowledge, information and learning” and the constitution also imposes proactive disclosure obligations on the government. The Right to Information Act was adopted and entered into force in 2014.

Scope of information covered

The Right to Information Act 2014 (RTI Act) define information broadly⁵¹, but information that belongs to a third party is not covered by the definition ⁵²

Scope of the law

The right of access to information applies to all public authorities which, according to RTI Act 2014, include the executive, the legislative, the judiciary, independent institutions, security services, councils elected under the constitution, those bodies which take any state responsibilities, those functioning under the state budget and those receiving assistance from the state budget. The legislation affirms that the right of access also applies to associations and organisations functioning in the Maldives with funds from the state budget or funds received from a foreign government or funds from an international body. Although it is indirectly suggested, the legislation does not specifically state that the right of access applies to state-owned enterprises.

Timelines

The RTI Act states that the maximum timeframe for responding to a request for information is 21 days and 48 hours for responding to a request which involves the life and liberty of a person.

Exceptions

The exceptions to the right of access are generally consistent with international standards, yet some of them are too broad, vague or contradictory:

- Article 3(c) of the RTI Act trumps restrictions on information disclosure in other legislation where there is any discrepancy. However, it is directly contradicted by Article 22(a) of the same Act, which builds in any exception found in other laws.
- Article 8(b) of the RTI Act states that a public authority can refuse access to information where the authority had responded to the same request previously and where, after the response, the information has not changed notably, or where sufficient time has not elapsed. “Sufficient time has not elapsed” is a vague formulation, which leaves room for abuse. Moreover, it is an unnecessary addition to the existing discretion on the part of a public authority to refuse to provide access to information if that information is deemed not to have changed notably.
- The deferments in disclosing information, mentioned in Article 14 of the RTI Act – the “time for such disclosure has not arrived” provisions – are too broad.
- Article 22(d)(2), which states that “information, if prematurely disclosed could adversely affect a person or group of persons”, is too vague as is Article 25 (c) that covers a certain category of information on business affairs.

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN THE MALDIVES

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0.75
SCOPE OF THE LAW	1
TIMELINES	0.5
EXCEPTIONS	0.5
HARM TEST	0
PUBLIC INTEREST TEST	1
INFORMATION COMMISSION(ER)	1
PROACTIVE DISCLOSURE	1

- Article 22(d)(3) sets an exception “where disclosure of certain information would detriment the privilege [...] of the People’s Majlis”, which is not in line with international standards.
- The child protection clause in Article 22(d)(5) of the RTI Act is too broad and unnecessary in light of separate protections for personal information.
- Article 22(b) sets an exemption for “information, disclosure of which could cause action for breach of confidence to be filed against the government”, though no laws cover an expectation of confidence from state institutes.
- The purpose of the standalone exception in Article 28 (c) on “the ability to administer the rules governing immigrants entering Maldives” is unclear.
- Article 27(a)(3) is too broad, as it states that “Information that needs to be kept confidential for the enforcement or administration of a legislation” is exempt from the right to information.

Harm test

The RTI Act has harm tests for the majority of exceptions. However, several exceptions still lack a harm test, including exceptions related to:

- documents and deliberations of the cabinet (Article 32 (a) (4));
- “Information, disclosure of which could prevent the government from obtaining such information in the future” (Article 22 (c));
- personal information (Article 23);
- information of investigations and trials protected by legal privilege (Article 24);
- a vague category of information on business affairs (of Article 25 (c)).

There are some exceptions under Article 22 where the harm test is implicit in the text of the law.

Public interest test

Article 20 of the RTI Act provides for a public interest test, which stipulates that information must be disclosed when this is in the overall public interest, even if it may harm a protected interest. This rule applies to all exceptions covered by the law, but not to “records relevant to enforcement agencies,” which are exempted from the applicability of the Act. Although for the latter category the normal public interest test does not apply, a hard public interest override is built in for:

- information “that could reveal that the scope of a law enforcement investigation had exceeded limits defined by law” or the general principle law enforcement agencies should adhere to in their work;
- “degree of success achieved in programs, designed to stop the breach of law”;
- “information made known to the person under investigation as per the normal procedure” (Article 27 (b)).

Information commission(er)

The Information Commissioner’s Office is the oversight body where an external appeal can be lodged. It is presided by the information commissioner who is appointed by the president after the parliament approves a name from a list submitted by the president. The information commissioner reports to and has his/her budget approved by the parliament. The information commissioner’s office has the necessary mandate and power to perform its functions, including to order, investigate and review specific information and examine, search and inspect the premises of public bodies.

Proactive disclosure

The RTI Act (Article 37) contains an extensive list of minimum standards on mandatory proactive publication of information. The law mandates all public authorities to annually publish a broad set of information on functions, responsibilities, structure of public bodies, services provided by them, their complaints mechanisms, information held by them, their rules, regulations, policies, decisions that would affect the public, their budget and remuneration of employees.

THE PRACTICE

The RTI Act is relatively new and most of its provisions have yet to be tested in practice. However, numerous shortcomings in its application are very much visible already.

The Act creates a specific presumption of access to all information held by public authorities, subject only to limited exceptions. Article 70 of the Act states that in enforcing and interpreting the provisions of the Act, “the onus shall be on the interest of fully enabling the right to information.” So far, there is no jurisprudence that would show how this provision is being adhered to in practice.

A number of shortcomings in the access to information regime came about with the introduction by the Information Commissioner’s Office (ICOM) of the application form to request information. The law specifically states that such an application form should not compel anyone to provide anything more than the mandatory set of information prescribed by the RTI Act.⁵³ The actual application form introduced, however, requires the person requesting information to fill in his/her national identity card number, a copy of the identity card, and the reason for requesting information, together with the requestor’s fingerprint

Although the law states that every person has the freedom to acquire information, and define ‘persons’ to include natural and legal personalities, the application form suggests that the right is only provided to individual citizens of the Maldives, as the form requires the requestor to fill in his/her national identity card and provide a copy of the card. Due to the specifics of the application form, foreign nationals, as well as companies, associations and other legal bodies, are unable to complete the form. This provides opportunities for public bodies to refuse acceptance of the form, thereby depriving such persons from the right to information. This approach also disregards the fact that the constitution provides this right to everyone.

In addition to the problems created by the requirement to provide additional information on the application form, in practice, several other factors make requesting or gaining access to information unnecessarily burdensome and difficult. Not only do requestors have to provide their identity card number and a copy of the identity card, but they also have to give their full name, common name, present address and permanent address. Anonymous requests are not allowed.

In fact, the requirement to state the reason for requesting access to information on the application form is the most important factor making it difficult to request or gain access to information. After continuous dialogue with Transparency Maldives, ICOM changed the application form in July 2017. On the new form, it inserted the term “optional” in the section where the applicant has to provide the reasons for requesting information.

There is a general lack of awareness about the access to information regime among public sector employees (especially employees at the reception of public offices). This has resulted in a number of deficiencies in the submission of requests. First, persons requesting access to information have had to wait at office lobbies for significant amounts of time before their application for information was accepted. Second, public authorities often fail to provide a receipt acknowledging that the form has been submitted, as mandated by law. Third, public authorities occasionally insist that applicants fill in details of the form that are not required by law. In some instances, public bodies have even refused to accept application forms with official email addresses and insisted that a personal email address be used instead.

Harm tests are hardly used in practice by the public authorities and most requests for access involving exceptions are rejected. In addition, Transparency Maldives has experienced a number of instances where requests for access to information filed by its staff have been rejected, citing exception clauses in the law (such as third party private information, national security and trade secrets) when such exceptions were not relevant at all. In these cases, appeals to the review committees in public bodies and to the information commissioner were rejected. As of July 2018, no appeal has been filed to the High Court.

According to the annual reports of the Information Commissioner’s Office, 106 requests for information were made to public authorities in 2015 and 81 were answered. In 2016, 761 requests were made, out of which 713 were answered. The total population of the Maldives is about 440,000 people.



RECOMMENDATIONS

- Further improve the quality of the RTI Act, by reviewing vague, overly broad or controversial exceptions. Introduce harm tests for each exception and bring under the scope of the Act all third party information and records relevant to enforcement agencies.
- Eliminate the practice of requiring persons to state reasons for requesting information or provide personal details, except a freely chosen contact detail where they can receive the information. Allow anonymous requests.
- Bring the authorities' practices in line with the constitution and provide information to everyone who submits a request.
- Train all information officers and members of the Review Committee to fully understand and comply with the RTI Act.



The Right to Information Act in the Maldives is a positive step towards increasing transparency, inclusiveness and accountability in governance processes. However, challenges remain in the implementation of the framework envisioned in the RTI Act. In particular, administrative hurdles, lack of awareness, and outright refusal to implement the letter of the RTI Act remain major challenges to realising transparent governance in the Maldives.

- Mariyam Shiuna, Executive Director
Transparency Maldives

MONGOLIA

Mongolia's right to information law has many good features, but there is room for improvement in the areas of harm and public interest tests, as well as the channels for seeking redress when requests are refused. A new Law on State Secrets was enacted in 2016 to update and clarify the regulation of state secrets. It is not clear yet whether the law constitutes an improvement or deterioration.

Some developments in the area of freedom of the media in Mongolia give cause for concern, but these have not reached a level that would inhibit effective exercise of the right to information.

THE LAW

In Mongolia, the legal framework (including jurisprudence) recognises a fundamental right of access to information. Article 16.17 of the constitution provides for "the right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity, and reputation of persons and to ensure national defence, security, and public order, the information which is not subject to disclosure must be classified and protected by law." Since 2011, Mongolia has an information transparency and right to information law (RTI law).

Scope of information covered

In Mongolia, the right of access applies to all material held by or on behalf of public authorities, recorded in any format, regardless of who produced it, except where this information is classified as a government secret or if it is otherwise prohibited by law from being disclosed. Both national and foreign citizens, stateless persons and legal entities are entitled to receive the following information:

- "(i) All information and documents, and information pertaining to the organisation's contracts and agreements in possession of the organisation;
- (ii) All information pertaining to the goods and items in possession of the organisation;
- (iii) Any other information pertaining to the functioning of the organisation."⁵⁴

This information is provided as long as it is "not related to the human rights and freedoms, national security, and lawful interest of organisations prohibited to be released to the public".⁵⁵

Scope of the law

The RTI law (Article 3) lists the public bodies under its scope, which includes the parliament's office, presidential office, cabinet secretariat, all central and other state administrative organs, national security council, all courts and prosecution authorities, other organisations established by Parliament (except for the Cabinet), and local administrative and self-governing entities, state owned or state participated legal entities, non-governmental organisations fulfilling certain functions of the executive branch in accordance with the Government Law, public radio and television. However, exclusions are applicable for the armed forces, border protection and intelligence organisations.

Timelines

The maximum timeframe for responding to a request for information is seven business days which can be extended by another seven business days.

Exceptions

The exceptions to the right of access are largely consistent with international standards. However, they include some questionable categories, such as "if the concerned information relates to the ratification of the international treaty process", "any other information specified in the laws", "information related to the intellectual property" and "if there are well-grounded reasons that the public release of the concerned information might be detrimental to the national security and public interest of Mongolia".

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN MONGOLIA

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0.5
SCOPE OF THE LAW	0.75
TIMELINES	1
EXCEPTIONS	0.5
HARM TEST	0
PUBLIC INTEREST TEST	0
INFORMATION COMMISSION(ER)	0.5
PROACTIVE DISCLOSURE	1

Harm test and public interest test

The RTI law does not include any public interest test or mandatory public interest override provisions. It has a harm test that applies only to public interest, national security and business secret exceptions.

Information commission(er)

There is no information commission(er) in Mongolia, however there is a National Human Rights Commission of Mongolia (NHRC). When a citizen or legal entity considers that its lawful right to information was infringed by an official or a public body, they have the right to complain to higher instances within the public body, to the NHRC or to the courts.

The NHRC is an independent entity with powers usual for any ombudsman, extending beyond those in some areas. The speaker of parliament nominates candidates for commissioners on the basis of the respective proposals of the president, the Parliamentary Standing Committee on Legal Affairs and the Supreme Court. The parliament appoints the commissioners, as well as the chief commissioner. The commissioners enjoy immunity and the NHRC budget, guaranteed by law, has to be reflected in the state consolidated budget. The NHRC's mandate includes the promotion and protection of the right to information, as one of the human rights enshrined in the Constitution of Mongolia. Domestic and foreign citizens, and/or stateless persons who are residing in Mongolia, as well as NGOs, can lodge complaints to the NHRC, which can investigate and issue recommendations, proposals and reports. Commissioners of the NHRC have extensive investigative powers, including unrestricted access to any business entity or organisation and access to the confidential data/records of the state, organisation or individual person.⁵⁶ The NHRC can resolve cases, for instance by resorting to conciliation of the parties, but it can also submit claims to the courts.

Proactive disclosure

The RTI law includes detailed rules that obligate entities under the scope of the law to proactively publish information. This information is divided into operational, workforce, budgetary and procurement transparency.⁵⁷ With respect to operational transparency, information such as the organisational structure, internal procedures, applicable laws and regulation and documents checklists are to be published online.

Budgetary transparency is largely dealt with by the Glass Account Law and involves publishing budgets and financial statements. Further proactive publication rules apply to non-governmental organisations fulfilling certain functions of the executive branch. These are obliged to publish information relevant to the environment and to public health, as well as to adopt a list of classified confidential information held by that particular non-governmental organisation and to inform the public of it. If public bodies fulfill similar functions the same rules apply to them too.

THE PRACTICE

Although the RTI law does create a specific presumption in favour of access to all information held by public authorities, subject to limited exceptions, these exceptions may be applied in ways that are not consistent with international standards, due to ambiguities in the law and their potentially broad scope.

The law applies to Mongolian citizens, foreign citizens and stateless persons legally residing in Mongolia as well as presumably to legal entities, that are registered in Mongolia. As such, the legislation does not necessarily grant everyone – for example, foreign legal entities and organisations or individuals who may not be lawfully residing in Mongolia – the right to request information. It is a further shortcoming of the law that anonymous requests are not possible and requestors have to provide their name, address, ID card number and other identifying information. The formal requirements for requesting information or the approval process may make the requests unnecessarily burdensome and difficult in practice.

The law covers obtaining “information”, which is provided orally, in writing or electronically. It does not necessarily grant the right to access records or documents, although it indirectly does so as citizens may obtain a copy of such records or documents. The appeals mechanism is somewhat ineffective as there is no dedicated independent information commission and citizens must rely instead on the National Human Rights Commission.

No specific information is publicly available on the number of requests made to public authorities.

In the area of proactive publication, there are some good practices. The Independent Authority against Corruption (IACC) has published information, documents

and surveys online. Also, government staff, public service staff, civil servants' income, assets and interests information is publicly available on the IACC website. The accounts of government agencies and ministries were turned into "glass accounts" under the Glass Account Law and made transparent to the public on their respective websites. IACC publishes the asset disclosures of public official⁵⁸ every year while the government procurement agency publishes procurement details.⁵⁹ Annual data is also published as part of the Extractive Industries Transparency Initiative.⁶⁰

The Independent Research Institute of Mongolia monitors government organisations websites for compliance with the requirements of the RTI law of Mongolia and publishes results every year.⁶¹

RECOMMENDATIONS

- Further improve the quality of the RTI Act, by reviewing vague, overly broad or controversial exceptions.
- Introduce harm tests for each exception and introduce public interest test for all exceptions.
- Bring under the scope of the Act the armed forces, border protection and intelligence organisations.
- Eliminate the requirement for requestors to give personal details, except a freely chosen contact detail where they can receive the information. Allow anonymous requests.
- Set up the position/office of information commission(er), with similar powers and independence as the National Human Rights Commission.
- Collect and annually publish information on the practice of information requests and the relevant remedies applied.



Right to information is also very important for journalists so they have the information and are able to report on what government is doing. On 26 April 2017, television and print media showed their solidarity to protect their rights by going dark on air for one hour or printing a black front page. It was ahead of the Mongolian parliament's debate and passing of law amendments which allow for imposing large fines on reporters accused of defamation in what is seen as a way to discourage them from reporting on issues like rampant corruption. Journalists' rights to get information and report on it are key to holding government accountable, and they should not be threatened with hefty fines or otherwise.

- Batbayar Ochirbat, Executive Director
of Transparency International Mongolia

NEPAL

The Right to Information Act of Nepal is a rather good law in most aspects. However, in one crucial area, its approach is out of step with international good practice and undermines the purpose of the act. This is the requirement to state the purpose for the information request and the obligation to use the information only for that purpose.⁶² Nepal's freedom of expression and media environment is not totally free, but it has recorded recent improvements.

THE LAW

The right to access to information is guaranteed in Article 27 of the Constitution of Nepal: "Every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest. Provided that no one shall be compelled to provide information on any matter of which confidentiality must be maintained in accordance with law." Nepal adopted its Right to Information Act (RTI Act) in 2007.

Scope of information covered

The RTI Act defines information as "any written document, material, or information related to the functions, proceedings thereof or decision of public importance made by a Public Body." Documents and public bodies are also broadly defined and "public importance" means a subject related directly or indirectly with the interest of citizens".⁶³

The "Right to Information" is also defined in a rather progressive way that goes beyond the usual phrasing of the right to seek, receive and impart information. It is defined as "the right to ask for and obtain information of public importance held in the Public Bodies and this term shall also include the right to study or observation of any written document, material held in Public Body or proceedings of such Public Body; to obtain a verified copy of such document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any material or to obtain information held in any type of machine through such machine".

Scope of the law

Public bodies not only cover entities established under the constitution or by an act or formed by the Government of Nepal or fully or partly state-owned enterprises. They also include any "Political Party or organisation registered under the prevalent law" and "Non-Governmental Organisation/Institutions receiving funds directly or indirectly from the Government of Nepal or Foreign Government or International Organisations/Institutions."⁶⁴

Only Nepalese citizens can be requestors.

Timelines

The RTI Act distinguishes between two time periods for replying to a request: if the nature of the information makes it possible, it has to be provided immediately; otherwise the deadline is fifteen days

Exceptions

The RTI Act only lists five exceptions, all of them generally in line with international standards. However, the formulation of two of them is too broad. These are if the information requested either "directly affects the investigation, inquiry and prosecution of a crime" or has "a serious impact on the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy".

Harm test

The exception related to "the investigation, inquiry and prosecution of a crime" also lacks a harm test.

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN NEPAL

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	1
SCOPE OF THE LAW	1
TIMELINES	1
EXCEPTIONS	1
HARM TEST	0.75
PUBLIC INTEREST TEST	0
INFORMATION COMMISSION(ER)	1
PROACTIVE DISCLOSURE	1



Public interest test

The RTI law has no public interest test or public interest override provisions. Moreover, it contains a rather severe restriction. Requestors have to state the reason for their request and, contrary to Article 19 of the International Covenant on Civil and Political Rights, they are not free to further disseminate the information they obtain. As Section 31 stipulates “(1) a person who obtains information from a Public Body shall not misuse the information by not using it for the same purpose that was considered. (2) The concerned Public Body may complain to the Commission against a person who misuses the information against Sub-Section (1).” Such misuse can be punished by fines of 5,000 to 25,000 rupees (US\$45 to US\$225).⁶⁵ The law does not allow any applicant seeking information to remain anonymous.

Information commission(er)

In Nepal, an independent National Information Commission was established under the RTI Act for the protection, promotion and practice of the right to information. The RTI Act sets the rules on the nomination, appointment and removal of its members. No one who is an incumbent employee of government or public institution or in any incumbent political position can be appointed as a commissioner. However, “the Government of Nepal shall arrange necessary budget for the Commission” and the commission reports to the parliament through the prime minister. These latter conditions weaken its independence.⁶⁶ The commission has sufficient power to investigate complaints and inspect any document, including classified ones. However, it has no power to inspect premises.

Once an individual whose information request has been refused has exhausted the complaints procedure at the public body from which information was requested, they can appeal the decision to the National Information Commission, up to 35 days after the decision was received. The commission can then obtain copies of documents, summon the head of the authority that refused the request and hear witnesses. It then “has to give final verdict on the appeal within sixty days of the appeal”.⁶⁷

Proactive disclosure

Public bodies have to list and publish the following information proactively: “(a) structure and nature of Body, (b) functions, duties and powers of Body, (c) number of employees and working details of Body, (d) service to be rendered by the Body, (e) branch and responsible officer of the service providing Body, (f) fee and time limit required for service, (g) decision making process and authority, (h) authority to hear appeal against decision, (i) description of functions performed, (j) name and designation of Chief and Information Officer, (k) list of Acts, Rules, By Laws or Guidelines, (l) updated description of income, expenditures and financial transactions and (m) other particulars as prescribed”.

The RTI Act does not stipulate, however, that this information has to be published online.

THE PRACTICE

Although the RTI Act is more than a decade old, there is room for improvement in its application by public bodies.

No exact data is available on the number of information requests, only the number of complaints and appeals are available. In the year 2014/15, 777 complaints, including appeals, were lodged at the National Information Commission. Among them 272 pertained to education, 144 to local development, 100 to administration and communication, 57 to infrastructure development, 31 to corporations, 25 to health services, 15 to industry and commerce, and 4 to justice.

Likewise, in the year 2015/16, 678 complaints, including appeals, were lodged at the National Information Commission. Among them, 374 related to administration and communication, 230 to economy, 25 to education, 9 to infrastructure development.⁶⁸

Generally, most officials are well aware of the right to information. However, due to the bureaucratic attitude evident in many government offices, information officers are known to delay the release of information or hide information rather than providing it readily.

Journalists and non-governmental organisations, in general, are also well informed about the act and all the processes it covers because they were actively involved in advocating for its adoption. On the other hand, few private sector actors or ordinary citizens are aware of the act and related processes.

With regard to the proactive publication of information, it is worth mentioning that civil society organisations, in collaboration with the prime minister's office have launched some initiatives in the area of public procurement on behalf of the government. The Public Procurement Monitoring Office (PPMO) has established a centralised e-Government Procurement (e-GP) system for nation-wide public procurement management. This one-stop web-based procurement portal covers various activities of the public procurement life cycle, including registration of bidders, procurement planning, e-tendering, online evaluation, contract management, etc.⁶⁹

RECOMMENDATIONS

- Eliminate the requirement to state the grounds for the information request.
- Eliminate the requirement to provide the requestors' personal details, except a freely chosen contact detail through which they can receive the information. Allow anonymous requests.
- Introduce harm tests for each exception and introduce public interest test for all exceptions.
- Collect and annually publish information on the practice of information requests and the relevant remedies used.



RTI awareness needs to be increased at the citizen and official level, to ensure it serves its purpose to consolidate democratic values in the society.

- Shree Hari Aryal, President,
Transparency International Nepal

PAKISTAN

Pakistan was among the first countries in the region to adopt freedom of information laws. The freedom of information landscape is quite complex as the provinces and the federal level have separate laws on the right to information. For the purposes of the present report, we considered the Right of Access to Information Act 2017 (RTI Act 2017), which is a federal level law.

The RTI Act 2017 will certainly improve the right to information law established by the Freedom of Information Ordinance 2002. It contains strong provisions pertaining to the proactive disclosure of information, indexation and computerisation of records and the establishment of an independent, autonomous information commission. Broadening the scope of the definition of public body, it also brings NGOs within the purview of the law.

The RTI Act 2017 has great potential to ensure the transparent functioning of NGOs, federal ministries and attached departments. The federal budget for financial year 2018-19 is going to be unique in that the government will, for the first time, be legally bound to commit resources to ensuring the transparent functioning of federal public bodies, as required under the RTI Act.

After the 18th Amendment of the Constitution in 2010, the federation has delegated much power to the provinces. Currently, three out of four provinces have their own RTI laws. Provincial RTI laws do not need to be in line with the federal RTI law, as they are independent from each other and the provinces are free to provide more or less rights at provincial level.

Pakistan's record in the field of freedom of expression and of the media shows that exercising the right to information can be rather challenging and often risky. However, there is a legal infrastructure in place.

THE LAW

The Constitution of Pakistan recognises the right to information as a fundamental right: "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law". The RTI Act 2017 follows this rule and guarantees the right of access to information only for citizens. Aside from the federal level legislation, the RTI Act 2017, provinces have their own right to information laws.⁷⁰

Scope of information covered

The RTI Act 2017 defines "record" and "public record" narrowly as it does not offer a broad definition that covers any information, record or data held by public authorities. Instead, it provides a list of various types of documents, leaving anything that is not listed outside the scope of the definition.⁷¹ However, the "right of access to information" is much broader as it means "the right of access to information accessible under this Act which is held by or under the control of any public body and includes the right of access information, documents or record in digital or printed form, as the case may be."⁷² It is unclear how the two concepts will interact in practice. Furthermore, there is also an extensive list⁷³ of records of all public bodies that are declared unavailable to the public. This "exclusion of certain record" includes records relating to defence forces, decision-making information and minutes of meetings.

Scope of the law

The scope of the RTI Act 2017 is sufficiently broad as it covers all branches of power and a wide range of further bodies. These include the executive (cabinet) and administration, including all ministries, departments, federal, municipal and local authorities, courts, tribunals, commissions under federal law, "statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government" and "non-governmental organisation which directly or indirectly receives or has received public funds, subsidy, tax exemption, piece of land or any other benefit"⁷⁴ However, the defence forces and anything connected to national security are already excluded at the level of definition of records.

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN PAKISTAN

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0
SCOPE OF THE LAW	0.75
TIMELINES	1
EXCEPTIONS	1
HARM TEST	1
PUBLIC INTEREST TEST	0.25
INFORMATION COMMISSION(ER)	0.5
PROACTIVE DISCLOSURE	1

Timelines

The RTI Act 2017 stipulates that “a public body shall be required to respond to a request as soon as possible and in any case within ten working days of receipt of the request.” This may be extended by ten more working days.

Exceptions

The exceptions to the right of access in the RTI Act 2017 are generally consistent with international standards. If “the information was obtained from a third party and on its communication it would constitute an actionable breach of Confidence” is the only category of exception that is not considered under Article 19 of the ICCPR.

Harm test and public interest test

The RTI Act 2017 includes a harm test for each exception, though some of them are only implicit in the phrasing of the exception, such as some exception related to crime prevention and prosecution or the exceptions related to privacy.⁷⁵

Only one exception includes a public interest override. It is the privacy exception when “the third party is or was an official of a public body and the information relates to his functions as a public official.

The other public interest override relates to the coverage of the law. Classified records are by definition not public records, but “the Minister-in-charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded”.⁷⁶ This amounts to a public interest test for classification. However, the law contains no specific reference to public interest tests.

Information commission(er)

A federal Information Commission is a new entity established by the RTI Act 2017. The composition of the commission, which consists of one member from the judiciary, one member from the public administration and one from civil society, contributes to the independence of the body. However, the chief commissioner is appointed by the prime minister. The law prohibits members of the commission from any political affiliation or holding public office at the time their appointment and during their mandate and sets

further conflict of interest rules. The rules related to the removal of members of the Information Commission also contribute to their independence. The funding of the Information Commission is a weaker point in the RTI Act 2017, as the federal government makes budgetary allocation to the commission.⁷⁷

The Information Commission does not have the power to access and review classified documents or enter the premises of public bodies.

Proactive disclosure

The RTI Act 2017 has an extensive list of minimum standards on mandatory proactive publication of information. This list includes “public body’s organisation and functions, duties, powers and any services it provides to the public, including a directory of its officers and employees, indicating their duties and functions and their respective remunerations, perks and privileges; statutes, statutory rules, regulations, bye-laws, orders”, but also a wide range of financial budgetary, regulatory, planning information, reports and crime prevention information. The law prescribes that “information and record are duly published including uploading over the Internet in a manner which best ensures that these are accessible”.⁷⁸

THE PRACTICE

Although the right to information regime of Pakistan is by now 16 years old, its implementation still has many shortcomings.

In practice, a number of factors make it unnecessarily burdensome and difficult to request or gain access to information. Requestors have to provide complete contact details, both when they used the 2002 FOI Ordinance and when using the Punjab RTI Act. The new RTI Act 2017 also contains similar provisions.⁷⁹ In addition, public awareness of the law is low among public sector employees.⁸⁰ Media have also reported that the lack of interest in the electronic RTI application system launched in 2015 displayed by the Khyber Pakhtunkhwa Right to Information Commission and public information officers has nearly crippled the initiative.⁸¹

On their websites, the Khyber Pakhtunkhwa Right to Information Commission and the Punjab Information Commission provide details and status of the complaints they review, as well as statistics on their work.⁸²

RECOMMENDATIONS

- Extend the definition of public records.
- Bring all public entities, including the defence forces, under the scope of the RTI Act 2017.
- Introduce public interest test in the law for all exceptions, as well as hard public interest overrides for information on wrongdoings, such as human rights violations, corruption, abuses of power and environmental damage.
- Empower the Information Commission(er) to review classified documents and to enter premises of public bodies. Provide funding independent of the government to the Information Commission.



As a citizen of Pakistan, you have the right under the constitution to have access to information on all matters of public importance. Use your rights judiciously.

- Saad Rashid, Executive Director of
Transparency International Pakistan

PAPUA NEW GUINEA

Papua New Guinea does not have a right to information act. While the constitution of the country enshrines the right of access to information and stipulates that a law should be adopted on this matter, this has not happened in the past four decades. There are some promising, though faint, signs that the government intends to introduce a right to information act. Papua New Guinea has a relatively free media environment, although journalists occasionally face threats and restrictions on their reporting.

THE LAW

Section 51 of the Constitution of the Independent State of Papua New Guinea stipulates that, “Every citizen has the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society”. It also lists exceptions related to this secrecy.

The Constitution also sets out that a law may regulate or restrict the right to information and “provision shall be made by law to establish procedures by which citizens may obtain ready access to official information”.

Exceptions

The exceptions spelled out in Section 51 of the constitution are in line with international standards.

Further to the constitutional provisions, the Government of Papua New Guinea adopted a National Policy on Information and Communication in 1993.⁸³ This policy is mostly about the technology of communication and it contains short references to access to information. In 2016, within the framework of the Open Government Partnership, the country’s Steering Committee (twelve government departments and ten CSOs) selected four commitment clusters, among them freedom of information. Papua New Guinea has yet to adopt a national action plan with clear commitments on adopting and implementing a right to information law.

Information commission(er)

Papua New Guinea does not have an information commission(er). However, under Section 218(a) of the Constitution, the Ombudsman Commission is mandated to “ensure that all governmental bodies are responsive to the needs and the aspirations of the people.” This should provide a sufficient remit to cover right to freedom of information cases, though no such cases are known in the Ombudsman Commission jurisprudence.

THE PRACTICE

Although Papua New Guinea has no right to information act, qualified rights have been exercised in practice with reference to the constitution.

A community group in Papua New Guinea is also currently referring to Section 51 of the constitution to request the public release of an environmental impact assessment on a proposed deep sea mine.⁸⁴ The legal proceedings are pending in court as of July 2018.

The decision to be handed down will indicate how the courts view this right and whether Section 51(1) is sufficient to establish a precedent.

RECOMMENDATIONS

- Adopt a right to information act in line with international standards.
- Ensure that the Ombudsman Commission receives complaints and effectively investigates cases of violation of the right to freedom of information and helps eliminate unfair or otherwise defective practices affecting or administered by governmental bodies in this field, as long as an independent information commission(er) is not established.
- Conduct an assessment of the current procedures of state agencies, as some have taken proactive steps in the disclosure of information.



Papua New Guineans can see the benefit to countries in our region from legislated access to information, whether it be wider civic participation or increased accountability in all levels of government. It is now up to our legislators to fulfil the promised right in our national constitution, which has been there since 1975, and enable similar outcomes in our country.

- Arianne Kassman, Executive Director of Transparency International Papua New Guinea

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN PAPUA NEW GUINEA

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0
SCOPE OF THE LAW	0
TIMELINES	0
EXCEPTIONS	1
HARM TEST	0
PUBLIC INTEREST TEST	0
INFORMATION COMMISSION(ER)	0
PROACTIVE DISCLOSURE	0

SOLOMON ISLANDS

Solomon Islands does not have a right to information act. Although the constitution of the country enshrines the right of access to information, there has been no legislative proposal to adopt a right to information act. The country enjoys freedom of expression and of the media.

THE LAW

Section 12 of the Constitution of Solomon Islands recognises the “freedom to receive ideas and information without interference, [and the] freedom to communicate ideas and information without interference”.

Exceptions

The same section of the Constitution also allows for exceptions “in the interest of defence, public safety, public order, public morality or public health” and also “for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts”.

Information commission(er)

Solomon Islands does not have an information commission(er), but it has an Ombudsman, which is an independent office, established by the constitution. The ombudsman cannot hold other public offices or has to resign from any political party if he/she was a member of any. The ombudsman is appointed by the governor-general, acting in accordance with the advice of a committee consisting of the speaker, the chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission.⁸⁵

The ombudsman can investigate administrative grievances, which may include right to information complaints. He/she can enter premises of public bodies, request information from public officials, seize and documents, access secret or restricted documents and as the result of his investigation issue recommendations. The ombudsman must give the final report of the investigation to the public body or official whose conduct was investigated, as well as to the responsible minister, the prime minister and the complainant. The ombudsman can follow up on

his recommendation and request a report on the measures taken to implement it and the prime minister has to table the follow-up report in parliament. The ombudsman also directly reports to the parliament annually and can submit further reports to it.

THE PRACTICE

Lack of performance by the Ombudsman is due in part to insufficient resources, which poses significant challenges. However, the commitment of the staff in the Ombudsman's office is an important note and could help to sustain its role in providing transparency and fighting corruption.

RECOMMENDATIONS

- Adopt a right to information act that is in line with international standards.
- As long as an independent information commission(er) is not established, ensure that the ombudsman receives complaints and effectively investigates cases of violation of the right to freedom of information, as well as helps eliminate unfair or otherwise defective practices affecting or administered by governmental bodies.



Access to information is a right of the citizens of Solomon Islands. The right to have information is equivalent to the right to live. It empowers citizens and enables them to make informed decisions while participating in the democratic processes stipulated in the national constitution of Solomon Islands.

- Ruth Liloqula, Executive Director of Transparency Solomon Islands

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN THE SOLOMON ISLANDS

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0
SCOPE OF THE LAW	0
TIMELINES	0
EXCEPTIONS	0.75
HARM TEST	0
PUBLIC INTEREST TEST	0
INFORMATION COMMISSION(ER)	0.5
PROACTIVE DISCLOSURE	0

SRI LANKA

Sri Lanka has one of the best right to information laws in the world and it has few shortcomings. However, as the law is new, its implementation in practice has to develop and this will require significant commitment from the public sector. Several public authorities have adopted encouraging practices, but the public's knowledge of the existence and process of the Right to Information Act is inadequate. Much remains to be done on the part of the state to promote the right to information.

Similarly, the transition from a culture of secrecy to one that allows public participation and scrutiny continues to raise challenges.⁸⁶ The first years of implementation of the law are crucial. Trends that jeopardise the RTI act are already visible in recent legislative work.

Freedom of expression is relatively strong in the country. With few exceptions, no laws or established policies and regulations are in place that would undermine this freedom. But the right to freedom of expression is often not protected and judicial processes are very tedious and slow at best when dealing with violations.

THE LAW

The 19th Amendment to the Constitution of Sri Lanka recognised the Right to Information as a fundamental right. Following this, the Right to Information Act (RTI Act) was passed in 2016. Article 14A of the constitution not only stipulates the right, but also defines the public bodies that come under the scope of the law, exceptions that may apply and the citizens who enjoy this right.

Scope of information covered

The RTI Act gives a broad definition of information covering any material that is recorded in any form and is in the possession, custody or control of a public authority.⁸⁷

Scope of the law

Public authorities are defined very broadly, including all branches of power, as well as private entities or organisations carrying out a statutory or public function or service, state-owned companies, non-governmental organisations that receive substantial public funds and private educational institutions.

Timelines

Information officers have 14 working days to decide on the request and 14 additional working days to provide the information in case the decision is positive.⁸⁸

Exceptions

The exceptions set by the RTI Act are largely in line with international standards, although two of them are overly broad. One involves an exception on communications “between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law”. The other exception pertains to information “supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure”.⁸⁹

Harm test

Section 5 of the RTI Act lists 14 major categories of exceptions, some of which are broken down into subcategories. Six of the 14 exceptions do not include a harm test.⁹⁰

Public interest test

The RTI Act provides for a public interest test for all exceptions when it stipulates that a “request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure”.⁹¹

Information commission(er)

The RTI Act established a Right to Information Commission. The rules on the nomination, appointment and removal of its members, as well as on its finances provide for its independence. The commission has sufficient powers to investigate complaints and can inspect any document. However, it has no power to

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN SRI LANKA

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	1
SCOPE OF THE LAW	1
TIMELINES	0.25
EXCEPTIONS	0.75
HARM TEST	0
PUBLIC INTEREST TEST	1
INFORMATION COMMISSION(ER)	0.5
PROACTIVE DISCLOSURE	1

inspect premises. The commission can “hear and determine any appeals made to it by any aggrieved person” and can also direct public authorities to publish information that they withheld.⁹²

Proactive disclosure

Sri Lankan law encourages proactive disclosure through Regulation 20 (gazetted in February 2017) and Sections 8, 9 and 10 of the RTI Act. Every minister has to publish twice a year a report that enables citizens to exercise the right of access to information. These reports include “organisation, functions, activities and duties of the Ministry of such Minister and of all the public authorities falling within the functions so assigned”, as well as rules, regulations, details of the exercise of the right to information, planned projects, budget and name, designation and other particulars of the information office.

Further features of the law

It is a limitation of the Sri Lankan law that a requestor has to be a citizen of Sri Lanka. Incorporated and unincorporated bodies must have over 75 per cent Sri Lankan membership. This rule also figures in the constitution.

In spite of the public interest override set out in Section 4 of the RTI Act, conflicting pieces of legislation restrict the right to information. A noticeable trend of new legislation is encroaching upon the jurisdiction of RTI regime, such as the draft Audit Bill,⁹³ the Office of Missing Persons Act and the draft Reparations Bill.

THE PRACTICE

In practice, there are a number of obstacles to the free exercise of the right to information. These include threats and intimidation against requestors, the secretive mindset of public officials, and the public authorities’ demand that citizens physically go to their premises to pay the prescribed fee to obtain information.

Comprehensive information on the number of right to information requests is not yet available. However, the information commission has published main figures about its work during the first year of the Act “As at February 3rd 2018, the Commission has now approximately 411 perfected appeals received by it with appeals being concluded/pending/listed before it for hearing in approximately 350 cases. Information has been released in a majority of the appeals (81)”.⁹⁴ In the same statement the commission also noted with concern “that certain Public Authorities have yet not appointed their Information Officers or named their Designated Officers” and in “other instances, Public Authorities have evidenced evasion by frequently asking for extensions of time to submit information that ought to be legitimately given.”

One study has been conducted on online proactive disclosure.⁹⁵ However, no comprehensive assessment on compliance has yet been performed. As of July 2018, the commission report from the first year of the RTI Act had not been published.

RECOMMENDATIONS

- Improve the timeframes for providing information and limit the use of extensions of deadlines for responses.
- Introduce harm tests for each exception.
- Provide the information commission with the power to inspect premises.
- Train more public officials to familiarise them with the RTI Act so as to change the culture of secrecy.



RTI not only empowers citizens to access state information, but also importantly empowers the bureaucracy to communicate with the public directly, through official channels, where in the past no formal mechanism existed.

- Asoka Obeyesekere, Executive Director,
Transparency International Sri Lanka

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VANUATU

The right to information law of Vanuatu is strong in most aspects and the country's National Policy on the Right to Information (2013-2018)⁹⁶ is also very promising as it aims to set a legal and infrastructural environment that provides for effective implementation of right to information. As the Right to Information Act entered into force in 2017 and it has not been fully implemented there is little evidence yet of how it is going to be applied in practice.

THE LAW

Although there is no explicit provision on the right of access to information in the Constitution of Vanuatu, the Right to Information Act No. 13 of 2016 (RTI Act) among its purposes states to "give effect to the right to freedom of expression under paragraph 5(1)(g) of the Constitution". The RTI Act was passed by the Parliament of Vanuatu in December 2016. The RTI Act was officially gazetted on 6 February 2017.

Scope of information covered

The right of access to information applies to all records held by or on behalf of public authorities in any form or medium, except "any information held by the system of custom, traditions and practices generally practiced throughout Vanuatu" and private entities records that are unrelated to public service, as well as some programme related information of publically owned media.⁹⁷ The RTI Act does not apply by default to public records predating Vanuatu's independence.

Scope of the law

The RTI Act applies to Government agencies that include the State, the Government and to all entities established by the Constitution, which includes the head of state, judicial branch, Parliament, electoral commission, public administration, and to any Government agency prescribed by the Minister responsible for the implementation of the Act. The RTI Act also applies to Government owned, controlled, funded "relevant private entities" in as much information relates to funding provided by the Government or public services or functions they carry out or when these are designated so by the Minister.⁹⁸

Timelines

Right to Information Officers who receive information requests under the RTI Act have to decide within 30 days and in cases where "information that appears to be necessary to safeguard the life or liberty of a person" in 48 hours on the disclosure of the information. If access is granted then information has to be provided within 7 days of payment of a fee / notification and as soon as possible in matter of safeguarding life or liberty.⁹⁹ This period can be extended once by 14 days.

Exceptions

The exemptions under the RTI Act are in line with international standards save for Section 44 (1) (a) "information was obtained from a third party and to communicate it would constitute an actionable breach of confidence", which is not considered under Article 19 of the ICCPR.¹⁰⁰

Harm test

Exemptions on personal information and information communicated in confidence by third parties imply that their disclosure may cause harm. Exemptions on privileged information, on confidential information (Section 44 (1) (a)) and on trade secrets do not contain harm tests, but all the other exemptions have harm tests.

Public interest test

The RTI Act contains a very impressive detailed public interest test that has to be applied for all information requests that may invoke the use of exemptions. The law lists the public interests that have to be balanced against the exemption and also sets prohibitions that must not be factors in the decisions, such as

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN VANUATU

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0.5
SCOPE OF THE LAW	1
TIMELINES	0.25
EXCEPTIONS	1
HARM TEST	0.5
PUBLIC INTEREST TEST	1
INFORMATION COMMISSION(ER)	1
PROACTIVE DISCLOSURE	1

“access to the information could result in any person misinterpreting or misunderstanding the information” or “[the] author of the document was, or is of high seniority in the Government agency or relevant private entity”.¹⁰¹ Besides this general public interest test exceptions on trade secrets and on economic interests of the state also contain public interest tests specific to their areas.¹⁰²

Information commission(er)

The Judicial Service Commission¹⁰³ appoints the Information Commissioner. The candidate cannot have any position in a political party, or be a member of the Parliament or of municipal or provincial council.¹⁰⁴ The RTI Act also sets further rules on conflicts of interest and also provides for clear rules on the removal of the Commissioner, which provide for the commissioner's independence.¹⁰⁵ The Information Commissioner annually reports to the Parliament. The funds of the commissioner's office are partly appropriated by the Parliament, but can receive funds from non-governmental organisations and from other sources too.

The commissioner has all the necessary powers to investigate complaints on request or on his/her own initiative, decide on appeals, monitor the implementation of the RTI Act and make recommendations both of general nature and directed to specific bodies, as well as to train and promote this right.¹⁰⁶ “A person who is not satisfied with the decision of the Information Commissioner” rendered in the appeal procedure can apply to the Supreme Court to review that decision.¹⁰⁷

Proactive disclosure

The RTI Act has detailed provisions on disclosure of information by government agency or relevant private entity. There is an initial set of information, such as their structures, functions, finances, employees procedures, information-keeping systems, services, policies that they have to update regularly.¹⁰⁸ The RTI Act does not prescribe the form of publication and that the dissemination of information has to be in electronic form, but it requires that “to be disseminated widely and in a manner that is easily accessible to the public, taking into consideration the cost effectiveness, local language and the most effective methods of communication”.¹⁰⁹

THE PRACTICE

In August 2017 the acting prime minister of Vanuatu signed the first RTI enforcement order that covers seven government agencies. It was an important first step of the implementation of the RTI Act and by August 2019 any other Government agency and relevant private entities to which the RTI Act applies have to be specified.¹¹⁰

The seven government departments enlisted under the Order are the Department of Statistics, Department of Customs, Department of Agriculture, Department of Forestry, Department of Livestock, Department of Tourism, and the Office of the Government's Chief Information Office.

In July 2017, a Memorandum of Understanding (MOU) was signed between the Director of the Department of Strategic Planning, Policy and Aid Coordination (DSPPAC) and the Vanuatu Cultural Centre and the National Archives to establish a proactive publication scheme under the implementation plan of the RTI policy and RTI Act. Under the MOU, the National Archives will take the lead in establishing the National Records and Information Development Committee to reinforce best practice of records management and establish standards and guidelines as required by the RTI Act.¹¹¹

The Prime Minister of Vanuatu Hon Charlot Salwai also appointed members to the RTI Steering Committee in 2017. In May 2018, 35 RTI Officers in government and statutory agencies took part in a three-day training by UNDP and the RTI Unit on the importance of the right to information, the role of RTI officers, the steps of processing RTI requests and appeals, as well as issues such as proactive disclosure and how to interpret exemptions in the RTI Law.

In August 2017, the RTI Unit launched a website with details on right to information in Vanuatu.¹¹² The RTI Unit also carried out awareness raising activities targeting government ministries and departments as well as private and state-owned enterprises. Transparency International Vanuatu organised similar awareness raising and capacity building activities for citizens.

The Judicial Service Commission has not yet appointed an Information Commissioner, but trainings of Information Officers have started.¹¹³

At the date of this report's publication, people have not yet started using the RTI Act for the purpose of accessing information.

RECOMMENDATIONS

- Appoint the Information Commissioner without delay and provide for the necessary resources to set up his/her office
- Reduce the timeframe in the RTI Act of granting information.
- Add harm tests to legally privileged information and trade secret exemptions.
- Revoke the exemption stating “information was obtained from a third party and to communicate it would constitute an actionable breach of confidence
- Extend the scope of the RTI Act to include information held by the system of custom, traditions and practices where such information concerns powers and duties conferred to them by the Constitution.
- More staff need to be recruited into the RTI Unit to support the current two staff and enable the office to fully deliver its services.



Transparency International Vanuatu’s partnership with the RTI Unit is a good example of civil society and government working together to achieve positive change. We worked together towards the adoption of the RTI Act, which received overwhelming support from both sides of the Parliament. We believe the next steps in the implementation of the RTI Act and the design of the citizen budget for Vanuatu will make right to information more tangible for the citizens of Vanuatu.

- Wilson Toa, Executive Director
of Transparency International Vanuatu



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VIETNAM

The adoption and entry into force on 1 July 2018 of the Law on Access to Information is a very important development in Vietnam. This is the first such law in the country and it is yet to be seen how the public authorities and the courts will apply it in practice, and therefore how much citizens, media, civil society and the private sector will be able to use the law. Freedom of expression and of the media faces significant limitations in the country, which is why the first few years of implementation of this law will be crucial.

THE LAW

The right to access to information was acknowledged in Article 25 of Constitution Law 2013 and this right is further recognised in Article 3 of the Law on Access to Information (hereinafter called “LAI”), which entered into force on 1 July 2018.

Scope of information covered

Under LAI, Article 2(1-2) defined “information” a news, data which is “created by state agencies” and must be “confirmed in writing” by a competent person. Information could be contained in numerous forms, including documents, dossiers, materials in forms of handwritten copies, printed copies, electronic copies, paintings, pictures, drawings, tapes, disks, videos, recordings or other forms. However, this law excludes the right to information on classified “internal documents” of government agencies (Article 6(2)).

Scope of the law

According to Article 9 of LAI, state agencies (including the executive, the legislature and the judiciary) are responsible for providing information that they created. For some specific agencies, a focal department will be assigned this task. For example, the Governmental Office (a department of government) shall provide information created by the government, the prime minister and by itself (Article 9(2)(c)). However, LAI does not mention some sectors, such as state-owned enterprises, private bodies that perform a public function or that receive significant public funding

The law sets different deadlines for different types of information and modalities for providing them. The distinction between simple and complex information is not very clear.

TIMELINES FOR RESPONDING TO A REQUEST

	Simple and available information	Complex and unavailable information (which has to be gathered from different sources)
Provision of information right at office of agencies	Immediately	10 working days (+ can be extended by 10 more working days)
Electronic provision of information	3 working days	15 working days (+ can be extended by 15 days)
Provision of information by post or fax	5 working days	15 working days (+ can be extended by 15 days)

ASSESSMENT OF THE RIGHT TO INFORMATION LAW IN VIETNAM

Indicators	Achieved
RIGHT TO INFORMATION IS A FUNDAMENTAL RIGHT	1
SCOPE OF INFORMATION DEFINITION	0.5
SCOPE OF THE LAW	0.5
TIMELINES	0.5
EXCEPTIONS	0.5
HARM TEST	0
PUBLIC INTEREST TEST	0.25
INFORMATION COMMISSION(ER)	0
PROACTIVE DISCLOSURE	1

Exceptions

Article 6 and 7 provide the following exceptions:

- State secrets, including information with important content relating to politics, national defence and security, foreign relations, economy, science and technology, and other fields as prescribed by law.
- Information which, if accessed, could harm the interests of the state or adversely affect national defence and security, international relations, social order and safety, social morality or community well-being; or could harm the life, living or property of other persons; information classified as work secrets; information on internal meetings of state agencies; and documents drafted by state agencies for their internal affairs.
- Business secrets, the privacy or personal secrets of a person and family secrets.

Amongst these exceptions, the ones that are problematic and not in line with international standards are those that apply to “science and technology and other fields”, “social order and safety”, “social morality or community well-being” and “information classified as work secrets”.

Harm test

A harm test is present in Article 6 (2) of LAI, which regulates a broad range of information that is inaccessible to citizens.¹¹⁴ Other provisions of LAI, such as the ones on business secrets, privacy or personal secrets do not include harm tests. A broad range of information, listed in Article 6 (1) of LAI, is classified as state secrets and has significant overlap with Article 6 (2), but these lack any provision of LAI requiring a harm test.

Public interest test

LAI has a public interest test that applies to exceptions regarding “business secrets, the privacy or personal secrets of a person and family secrets” as prescribed in Article 7(3). Article 34(1)(g) emphasises the responsibility of state agencies for “timely reviewing and considering benefits of information provision to decide whether making information public or providing information upon request in order to protect public interests and community health.” However, it is not clear whether this could override an exception.

Information commission(er)

There is no independent oversight body such as an information commission(er) to oversee the implementation of LAI. However, requestors have the “right to lodge a complaint or institute a lawsuit against a state agency or a person responsible for information provision”.

Proactive disclosure

According to Article 34(1)(b), each state agency must take the initiative in developing, updating, publicising lists of information subject to publication, and uploading such lists to their online portals. Article 17 provides a list of types of information that must be disclosed to the general public. These include: legal instruments; draft laws; national and local socio-economic development strategies, programmes, projects; lists of public investment and procurement projects; periodical work reports; annual financial statements. Article 19 contains detailed provisions on the posting of information on e-portals and websites.

LAI entered into force on 1 July 2018. It is therefore a bit early to evaluate public bodies’ compliance with the proactive publication requirements. However, this law could be considered a sign that Vietnam is taking steps to proactively publish information. Other examples include the publication of draft laws to invite people’s comments and the fact that Da Nang is the first city in Vietnam to have an Open Data Portal.¹¹⁵

Further features of the law

LAI has further shortcomings in addition to the ones mentioned above. The right of access to information has limitations concerning foreign citizens. Article 36(1) states that foreigners residing in Vietnam have the right to request information directly about their rights and obligations. This law does not grant this right to foreigners living outside of Vietnam.

LAI provides a right to both information and access to records/documents, although it is not clearly stated in the law. Article 2 could apply for exercising the right of access to records and documents. The law makes no reference to partial access.

LAI requires requestors to specify the name of the document, dossier or material when requiring information, as well as the “reason for and purpose of the request for information.” (Article 24(2)(b) and (d)).

The appeals mechanism set up by LAI is not very robust. There does seem to be an internal complaints procedure, but the rules for handling it are not clear

(Article 8(1)(b), Article 14(1), and Article 34(1)(k)). Also, Article 14(2-3) grants a requestor the right to lodge an external appeal with a third agency. However, the competent agency and procedure for handling the appeal are not specified. As stated, there is no independent oversight body under Vietnamese laws.

THE PRACTICE

LAI has just entered into force. It is therefore hard to assess its performance. However, expected shortcomings include:

- Anonymous requests are not allowed (Article 24).
- State agencies may use the vague language regarding “exceptions” (Article 6 and 7) to refuse to provide information.
- The new decree (No. 13/2018/ND-CP detailing LAI), which took effect on the same day as this law, limits access to information created before 1 July 2018.¹¹⁶
- Public sector employees still lack awareness about the exercise of this law, in particular enabling citizens to gain access to information.
- Citizens also lack of awareness of the right to information and its exercise under this law.
- The media have limited legal knowledge and lack the skills to exercise the right to information under LAI to perform anti-corruption work.

As regards proactive publication, a number of state agencies had been publishing information on their portals even before LAI entered into force. However, not all public data count as reliable sources of information in Vietnam.

Several NGO initiatives in Vietnam have been using available open data to strengthen accountability in government and support the fight against corruption. For example, thanks to the efforts of civil society, the Ministry of Finance has been publishing information on the state budget annually on their portal.

RECOMMENDATIONS

- Eliminate the requirement to state a reason for requesting access, specify the name of document, dossier or material, as well as provide the personal details of the requestor, except a freely chosen contact detail to receive the information. Allow anonymous requests.

- Extend the definition of information to all information held by or on behalf of public authorities, with no exceptions.
- Broaden the scope of the law and include state-owned enterprises, private bodies that perform a public function or that receive significant public funding.
- Review the exceptions in the law and remove the ones that are not in line with international standards.
- Extend the public interest test to all information held by or on behalf of public bodies.
- Set up an independent information commission(er).
- Strengthen the appeals mechanism by clarifying its details.
- Provide foreign citizens with the same right of access to information as Vietnamese citizens.
- Train public officials to fully understand and comply with the LAI.
- Raise awareness of citizens about how to exercise the right of access to information under this law.
- Train media (journalists/ reporters) to fully understand the LAI provisions and how to exercise the right of access to obtain anti-corruption information.



One of the objectives of the Law on Access to Information in Vietnam is to ensure greater transparency and accountability of public agencies, helping to reduce corruption. This is an important step in the right direction. However, will this new Law change current practice? Will public officials make it easier for citizens when requesting for information?

- Nguyen Thi Kieu Vien, Executive Director of Towards Transparency Vietnam

METHODOLOGY

The country reports aim to provide a broad assessment of national progress towards Sustainable Development Goal (SDG) target 16.10: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”.

National chapters of Transparency International filled in a questionnaire, which was designed to assess national progress towards SDG goal 16.10 target. The two official SDG indicators

- “16.10.1 Number of verified cases of killing kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.”
- “16.10.2 Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information” were broken down into several questions.”

Both indicators were assessed against three types of question:

- Some questions pertain to the *de jure* legal and institutional framework. These questions require the researcher to provide a score.
- A second type of question requires the researcher to provide a qualitative appraisal of the country's *de facto* efforts to tackle corruption.
- A final type of question concerns country data from assessments and indices produced by other civil society groups and international organisations.¹¹⁷

Replies to the seven questions that break down Indicator 16.10.1 and third-party assessments were used only for the purposes of the regional overview.

Indicator 16.10.2 was assessed through questions on fourteen issues related to the right to information framework of the country. The questionnaire aimed to assist national chapters to identify areas where the right to information framework leaves room for improvement.

LEGISLATIVE FRAMEWORK

The purpose of the scored questions is to assess the legislative framework and the policies that have been formally established. These indicators allow for an easy comparison between countries' performance on a specific question or a set of selected questions in given year. Most of the indicators can also be used to keep track of a country's progress on introducing and improving key policies and legal provisions over time.

Each question receives a standalone score. Based on the scores awarded by national researchers, a colour system is used to assess the legislative framework through the use of an easily understandable scorecard:

● **Green:** compliant/strong; the country's legislative framework appears to be addressing a specific policy and is in line with acknowledged best practice.

● **Yellow:** while there is a solid provision in place, there is some room for improvement.

● **Light orange:** while the legislative framework partly addresses a specific issue, there is a need for further improvement.

● **Dark orange:** While there are some provisions in place to address a specific issue, they are insufficient and urgently need to be strengthened.

● **Red:** absent/non-compliant; indicates that the legislative framework on a specific issue is insufficient and not in line with international standards or with recommendations made by Transparency International and other anti-corruption stakeholders.

○ **White:** not applicable or no data available. Where possible, the use of this option should be avoided and an explanation should be provided as to why the question has not been scored.

Note: not all five coloured scores are available for each question. Where a law or agency does not exist, subsequent questions about the provisions of that law or mandate of that agency should be scored 0 rather than marked as “not applicable”.

AGGREGATING SCORES

The method of aggregating scores has been simplified as far as possible. Each scored question is worth a maximum of 1 point.

- A green response is worth 1 point.
- A yellow response is worth 0.75 points.
- A light orange response is worth 0.5 points.
- A dark orange response is worth 0.25 points.
- A red response is worth 0 points.
- Where the “white” option (not applicable/no data available) is selected, no score is awarded and the question is removed from the aggregation.

All scored responses are simply aggregated to determine the overall grade for the target.

For example, if a country was awarded 2 green (2 points), 1 yellow (0.75 points), 3 light orange (1.5 points), 1 dark orange (0.25 points) and 2 red (0 points) scores, the total would be 4.5 points.

For each target, the awarded score is divided by the total possible score to determine a percentage. In the example provided, therefore, $4.5/9 = 50\%$.

Finally, each of the targets is awarded a coloured grade as follows:

- 0%-20% = red
- 21%-40% = dark orange
- 41%-60% = light orange
- 61%-80% = yellow
- 81%-100% = green

Our example would therefore be graded “light orange” for 50%.

Were some of the responses for the questions marked “white”, these questions would be removed from the calculation. For instance, if for 16.10 a country was awarded the following scores: 2 green (2 points), 2 yellow (1.5 points), 1 light orange (0.5 point), 1 dark orange (0.25 points), 1 red (0 points) and 2 white (-), the country would score 4.25 out of a maximum possible score of 7. This would give an aggregated score of 61% for target 16.10, which would therefore be graded yellow.

PRACTICE

Guided questions at the end of each policy area allow the researcher to provide an assessment of the practice and compliance with important legislative provisions. Researchers are also encouraged to include publicly available data that may provide valuable insights, for example statistics on enforcement. Furthermore, these sections also allow researchers to highlight relevant cases, reforms and changes that have occurred in the past two years.

LIMITATIONS

It is important to note that the scoring methodology does not aim to provide a comprehensive assessment of a country’s right to information framework. Rather, scores seek to reflect if and to what extent certain best practice policies have been transposed into the national legislative framework. As such, the scorecard aims to highlight areas of the legislative framework that need to be reformed in order to create a robust right to information system.

While a strong legislative framework is needed to guarantee the right to information, it is in no way sufficient without independent institutions that have adequate capacity and resources to implement it and to ensure compliance. The scorecard cannot account for such implementation gaps.

ACKNOWLEDGEMENTS

Questions of Indicator 16.10.2 drew on the Right to Information Rating by Access Info Europe (AIE) and the Centre for Law and Democracy (CLD).¹¹⁸ Transparency International used nine scored questions only, focusing on key features of the assessed right to information framework and these provide a far less detailed picture than the 61 questions of the Right to Information Rating. As the national chapters of Transparency International provided their own assessment and the laws of the assessed countries in some cases were amended since AIE and CLD did their assessment, the outcomes may be different.

APPENDIX - QUESTIONNAIRE

Target 16.10: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

Indicator 16.10.1: “Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.”

Indicator 16.10.2: “Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.”

1. Protection of fundamental freedoms

1.1 What is the country’s score and rating in Freedom House’s Freedom in the World Rating <https://freedomhouse.org/report-types/freedom-world>?

Please provide the score and the rating of your country (“free”, “partly free”, “not free”) and the year of the assessment you are referring to.

1.2 What is the country’s rank and score in the most recent World Press Freedom Index, issued by Reporters Without Borders (<https://rsf.org/en/ranking>)?

Please provide the country’s rank, its score and the year of the ranking you are referring to.

1.3 Does the legal framework contain any provisions that threaten or undermine the ability of journalists, bloggers researchers, human rights advocates and other civil society actors to exercise their fundamental rights, to uncover and report on all forms of corruption, and to hold leaders accountable?

Please name any relevant laws and provisions, briefly explain why they may threaten fundamental rights, and provide links/references to relevant sources.

1.4 Are any policies or practices in place that undermine the ability of journalists, bloggers researchers, human rights advocates and other civil society actors to exercise their fundamental rights, to uncover and report on all forms of corruption, and to hold leaders accountable?

Please provide relevant examples and links/sources. If there are many factors you deem relevant, please briefly describe the three you deem most severe.

1.5 Have there been documented cases of killings, kidnappings, enforced disappearances, arbitrary detentions, torture or attacks against journalists, associated media personnel, trade unionists, human rights and civil society advocates or other people who investigated, uncovered and advocated against corruption in the previous two years?

If this is the case, please provide approximate numbers of such cases and describe up to two exemplary cases (possibly ones linked to corruption) and corresponding links/sources. You may find useful information in reports by international human rights watchdogs, including Human Rights Watch (<https://www.hrw.org/world-report/2018>), Amnesty International (<https://www.amnesty.org/en/countries>), Freedom House (<https://freedomhouse.org/reports>), Reporters Without Borders (<https://rsf.org>), in reports and press releases issued by national and local human rights advocates, in national media coverage, in statements made by regional human rights bodies and in reports of a national Human Rights Ombudsman.

1.6 Have there been cases of attacks against NGOs, journalists, and others advocating or reporting on corruption adequately investigated and resolved in the past two years? Were perpetrators identified and held accountable?

Please provide a brief description if and how such cases were investigated and resolved and provide relevant links/sources. If there were numerous such cases in the past two years, please focus on two exemplary ones.

1.7 Have there been documented cases of government censorship, including of online communication, or of undue political interference that limits people’s ability to inform and express themselves online in the past two years?

If “yes”, please provide a brief description of relevant cases and sources/links. If there were numerous cases or if censorship is an ongoing practice, please briefly describe the three cases or practices you deem most severe.

2. Access to information

2.1 Does the legal framework (including jurisprudence) recognise a fundamental right of access to information?

Please provide a brief description and a reference/link to the relevant legal provision. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 1.

Scoring

- 1: There is a full constitutional recognition of a public right of access to information
- 0.5: There is a limited constitutional right
- 0: There is no constitutional right to information
- -: Not applicable or no data available

2.2 Does the right of access to information apply to all materials held by or on behalf of public authorities in any format, regardless of who produced it?

Please provide a brief description and a reference/link to the relevant article. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 5.

Scoring

- 1: The right applies to all materials held by or on behalf of public authorities, with no exceptions
- 0.5: The right applies to materials held by or on behalf of public authorities, but there are exceptions for “internal documents” or databases
- 0: The definition of information is very limited and includes several and/or broad exceptions of information that is not covered by the right
- -: Not applicable or no data available

2.3 To which branches and bodies does the right of access apply?

Please provide a brief description which bodies and entities are covered by access to information and which important entities are completely exempt. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicators 7 to 12. If a particular complex national situation is not adequately reflected by the scores, the national chapter should choose the score that appears most adequate and provide relevant details in the narrative section of this question.

Scoring

- 1: The right of access applies, with no bodies excluded, to 1) executive branch; 2) the legislature; 3) the judicial branch; 4) state-owned enterprises; 5) other public authorities including constitutional, statutory and oversight bodies (such as an election commission or an information commission); and 6) private bodies that perform a public function or that receive significant public funding
- 0.75: The right of access applies to at least five of the above-mentioned sectors, with no particular bodies excluded
- 0.5: The right of access applies to at least four of the above-mentioned sectors, but some bodies are exempt
- 0.25: The right of access applies to at least three of the above-mentioned sectors or several key bodies are exempt (such as secret services, military, police, president etc.)
- 0: There is no access to information framework; or: no clear provision on the institutions that are covered; or: the right of access applies to less than three of the above-mentioned sectors and several key bodies are exempt (such as secret services, military, police, president etc.)
- -: Not applicable or no data available

2.4 Are there clear and reasonable maximum timelines for responding to a request, regardless of the manner of satisfying the request?

Please provide a brief description and a reference/link to the relevant article. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 22.

Scoring

- 1: Timeframe is 10 working days (or 15 days, or two weeks) or less
- 0.5: Timeframe is 20 working days (or 30 days, four weeks or one month) or less
- 0.25: Timeframe is more than 20 working days (or 30 days, four weeks or one month)
- 0: There is no specified timeframe for responding to a request
- -: Not applicable or no data available

2.5 Are exceptions to the right of access consistent with international standards?

Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; legitimate policy making and other operations of public authorities. It is also permissible to refer requestors to information which is already publicly available, for example online or in published form.

Please provide a brief description and a reference/link to the relevant article. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 29.

Scoring

Score 10 points and then deduct 1 point for each exception which either (a) falls outside of this list and/or (b) is more broadly framed:

- 1: 9 or 10 points
- 0.75: 7 or 8 points
- 0.5: 5 or 6 points
- 0.25: 3 or 4 points
- 0: 0, 1 or 2 points
- -: Not applicable or no data available

2.6 Is a harm test applied to all exceptions, so that disclosure may only be refused when it poses a risk of actual harm to a protected interest?

Please provide a brief description and a reference/link to the relevant article. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 30. Address any relevant shortcomings concerning the implementation of the harm-test in the narrative of this section. (While affected third parties may be consulted before information is released to a requestor, they must not have veto power over the disclosure. This decision should be made by the public body answering the request, or, in case of an appeal, by an oversight body)

Scoring

- 1: Harm test is applied to all exceptions
- 0.75: Harm test is applied to all but 1 exception
- 0.5: Harm test is applied to all but 2 exceptions
- 0.25: Harm test is applied to all but 3 exceptions
- 0: No Harm test is required by law, or it does not apply to 4 or more exceptions
- -: Not applicable or no data available

2.7 Is there a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest? Are there ‘hard’ overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity?

Please provide a brief description and a reference/link to the relevant article. You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 31.

Scoring

- 1: There is a mandatory public interest override that applies to all exceptions and is not subject to overreaching limitations
- 0.75: There is a mandatory public interest override that applies to all exceptions but one or two and is not subject to overreaching limitations
- 0.25: The public interest test only applies to some exceptions
- 0: No public interest test is required by law
- -: Not applicable or no data available

2.8 Is there an independent information commission, or a similar oversight body, with whom requestors have the right to lodge an external appeal?

You will likely find relevant information in the country assessment of the RTI-rating (<http://www.rti-rating.org/country-data/by-indicator/>), indicator 37-41.

Scoring

- 1: An information commission is in place, and it has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies
- 0.5: An information commission or a similar oversight body exists, but either lacks the power to review classified documents or lacks inspection power
- 0.25: An information commission or a similar oversight body exists, but it neither has the power to review classified documents nor to carry out inspections
- 0: No independent oversight body exists
- -: Not applicable or no data available

2.9 Does the law/policy on access to information contain minimum standards on mandatory proactive (automatic, without having to be requested) publication of information?

If this is the case, please provide a short description of what information and documents have to be actively released (especially information relevant to deterring or detecting corruption)?

Scoring

- 1: if the law on access to information (or another relevant law) contains requirements on the mandatory automatic publication of certain information
- 0: if there are no requirements to automatically release certain information
- -: Not applicable or no data available

a) How do you, based on the evidence available to you, evaluate compliance by public bodies with these requirements to proactively release information?

2.10 What is the country’s score in the Right-To-Information Rating? (<http://www.rti-rating.org/country-data/>)

2.11 What are shortcomings of the access to information regime?

Does the law...

- create a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions, consistent with international standards?
- grant everyone (including non-citizens, non-residents and legal entities) the right to request information?
- provide a right to both information and access to records/documents?
- allow for partial access (a document can be redacted and then be partially released)?
- establish an effective appeals mechanism?

You will likely find the needed information in the country assessment of the RTI-Rating (<http://www.rti-rating.org/country-data/>). Another relevant source for the access to information framework in Europe is the EuroPam project (<http://europam.eu>).

2.12 Are there any factors that, in practice, make it unnecessarily burdensome and difficult to request or gain access to information?

Such factors may include that requestors have to identify themselves (anonymous requests are not allowed or possible), high fees to receive information, difficult request procedures, the lack of an effective and timely appeal mechanism, poor record keeping or a lack of awareness among public sector employees about the access to information regime. You may be able to obtain information from colleagues at the TI chapter who have submitted requests in the past, or from other civil society organisations or journalists who have extensively submitted FOI requests. You may also find information in an annual report issued by the information commission or a similar oversight body, or in relevant court cases. For European countries, also see EuroPam (<http://europam.eu>).

2.13 How many requests for information were made to public authorities each year in the previous two years?

a) How many were answered within the time limits provided by the law?

b) What percentage was fully answered, what percentage partly? What happened with the remaining requests?

You may find this information in an annual report by an Information Commissioner or another public body charged with overseeing the implementation of the law, or in annual reports issued by public bodies. If only information on the national level is available, please provide this information. If information is only available for some public bodies, please provide available data and sources. If no government data is available, provide data from civil-society operated FOI request portals or results from relevant field tests, if such exist.

2.14 Have there been any developments in the past two years that suggest an improvement or deterioration in the framework for public access to information and/or its implementation?

Relevant developments may include discussions to adopt a (new) law or policy, changes to current laws and procedures, relevant court decisions, and the reaction of public bodies to requests for information in important cases. Please provide a short description and relevant sources, references and links.

Guidance

- UNESCO: Unpacking Indicator 16.10.2: Enhancing Public Access to Information Through Agenda 2030 for Sustainable Development (http://www.unesco.org/new/fileadmin/MU_TIMEDIA/HQ/CI/CI/pdf/news/access_info_2030.pdf)
- Access Info Europe & Centre for Law and Democracy: RTI Rating (<http://www.rti-rating.org> and <http://www.rti-rating.org/wp-content/uploads/Indicators.pdf>)
- Freedominfo.org for recent developments related to the right to information (<http://www.freedominfo.org>)
- Right2Info.org (no longer updated) for international instruments, standards and cases on the right to information (<http://www.right2info.org/international-standards>)

ENDNOTES

1. We understand the countries included in the report are not fully representative of the Asia Pacific region. The countries included have been selected based on Transparency International chapters' ability to provide input and their participation in the current Transparency International Asia Pacific Regional Programme based on the guidelines set by the donor, the Australian Department of Foreign Affairs and Trade.
2. Harm test is an assessment of the likelihood and damage that (unauthorised) disclosure of certain information would cause. It is often phrased as "would jeopardise", "would harm", "might be detrimental". Public interest test is the balancing of two public interests concerning the disclosure and non-disclosure of a particular piece of information. For example disclosure of details of an industrial disaster in an arms factory may bring national security risks; at the same time, public health and environmental considerations may have more weight to save lives among the population near the factory.
3. See parallel reports at https://www.transparency.org/news/feature/sustainable_development_goals_turn_two_time_to_ensure_justice_for_all
4. UN General Assembly, *Human Rights Council : resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <http://www.refworld.org/docid/4537814814.html> (accessed 16 August 2018)
5. Article 9 of the African Charter on Human and People's Rights, 1981; Article 13(1) of the American Convention on Human Rights, 1969; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950;
6. UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34
7. See further documents at https://web.archive.org/web/20150318094732/www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=59&Itemid=80
8. Right to information laws: Impact and implementation, U4 Helpdesk answer, Maira Martini, Transparency International, August 2014, at https://www.transparency.org/whatwedo/answer/right_to_information_laws_impact_and_implementation
9. UN Human Rights Committee (HRC), General comment no. 34,
10. Ibid.
11. <https://freedomhouse.org/report-types/freedom-world>
12. <https://rsf.org/en/ranking>
13. Joint submission to the UN Universal Periodic Review of the Islamic Republic of Pakistan by ARTICLE 19, IFEX and Pakistan Press Foundation, page 5 at <https://www.article19.org/data/files/medialibrary/38704/Pakistan-Joint-Submission-A19,-IFEX,-PPF.pdf>
14. These include the Foreign Donation (Voluntary Activities) Regulation Act 2016 in Bangladesh, the Law on Associations and Non-Governmental Organisations 2015 in Cambodia and the Regulation on Associations 2015 in the Maldives.
15. Note that numbers for Cambodia in this table differ from the country assessment, which provides an evaluation of the country's draft right to information law.
16. Bangladesh Parliament, The Constitution of The People's Republic of Bangladesh, http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367 (accessed on 8 July, 2018)
17. Annual Report 2011, published by Information Commission of Bangladesh, Executive summary, http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/annual_reports/4078b890_d5bb_49b6_b7ea_edb44dd86dea/annual_report_2011_english.pdf (accessed on 8 July 2018)
18. *ibid*, Right to Information Act 2009, (English) Preamble, page-2
19. *ibid*, Right to Information Act 2009, (English) Chapter 1, page-4
20. "(i) any organisation constituted in accordance with the Constitution of the People's Republic of Bangladesh;
(ii) and ministry, division or office established under the Rule of Business made under article 55(6) of the Constitution of the People's Republic of Bangladesh;
(iii) any statutory body or institution established by or under any Act;
(iv) any private organisation or institution run by government financing or with aid in grant from the government fund;
(v) any private organisation or institution run by foreign aid in grant;
(vi) any organisation or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organisation or institution; or

(vii) any organisation or institution as may be notified in the official Gazette from time to time by the Government.”

21. *ibid*, Right to Information Act 2009, (English) Chapter 1, page-3,4 and Chapter 2, page-5

22. Right to Information Act 2009, (English) Article 2b

23. Right to Information Act 2009, (English) Article 32

24. Article 19, Country Report: The Right to Information in Bangladesh, <https://www.article19.org/resources/country-report-the-right-to-information-in-bangladesh/> (accessed on 10 July 2018)

25. In Article 7 (h), harm seems to be implicit in the provision. Article 7 (c), (j), (k), (n), (o), (p), (r), (s) and (t) do not refer to any harm.

26. Right to Information Act 2009, (English), Article 32

27. Right to Information Act 2009, (English) Article 11 (2)

28. Right to Information Act 2009, (English) Article 13

29. Right to Information Act 2009, (English) Article 13

30. Right to Information Act 2009, (English) Articles 14 - 16

31. Right to Information Act 2009, (English) Article 21

32. *ibid*, Article 19, Country Report: RTI in Bangladesh

33. Promoting “open government” through the RTI Act, by Shamsul Bari and Ruhi Naz, Research Initiative Bangladesh (RIB), The Daily Star, April 13, 2017, <http://www.thedailystar.net/perspective/promoting-open-government-through-the-rti-act-1390402>, (accessed on 10 July 2018)

34. RTI Rules on Disclosure, infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/law/dee1e9c7_7f51_4d2a_beb0_d45443f5134f/Disclouser%20of%20Information.pdf, (accessed on 9 July 2018)

35. Right to Information Act 2009, (English) Article 3

36. *ibid*, RTI Act 2009, Bangladesh, Section 7(t).

37. a2i Bangladesh, Government of Bangladesh, Data 2 Policy, by <http://a2i.pmo.gov.bd/data-to-policy/policy-reform/> (accessed on 10 July 2018)

38. a2i Bangladesh, Government of Bangladesh, One-Stop Shop, at <http://beta.a2i.pmo.gov.bd/one-stop-shop-2/#1510318258673-86e9e595-5997> (accessed on 5 September 2018)

39. The Right to Know, Syed Fazlul Mahdi, The Daily Star, 30 June 2017 <https://www.dhakatribune.com/opinion/op-ed/2017/06/30/the-right-to-know> (accessed on 10 July 2018)

40. Right to Information Laws: Impact and Implementation, U4 Expert Answer, page 6, Anti-Corruption Resource Centre, www.u4.no, (accessed on 10 July 2018)

41. Sustainable Development Goal 16: Preparedness, Progress and Challenges of Bangladesh A Study of Selected

Targets, by Transparency International Bangladesh (TIB), Full Report, page-56, https://www.ti-bangladesh.org/beta3/images/2017/Sustainable_Development_Goal_16/SDG_Full_Report_170917.pdf (accessed on 10 July 2018)

42. *ibid*, Annual Report 2017 (Bangla)

43. Annual Report 2017 (Bangla), Chapter-5, Implementation status of the Right to Information, page-62,

44. *ibid*, Annual Report 2017 (Bangla)

45. Assessment Report, How the Bangladeshi Media use the RTI Act for Free and Qualitative Reporting, published by MRDI, at <http://www.mrdibd.org/downloads/Assessmentreport-RTI-Act%20for-Free-and-Qualitative-Reporting.pdf>

46. Assessment Report, How the Bangladeshi Media use the RTI Act for Free and Qualitative Reporting, published by MRDI, at <http://www.mrdibd.org/downloads/Assessmentreport-RTI-Act%20for-Free-and-Qualitative-Reporting.pdf>

47. “Information: refers to all piece of official document under the possession of public institutions.” (Article 4)

“This law is applicable to all pieces of information, which shall be provided by public institutions both at national administration and subnational administration across the Kingdom of Cambodia, with the exception of a certain number of confidential information laid down by this law.” (Article 3)

48. http://www.owso.gov.kh/?lang=en&page_id=703; At the present time, the ombudsman’s office is attached to One Window Service Office (OWSO), a platform that link relevant public services to sub-national administrations. The OWSO brings public services closer to the people through the devolution and delegation of service delivery functions from relevant ministries and government institutions, in order to improve public service delivery. The law requires the OWSO to display service fees and procedures, as well as the length of time needed to provide services, in order to promote transparency and accountability. In theory, citizens can therefore address any concerns or complaints regarding service delivery and sub-national administration to the ombudsman’s office. Based on information obtained from the team working with the ombudsman’s office, this office faces numerous challenges. Ombudsman officers still lack capacity and a clear understanding of the role and functions of the office. As ombudsman positions are usually filled by former/retiring ruling party members, the independence of ombudsman offices is limited. Public awareness, and use, of this office remains low. Currently, OWSO and ombudsman offices only operate at the district/municipal/khan level of the sub-national administration, and only has some 50 offices across the country, which counts 200 districts/municipalities/khans.

49. <http://www.seva.gov.kh/>

50. One Window Service Office is an office that provides public services to the citizens, businessmen, small entrepreneurs and students. See details at http://www.owso.gov.kh/?page_id=1201

51. The RTI Act “refers to any kind of information, or any information produced at any given date, or any information produced by any party, or any information stored in any device, held and managed by a State Institute, which does not belong to a third party.”

52. According to Section 72(h) of the RTI Act, “Third Party’ refers to the beneficiary of the information protected under sections 23, 24, 25 and 26 of this Act, and whose interest the said sections protect. This definition does not include State Institute and applicants of information.”

53. The mandatory set of information includes a statement that the request for information is made under the Right to Information Act, details of the information requested, assurance of payment of fees for access to information, and the name, address and phone number of the person requesting access to information.

54. Article 11 of the RTI law

55. Article 11 of the RTI law

56. See details in the National Human Rights Commission of Mongolia Act, at <http://mn-nhrc.org/eng/engine/download.php?id=1> (accessed on 6 August 2018)

57. See Articles 6 to 10 of the RTI law.

58. <http://www.xacxom.iaac.mn>

59. <https://www.tender.gov.mn/mn/index/>

60. <http://www.eitimongolia.mn/reconciliation-report>

61. [http://irim.mn/uploads/files/13/TI-eb%20moni-2015-final%20eport-edited-20160104%20\(1\).pdf](http://irim.mn/uploads/files/13/TI-eb%20moni-2015-final%20eport-edited-20160104%20(1).pdf)

62. Sections 7(1), 31 and 32(4)

63. Section 2 of the RTI Act

64. Section 2 of the RTI Act

65. Section 32 of the RTI Act

66. Chapter 3 of the RTI Act

67. Section 10 of the RTI Act

68. NIC Annual Report 2014/15 and 2015/16 (July 15 –July 14 period)

69. <https://bolpatra.gov.np/egp>

70. Balochistan Freedom of Information Act 2005; Khyber Pakhtunkhwa Right to Information Act 2013; The Punjab Transparency and RTI Act 2013; The Sindh Transparency And Right To Information Act, 2016

71. According to the RTI Act 2017 “record” means “public record” and the latter is defined as “(a) policie

and guidelines; (b) transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and functions; (c) information regarding grant of licences, allotments and other benefits, privileges, contracts and agreements made by a public body; (d) final orders and decisions, including decisions relating to members of public; (e) and any other record which may be notified by the Minister-in-charge of the Federal Government for the purposes of this Act.” – Section 6 of RTI Act 2017

72. Section 2 (xii) of the RTI Act 2017

73. Section 7 of the RTI Act 2017

74. Section 2 (ix) of the RTI Act 2017

75. Section 16 of the RTI Act 2017

76. Section 7 (f) of the RTI Act 2017

77. Sections 18-21 of the RTI Act 2017

78. Section 5 of the RTI Act 2017

79. <http://www.foiapakistan.com/articles/FOI%20Rules%202004.pdf>; See also Section 5(3) of the Punjab Transparency and Right to Information Act 2013; Sections 11 of the RTI Act 2017

80. <https://www.thenews.com.pk/print/193861-Punjab-Information-Commission-verdict>

81. <https://www.dawn.com/news/1308355>

82. <http://www.kpti.gov.pk/page.php?PagelD=47&MenuId=11> and https://rti.punjab.gov.pk/complaint_status

83. https://web.archive.org/web/20040613060126fw_/http://www.communication.gov.pg:80/images/nipc_annex1.pdf

84. Constitutional Right to Key Documents on Experimental Seabed Mining, Media release of Deep Sea Mining Campaign, 3rd October 2017, at <http://www.deepseaminingoutofourdepth.org/constitutional-right-to-key-documents-on-experimental-seabed-mining/>;

Legal action launched over the Nautilus Solwara 1 Experimental Seabed Mine, 8 December 2017, Media release of Deep Sea Mining Campaign, at <http://www.deepseaminingoutofourdepth.org/legal-action-launched-over-nautilus-solwara-1/>

85. Ombudsman Act 2017, at <http://www.parliament.gov.sb/files/legislation/Acts/2017/Ombudsman%20Act%202017.pdf>

86. See more details on the first year of the Sri Lanka Right to Information Act: Press Release on One Year of RTI, Transparency International Sri Lanka, at <http://www.rtiwatch.lk/press-release-on-one-year-of-rti/> (accessed on 6 September 2018)

87. Sections 3 (1) and 43 of RTI Act

88. Section 25 of RTI Act
89. Section 5 (1) (f) and (i) of RTI Act
90. Section 5 (1) (f), (g), (i), (k), (m), and (n) of RTI Act
91. Section 5 (4) of RTI Act
92. Section 15 of RTI Act
93. <http://www.rticommission.lk/web/images/mediareleases/media-statement-eng-01062018.pdf>
94. Media Statement (06-02-2018), at <http://www.rticommission.lk/web/images/mediareleases/media-statement-Eng-6th-Feb.pdf>
95. https://rti.gov.lk/images/publications/Online-Proactive-Disclosure-under-the-RTI-Act-in-Sri-Lanka_Final-Report.pdf
96. https://ogcio.gov.vu/images/RTI-LAW-12-2015_RTI_POLICY_English.pdf
97. Section 4 (1) of the RTI Act
98. Sections 2 and 3 of the RTI Act
99. Sections 16 and 17 of the RTI Act
100. Sections 42 to 50 of the RTI Act
101. Sections 38 and 39 of the RTI Act
102. Sections 44(2) and 48(2) of the RTI Act
103. Article 48 of the Constitution of Vanuatu
104. Section 52 of the RTI Act
105. Section 52, 54 and 58 of the RTI Act
106. Section 56 and Part 7 of the RTI Act
107. Section 68 (6) of the RTI Act
108. Sections 6 and 7 of the RTI Act
109. Sections 6(8) of the RTI Act
- t110. 7 Vanuatu Government agencies under first Government Right To Information Order, Loop Vanuatu, 4 August 2017, at <http://www.loopvanuatu.com/vanuatu-news/7-vanuatu-government-agencies-under-first-government-right-information-order-64272> [accessed on 4 September 2018]; Section 2 (4) b) of the RTI Act
111. MOU Signing Paves Way For Proper Management Of Records And Information, TIVNEWS, 9 December 2016, at <https://tivnews.wordpress.com/2016/12/09/mou-signing-paves-way-for-proper-management-of-records-and-information/>
112. <https://rti.gov.vu/>
113. Opening Speech For RTI Officers Training, Government of Vanuatu, 12 April 2018, at <https://www.gov.vu/en/public-information/546-opening-speech-for-rti-officers-training> [accessed on 4 September 2018]
114. "Information the access to which could harm the

interests of the State or adversely affect national defense and security, international relations, social order and safety, social morality or community well-being; or could harm the life, living or property of other persons; information classified as work secrets; information on internal meetings of state agencies; and documents drafted by state agencies for their internal affairs."

115. <http://opendata.danang.gov.vn/>

116. There is no available translation of this decree.

117. A number of established indices and ratings produced by civil society organisations and international organisations assess a country's performance in specific policy areas relevant to this shadow monitoring exercise. These indices also provide scores and indicators that allow for an easy comparison between countries. Many of the indices can also be used to monitor a country's performance over time. The questionnaire makes use of data and insights collected by Transparency International's Corruption Perceptions Index, Transparency International's Global Corruption Barometer or assessments carried out by other civil society organisations, including: the Freedom in the World report by Freedom House; Reporters Without Borders' World Press Freedom Index; the Right to Information Rating, produced by Access Info Europe and the Centre for Law and Democracy; the Open Data Barometer, produced by the World Wide Web Foundation; and the Global Open Data Index, created by Open Knowledge International. The scores and results of these surveys and indices generally provide a comprehensive assessment on a specific issue supplementing the legislative scorecard.

118. <http://www.rti-rating.org>

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