

# IMPLEMENTING RIGHT TO INFORMATION

Lessons from Experience



ANUPAMA DOKENIYA



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# Abbreviations and Acronyms

ATIA	Access to Information Act
CIC	Central Information Commission
CSO	civil society organization
DoPT	Department of Personnel and Training
EITI	Extractive Industries Transparency Initiative
FOIA	Freedom of Information Act
GAC	Governance and Anticorruption
HURINET-U	Human Rights Network Uganda
ICO	Information Commission
IFAI	Instituto Federal de Acceso a la Información Pública (Federal Institute for Access to Information)
IPP	Institutul pentru Politici Publice
MDA	ministries, departments, and agencies
MKSS	Mazdoor Kisan Shakti Sangathan
NCPRI	National Campaign for People's Right to Information Campaign
NGO	nongovernmental organization
PETS	Public Expenditure Tracking Surveys
PIO	public information officer
POT	Portal de Transparencia (Transparency Portal)
RaaG	RTI Assessment and Analytical Study
RTI	right-to-information
SFP	Secretary of Public Function



# Preface and Acknowledgements

The Bank's 2007 Governance and Anticorruption (GAC) strategy highlighted that improving governance in countries was necessary to fight corruption and strengthen development, and underlined the importance of transparency as a critical dimension of good governance. It pointed out that citizens and media that have access to information on the operation of state institutions are crucial for fostering accountability. Transparency might extend to publication of budget and procurement data, access to state records and reports, and the state's active dissemination of information on its operations and performance. The strategy pointed out that building on a growing track record of success in this area, the Bank will scale up its work with interested governments to strengthen transparency in public policy-making and service provision. This project is part of the effort to scale up knowledge development on transparency and access to information issues. The project focuses specifically on the implementation of Right to Information laws—laws that establish citizens' right to have maximum access to government documents in all areas, barring a limited regime of exceptions.

The discussion in this report is based on research undertaken in eight countries. The case studies were prepared by: Jolanda Trebicka and Gerti Shella (Albania),

Yamini Aiyar and Mandakini Devasher (India), Marcos Mendiburu and Yemile Mizrahi (Mexico), Sergiu Lipcean and Laura Stefan (Moldova), Robert Pereira Chumbe (Peru), Sorin Ionita and Laura Stefan (Romania), Anupama Dokeniya (Uganda), and Tom McClean (United Kingdom). Robert Beschel provided invaluable advice to developing the final report. Lisa Bhansali, Marcos Mendiburu Sahr Kpundeh, Vivek Srivastava, Francesca Recanatini, Gary Reid, and Graham Teskey provided significant advice and inputs during the development of the project. Chris Finch, Verena Fritz, Helene Grandvoinnet, Guenter Heidenhof, and Jana Kunicova reviewed earlier drafts and provided very useful comments. Toby Mendel and Richard Calland provided expert inputs on specific topics. Tammar Berger, Sabina Schnell, and Kinga Krisko provided research assistance. Audrey Liounis edited various sections of the report. Diana Obrero and Laryssa Chiu helped with logistical issues throughout the project. Laura Johnson provided editorial, design, and layout assistance.

Anupama Dokeniya led the preparation of the report. She can be reached at: [adokeniya@worldbank.org](mailto:adokeniya@worldbank.org). The study was carried out with funds from the Governance Partnership Facility. The case studies are available at: <http://www.worldbank.org/publicsector/gpa/transparency>.



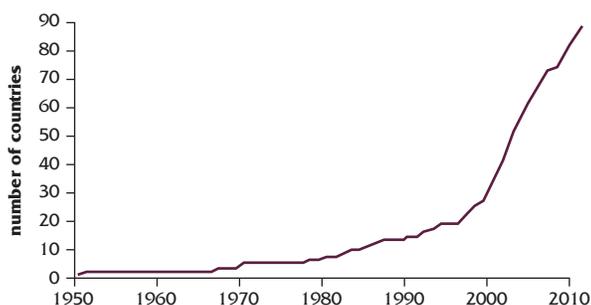
# 1. Overview

## 1.1. Background and Objectives

Over the last two decades, the number of countries with right-to-information (RTI) laws—laws that establish citizens’ “right” to have access to public information or operationalize such a right found in the constitution—has exploded (figure 1.1). In 1990, only 13 countries had RTI laws,<sup>1</sup> all of them western liberal democracies. By 2012, this number had risen to more than 90.<sup>2</sup> And most of the new adopters are countries in Eastern Europe, Asia, Latin America, and most recently, Africa and the Middle East—countries with diverse political histories, difficult governance environments, and persistent development challenges.

Both international and local dynamics have contributed to this trend. Internationally, the combination of a growing global emphasis on transparency as critical to good governance, the recognition of the right in international conventions,<sup>3</sup> its championship by international policy networks and epistemic communities,<sup>4</sup> and pressure from development aid agencies and intergovernmental bodies created a global momentum for reform (annexes 1 and 2). The influence of international networks that links global experts and nongovernmental organizations (NGOs)<sup>5</sup> with local policy makers has also been an important element in the convergence of legislative standards across countries (annex 3 and 4).

**Figure 1.1. Chronology of Adoption of ATI Laws**



Source: Based on data from Vleugels 2009.

Of course, the international momentum translated into law when domestic dynamics were favorable, when political elites perceived that it is to their advantage to support the law in order to win political points with domestic constituencies and establish their democratic credentials internationally. In several countries, the transition to democracy also provided an opportunity when pro-reform coalitions of ruling and opposition parties, civil society groups, and media obviated sources of opposition or resistance to the passage of an RTI law (annex 2).

As more countries have adopted the law, the right to information has been cast in fairly ambitious terms by both its international proponents and its domestic champions. It has been characterized as fundamental to enhancing citizen participation in governance, improving citizens’ understanding of public policy choices and decision-making processes, and enabling them to assert claims on service entitlements, scrutinize public officials and public expenditures,<sup>6</sup> and exercise a more direct form of social accountability.<sup>7</sup> The Indian RTI law passed in 2005, for instance, was characterized as “a great and revolutionary law,”<sup>8</sup> one with the potential of “fundamentally altering the balance of power between the government and citizens.”<sup>9</sup>

But because RTI laws are relatively new in most countries and because their adoption has been a difficult and contested process, much of the research in this area has focused on analyzing the passage of legislation and on the comparison of the provisions in pieces of legislation against global good practices.<sup>10</sup> There is little empirical research on how these provisions have worked in practice, especially in developing country contexts, whether or not they have been adequately enforced, and if they have been effective in fulfilling their stated goals of improving transparency, accountability, good governance, and service delivery. The research project on which this report is based attempts to address this gap.

It looks at two broad sets of questions on the implementation of RTI.

- The first set of questions relates to the effectiveness and impact of RTI laws. What happens after the law is passed? Does it actually enable citizens to gain access to information? What types of information? What evidence exists of the broader impact of RTI laws (in strengthening accountability of public officials, anticorruption, and so on)?
- The second set of questions relates to the factors that might explain how effectively the law works. In countries where there is evidence of the law working well, what factors might explain this? In countries where it is not being used, what constraints and challenges can be identified?

The project looked at these issues in eight countries—Albania, India, Mexico, Moldova, Peru, Romania, Uganda, and the United Kingdom. These countries have all had RTI laws in place for five years or more, span across

different regions, and represent a range of income levels and varying political and administrative traditions (table 1.1). In each country, local researchers were commissioned to collect data on the use of RTI law by citizens as a tool for requesting information and the responsiveness of officials to such requests. In some countries, this data is monitored by government agencies; and civil society groups have also launched surveys and studies to assess the use of and compliance with RTI. Additionally, researchers surveyed the secondary literature on the implementation of RTI in the case study countries, reviewed official documents, and conducted in-depth interviews with a range of stakeholders, including officials, civil society, and media groups. Details on the methodology for addressing the key questions are in annex 5.

This report provides a concise summary of the key lessons vis-à-vis implementation emerging from the case studies. It is intended to draw lessons from the experience of these countries as a guide to policymakers and officials charged with implementing RTI in countries that have

Country	Income classification	Name of RTI law	Year adopted	Context
Albania	Lower-middle income	Law 8503— <i>Right to Information about Official Documents</i>	1999	Post-communist transition; influence of European institutions
India	Lower-middle income	Right to Information Act	2005	Congress Party came to power on an electoral platform promising RTI
Mexico	Upper-middle income	Transparency and Access to Public Information	2002	Transformational regime change after 71 years of Partido Revolucionario Institucional rule
Moldova	Lower-middle income	Law 982 on Access to Information	2000	Post-communist transition; attempt by new political forces to be seen as progressive and break from the past
Peru	Upper-middle income	Law on Public Access to Information	2001	Political transition post-Fujimori
Romania	Upper-middle income	Law 544 on Access to Public Information	2001	Post-communist transition; pressure of EU accession
Uganda	Low income	Access to Information Act	2005	Attempt by ruling NRM to maintain a progressive image for international donors, and domestically faced with elections
United Kingdom	High income: OECD	Freedom of Information Act	2000	Labor Party came to power after several years

Source: Compiled by author based on case studies.

recently adopted legislation or that are working toward it. Although the number of countries under review is small, their experience offers useful lessons on the potential challenges and constraints in setting in place the institutional changes, capacity enhancements, and normative shifts necessary for RTI laws to function effectively. Policy makers need to be cognizant of, and make concerted and explicit efforts to address, these challenges in the course of implementation if the right to information is to become a reality.

The next section briefly outlines the key findings on the relative effectiveness and impact of RTI in the case study countries. The subsequent section and the following chapters explore the key dimensions that have a bearing on the relative effectiveness of the law.

## 1.2. Assessing Effectiveness and Impact

The performance of an RTI regime is usually measured by assessing the extent to which citizens exercised the right to information (through the number of annual requests), and whether the existence of a legally-mandated right propelled officials to disclose information (through statistics of fulfillment versus denial of requests).<sup>11</sup> Although implementing and oversight agencies are usually required to track and record these statistics, in three of the countries studied—Albania, Moldova, and Uganda—no official data could be accessed. But data from interviews and civil society organization (CSO) surveys suggests that both the use of RTI and the responsiveness by officials is very low. In Uganda, the 2005 Access to Information Act (ATIA) is not being used by the majority of citizens, and requests by CSOs, were mostly without success.<sup>12</sup> In Albania and Moldova, interviews suggested that although the respective RTI laws are being used, both interviews and civil society surveys suggest that information requests are often ignored or responded to with considerable delay or in incomplete formats.<sup>13</sup>

In the other case study countries, more systematic data was available. In these countries, the significant number of popular requests (table 1.2) as well as anecdotal data (annex 7) suggests that RTI has been very useful to citizens gaining access to information.<sup>14</sup>

Although as a percentage of the population, the total number of requests is very small (0.03–0.4),<sup>15</sup> the number is not significantly higher even in developed countries with several years of experience on RTI and ranges from 0.3–0.4 percent,<sup>16</sup> leading to RTI being characterized as an “extraordinary tool by definition.”<sup>17</sup> In the countries where data was available, it also showed that average compliance rates—the percentage of RTI requests that received a response—ranged from 75–90 percent, suggesting that RTI had proved a useful tool for many.

Although requests and responsiveness statistics provide a useful snapshot of the overall functioning of the RTI regime, they also have several limitations that are discussed in annex 5. For instance, they do not provide sufficient disaggregation on the kinds of information that are refused. Requests for information on the government’s functioning, decision-making, expenditures, and contracts—information particularly critical to holding the government accountable—might be precisely the requests that are refused. Anecdotal data about specific instances of information requests and responsiveness were therefore collected to assess if RTI was successful in accessing this more “sensitive” information.

In India,<sup>18</sup> Mexico, Romania, and the United Kingdom,<sup>19</sup> media and NGOs also had several successes in using RTI to elicit information on issues related to mismanagement of public funds; nonperformance of service-delivery agencies; and instances of fraud, corruption, or nepotism. More details on instances in which the use of RTI led to pushing the envelope on transparency in these countries can be found in annex 7.

The project also looked at anecdotal data to assess if there is evidence that RTI could have an impact on improving broader governance outcomes, such as officials being sanctioned when corruption was exposed, corrective measures being taken when poor performance was brought to light, better safeguards being established to improve governance and prevent corruption, firms being disqualified when collusion was exposed, and service providers being held accountable for the efficient delivery of services. A few instances of RTI disclosures resulting in such corrective actions emerged, but there were also several instances in which the exposure of information did not lead to any

**Table 1.2. Requests and Responsiveness in Selected Countries**

Country	Number of requests per yer (rounded to nearest 1,000)	Percentage of population	Percentage receiving response	Level of government
Albania	Data not available	n/a	n/a	n/a
India	250,000 (2007–08) (increased to 625,000 in 2011–12)	.03	81	Central
Mexico	Increase from 24,000 in 2003 to more than 120,000 in 2012	.04	96.9	Central
Moldova	n/a	n/a	n/a	n/a
Peru	Increase from 56,000 in 2004 to 68,000 in 2010	n/a	90	Central
Romania	600,000 (2002–09)	3.2	95–98	Central and regional
Uganda	Data not available	n/a	n/a	n/a
United Kingdom	16,000 in 2006 to 44,000 in 2010	.04	75–90	Central

Notes: n/a = not available. It is important to note that a negative response—that is, a denial of the information request—also counts in these statistics as a response.  
Sources: IFAI 2009; Central Information Commission 2006; Department of Government Services, Romania; Constitution Unit 2011; PCM, Peru; Population Reference Bureau 2011. Population data figures used are from mid-2011.

follow-up action—neither the punishment of officials nor any systemic improvements.

In the short term, access to information might also lead to more mistrust in government and higher perceptions of corruption as information about corruption that was previously hidden is put into the public space. This might explain the conclusions from a study that found a negative correlation between the existence of RTI laws and perceptions of corruption.<sup>20</sup> In India, for instance, high-profile corruption scandals, several exposed through RTI requests and followed by aggressive media, have created a widespread perception of massive corruption. But these exposés have also galvanized a popular movement directed against corruption and for setting in place stronger accountability mechanisms. Although this is an area that still needs much research, the Indian example might point to ways in which RTI can have a broader systemic impact, possibly through the mobilization of voices against corruption to create more systemic reforms in the accountability environment.

### 1.3. Explaining Outcomes

In-depth interviews with a range of stakeholders and an extensive survey of the existing research and empirical data enabled the identification of two broad dimensions that have a bearing on the effectiveness of an RTI law both to elicit information of a personal interest and to leverage RTI for accountability outcomes.

- First, setting up the formal institutional architecture for implementation was important to build capacity in the public sector to respond to RTI requests, aligning incentives and creating a culture of openness.
- Second, features of the underlying governance and political economy environment—the willingness of officials to follow the rule of law, the responsiveness of the state to civil society demands for information, the role of complementary check-and-balance institutions to demand follow-up action and maintain vigilance—all had a bearing on the effectiveness of RTI.

**Establishing formal institutions was critical to signaling political commitment, creating awareness and support for the law, and building capacity in the public sector to comply with the mandate for disclosure.**

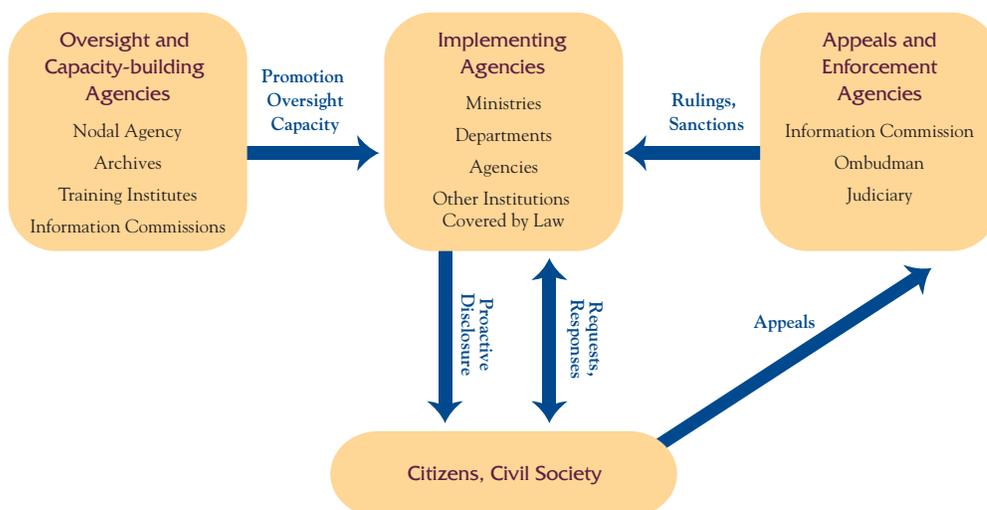
The key institutions, actors, and relationships relevant to the implementation of RTI are depicted in Figure 1.1. Where specific agencies for oversight and promotion of the law were designated and provided adequate resources and political support, they were important in driving implementation, overseeing and supporting efforts by implementing agencies, framing guidelines and regulations, ensuring that adequate arrangements for responding to requests were in place, promoting awareness about the law within the government and among the public, and supporting technological and human resource capacity. Both independent oversight agencies (such as information commissions) and nodal agencies within the government each played an important part in promotional, capacity-building, and oversight efforts. Some countries implemented technology systems for registering requests and monitoring compliance that also provided a useful interface for lodging requests to citizens. The establishment of independent commissions or tribunals, with adequate capacity, autonomy, resources, was

important to provide redress against noncompliance, on both more routine cases, and on specific more high profile cases.

On the other hand, where these formal institutions for implementation were not established, or where they were not provided with adequate resources or political support, capacity-building efforts were incomplete and fragmented and there was little evidence that RTI had made any difference to the environment for transparency in the government. However, the case studies also showed that sustainability can be challenging even in countries that establish robust implementation and oversight mechanisms, once the initial momentum behind the law subsides. In Romania, for instance, budget constraints led to the progressive marginalization of the nodal agency charged with overseeing implementation.

Undoubtedly, in many countries, budget limitations will influence feasible options for implementation. Although exact costs of implementation have been very hard to assess, additional budget is required for oversight agencies, for additional personnel in implementing agencies, training of information officers, awareness-raising, monitoring, and

**Figure 1.2. Implementation Institutions**



Source: Author.

technologies for information management, and for more structural improvements such as records management systems. An incremental approach to capacity building across agencies could make implementation more feasible and blunt the criticisms of RTI being a drain on resources. For instance, in the short term, it might be useful to focus efforts on building the capacity for information management in agencies that have high demand. For cost-intensive areas, such as records management, actions that might have the largest payoffs and address the most challenging constraints could be prioritized, rather than expecting a full-fledged rollout of advanced records management systems in the short term.<sup>21</sup>

Both the failure to put in place implementation and oversight mechanisms, and challenges to their sustainability indicates the erosion of political will during the implementation phase. The passage of the law is often a high-profile effort by its political champions, undertaken to establish democratic credentials and gain support and legitimacy both domestically and with international partners (annex 2). The implementation phase rarely embodies the same kind of enthusiasm and political dividends, so as political will dissipates, so do the incentives of administrative officials to implement the mandate of the law. As a result an “implementation gap” has characterized de jure reforms in several areas, not only RTI.<sup>22</sup> Moreover, as political momentum behind the legislation erodes, both political actors and public officials have also employed a variety of strategies to blunt the effectiveness of the law. Resistance to implementation might come in the form of attempts to create amendments to the scope of the law, refusal to help requesters, or even outright harassment. Sustaining political will for implementation might, therefore, be the most momentous challenge of RTI, and one that has to be kept on the forefront of implementation efforts.

**The underlying political economy relationships and governance environment influenced the effectiveness of RTI—for instance, determining if officials followed the rule of law, how responsive the state was to civil society pressures, and if other check-and-balance institutions maintained vigilance over the process.**

The influence of underlying political economy relationships and governance characteristics on RTI outcomes has rarely been assessed. Some commentators<sup>23</sup> have pointed to the importance of this dimension. For instance, Kriemer refers to the “ecology of transparency”<sup>24</sup> comprised of dedicated oversight and monitoring groups that routinely monitor the efficacy of RTI, accountability and media groups that use RTI to uncover information on corruption or non-performance and demand corrective actions, and media and press laws that encourage free expression and free association, as essential to the effective functioning of RTI.

The experience of the case study countries suggest that implementing RTI in countries with a more difficult record on key governance dimensions is challenging. Countries that ranked higher in terms of certain indices of governance—such as rule of law, voice and accountability, and civil liberties, were the countries where the record on implementation was better. In these countries, more robust data on the use and compliance with RTI was available, where civil society and media advocates were able to use RTI to extract information about government functions, public expenditures, procurement, performance, and so on—areas critical to ensuring accountability.

The limited anecdotal data that could be collected also points to the importance of the characteristics of the underlying political economy and governance environment in determining the ability of RTI to translate into “accountability outcomes” and broader governance improvements, such as if corruption and nonperformance were punished and if safeguards against corruption or oversight systems for performance were put in place. Some of the factors identified include the capacity of the legislature, judiciary, and other check-and-balance institutions such as supreme audit

institutions to follow through on disclosures, the extent to which the rule of law is followed, and the extent to which the media keeps pressure on follow-up action once information is disclosed.

Why civil society efforts had different results in different countries, why they succeeded or failed in different contexts—in other words, the political economy of state-society relations and the factors that propel state actors to respond to civil society pressure—are important areas for further analysis. Although the scope of the study is limited, the experience of the case study countries does highlight that factoring in the constraints and limitations of the underlying political economy relationships and governance environment is critical, and RTI reforms need to be part of a more comprehensive, consolidated set of reforms that address these underlying dynamics.

## **1.4. Organization of the Report**

The following chapters discuss the key challenges and obstacles that emerged in the case study countries vis-à-vis implementation. Chapters 2 and 3 discuss the lessons from the case study countries on setting up formal institutions for implementation and capacity-enhancing measures. Chapter 2 focuses on implementation and capacity within the public sector. Chapter 3 focuses on appeals and enforcement mechanisms set up to provide redress for denial of information. Chapter 4 assesses the role of the broader political economy environment. Chapter 5 summarizes the key findings. The note only highlights some of the key issues that emerged from the case study countries. More details on how these issues were addressed in these countries and on their more broad implementation experience can be found in the detailed case studies available electronically.<sup>25</sup>



## 2. Institutions and Capacity for Implementation

### 2.1. Why Implementation Institutions are Important

Addressing the supply-side of transparency—both capacity as well as administrative culture and incentives within the public sector—requires concerted efforts. Unlike other transparency measures, the scope of RTI extends across multiple sectors and various levels of the administration. Capacity for responding to RTI requests, proactively releasing information, and monitoring statistics of requests and responsiveness needs to be strengthened in MDAs across the administration as well as in other entities or arms of government subject to the law, which might include legislatures, judicial bodies, state-owned enterprises, and other government bodies. This requires considerable effort and investment to boost both technical and human resource capacity. Information systems and archival practices must be upgraded and records digitized so that information can be retrieved within mandated timeframes. Staff capacity and training is required to improve information management and dissemination skills. Organizational units must be set up to respond to requests. Formal institutions overseeing capacity-building are important for these efforts.

The mismatch between the demands of openness and the inherent incentives and bureaucratic culture in the public sector also need to be addressed. Control of information translates into rents for public officials when, for instance, bribes have to be paid to get information or when corruption can continue unchecked in the absence of transparency. Relinquishing control could lower discretion, lessen the avenues for corruption, and cut into rents by reducing opportunities for bribery, patronage, and kickbacks, creating more open competition in procurement contracts, and greater civil society monitoring of income and assets.

Public sectors have traditionally been characterized by principles of secrecy and control—principles often codified in a legacy of secrecy laws that require public servants to

commit to protecting state secrets. RTI laws presume that the information held by the state belongs to the people who have an intrinsic right to access it. An RTI law gives citizens<sup>26</sup> the right to access government records without being obliged to demonstrate a legal interest or standing—a fundamental shift in the principle guiding access to public information from “need to know” to “right to know.” Global standards on RTI have also converged on the principle of “maximum disclosure”—that is, the right of access should extend to a broad range of government documents unless specifically included in a narrowly-defined list of exemptions. Under an RTI law, therefore, a presumption of disclosure and transparency supersedes the presumption of secrecy that has traditionally characterized the functioning of government.<sup>27</sup> This is a fundamental paradigm shift, and effective implementation requires fostering a new culture of openness.

Building support and capacity for RTI implementation is also a long-term exercise rather than a short-term activity. During political and administrative transitions, especially in settings where a large number of public officials might be political appointees, political change at the top might lead to changes in other parts of the administration, necessitating training new cohorts of officials, rebuilding a commitment to RTI, and renewing organizational structures will require sustained attention, support, and resources.

The case studies showed that dedicated institutions focused on strengthening the supply side were very important in promoting and monitoring compliance with the law and supporting implementation measures, framing guidelines and regulations for implementation, promoting awareness about the law within the government and among the public, and supporting technological and human resource capacity across government. Where some of the key elements of the institutional architecture were not set up, there was inadequate attention to capacity development and promotion of the law. The next sections briefly discuss the key

dimensions of the institutional architecture and the lessons from the experience of the case study countries.

## 2.2. Designating and Sustaining Oversight Agencies

In countries where oversight agencies with sufficient capacity and political support were set up, they provided an important focal point for capacity-building efforts. Independent oversight agencies— independent information commissions or ombudsmen—often designated by the RTI law itself and charged with both implementation oversight and to serve as an agency for appeals against noncompliance are considered best practice. However, implementation experience showed that designating an entity within the government for oversight and promotion and coordinating change management is also important, both during the initial years of implementation as well as over the long term to ensure the sustainability of implementation measures.

The various models adopted by the countries under review are outlined in table 2.1. Even though the law

might not specify an oversight agency within the government, India, Mexico, the United Kingdom, Uganda, and Romania designated particular government departments as focal points for implementation. In India, Mexico, and the United Kingdom, these agencies complemented strong independent oversight institutions. This combination of an independent oversight institution and a nodal agency within the government proved most effective because of the specific strengths of each body vis-à-vis implementation, as discussed below. On the other hand, the absence of an independent agency in Uganda and Moldova meant that there was no independent champion of the law. And the absence of clear focal points for implementation within the governments in Moldova and Albania led to fragmentation of efforts and poor incentives for compliance.

In the countries that adopted a mixed model, independent oversight agencies were important as champions of implementation. At the same time, a nodal agency within the government was essential for systemic change management. In Mexico, for instance, the role of the Secretary of Public Function (SFP), the agency responsible for public administration issues, was particularly critical during the initial stages of the law's implementation, when liaison

Country	Executive oversight body?	Independent oversight body?
Albania	No	Ombudsman; People's Advocate—charged by RTI law with implementation; functions determined by complementary law
India	Department of Personnel and Training (DoPT) ( <i>de facto</i> )	Central Information Commission (CIC); State Information Commissions
Mexico	Secretary for Public Function (SFP)	Federal Institute for Access to Information (IFAI)
Moldova	No	No, although Article 21 says that "person can turn to Ombudsman for the protection of his or her legal rights," But in practice, no oversight agency identified
Peru	Office of the President of the Ministerial Cabinet	Ombudsman
Romania	Ministries of Public Information, Communications & IT, and Ministry of Public Finance tasked with developing IT for public information (Article 24)  Oversight function now under General Secretariat of Government	No
Uganda	Directorate of Information and National Guidance ( <i>de facto</i> )	No
United Kingdom	Department of Justice	Data Protection Commission rechristened Information Commission (ICO), and its mandate expanded to include oversight and appeals under 2000 FOIA

Source: Author compiled from case studies

units and information committees had to be set up across approximately 250 federal agencies, and thousands of federal public officials needed to be trained. At the same time, the Federal Institute for Access to Information (IFAI), regarded as the gold standard for information commissions, aggressively promoted access by disseminating information about the law at the state level, persuading governors to pass similar laws, encouraging citizens to make information requests, and disseminating information about the Mexican experience internationally.

In India, the Department of Personnel and Training (DoPT) in the Ministry of Personnel, Public Grievances, and Pensions, the agency with overall responsibility for the civil service, was charged with overseeing implementation in the central government. DoPT took several measures to push for compliance with the law, issuing detailed notifications, supporting training, and issuing orders to ministries to appoint public information officers, proactively disclose information, and improve their records-management practices.<sup>28</sup> On the other hand, information commissions have pushed for compliance<sup>29</sup> even when DoPT demonstrated ambivalence to the law.<sup>30</sup>

In the United Kingdom, the Information Commission (ICO) has worked with authorities to improve their internal handling processes; maintained comprehensive documentation, guidance, and model publication schemes; supported research; and conducted public information campaigns. It was also empowered to undertake “own motion” reviews of implementation and report to the parliament on issues of concern—such as surveillance and privacy—on an *ad hoc* basis. The nodal authority within the government<sup>31</sup> has coordinated the effort among public authorities to put in place appropriate administrative procedures and records-management processes, assisted public authorities in preparing for the law, and publicized good practices.<sup>32</sup> The Access to Information Central Clearinghouse has been charged with ensuring consistent application of the Data Protection Act, FOIA, and Environmental Information Regulations.

In Albania, on the other hand, the absence of an agency within the government to oversee RTI led to fragmented efforts and prevented the rebuilding of capacity in the face of successive changes in government, the reorganization or abolition of ministries, the redeployment or removal of

senior public officials, and the consequent weakening of administrative capacity and training systems. This eroded capacity and skills and has created risk aversion among officials. Although the Albanian ombudsman, the People’s Advocate, charged with handling appeals under Law 8503, served an important function in being an advocate and champion of stronger implementation, pushing for several implementation measures, attempting to get regulations passed, and drafting amendments to make disciplinary measures under the law stronger, it was not successful in these efforts because of a lack of resources and political support.

In Uganda, the Directorate for Information and National Guidance, housed in the Office of the Prime Minister—purportedly to signal its significance—and staffed with progressive officials, launched training, monitored the appointment of information officers, and developed an implementation plan. But the absence of any significant budget being allocated to it reflected the absence of political commitment. The absence of implementation regulations, in particular, proved to be a significant stumbling block toward implementation for several years because it resulted in the absence of a clear, detailed set of guidelines and was used as a pretext for noncompliance. The absence of the regulations was also used as an excuse for not implementing the law in practice.<sup>33</sup>

However, the experience of Romania showed that sustaining the oversight function over a period of time can also be challenging. As RTI is institutionalized and as proactive disclosure and open data activities make more information available in the public space, oversight functions might become lighter. This has happened, for instance, with the information clearinghouse in the United Kingdom, whose role has shrunk as MDAs became more experienced and the processes for handling requests, and complaints under the 2000 FOIA became embedded in normal operating procedures. However, it has continued to provide expertise and coordination for sensitive requests and for handling cases referred to the commissioner, tribunals, and courts.

In Romania, on the other hand, bureaucratic restructuring and declining budgets led to the marginalization of the departments charged with RTI oversight. Initially, the ministry of public information charged with implementation mobilized resources and ensured that information officers were appointed. These initial efforts played an important

part in instituting some of the basic capacity for implementation. When the ministry of public information was dissolved, another agency took over its functions, and since 2009, a modestly-staffed and poorly-resourced Department of Government Strategies in the government's Secretariat General oversees RTI. The consequences of this erosion in capacity are obvious in the decline in the quality of performance data from implementing agencies.<sup>34</sup>

### 2.3. Organizational Arrangements in Implementing Agencies

Setting up organizational structures for responding to requests and accelerating proactive disclosure efforts is the centerpiece of RTI implementation. But this was challenging in some of the case study countries. In Uganda, for instance, only a few ministries responded with details about the RTI officials they had designated in response to a survey by the Directorate of Information and Guidance in 2009. Subsequently, however, there has not been any follow-up, and discussions with individual ministries showed that RTI response structures were haphazard and *ad hoc*—only a few ministries had designated information officers for RTI requests, there was no systematic training, and most officials were not even aware of the law.

In other countries, specific functions of the ministry, department, or agency; the extent of the demand from the public; and the limitation of resources influenced the size of the information management cell and the organization of the RTI function. In the United Kingdom, where agencies were given considerable autonomy in determining their arrangements, smaller departments have tended to delegate RTI to their legal teams or corporate services divisions, while larger departments and those receiving a high volume of requests set up dedicated teams. In India, departments focused more on formulating policies at the central level—such as the Department of Rural Development and of the Department of School Education and Literacy—set up leaner implementation structures with fewer information officers, primarily because most of their programs are implemented at the state- and local-government levels, and requests for information are most often transferred to

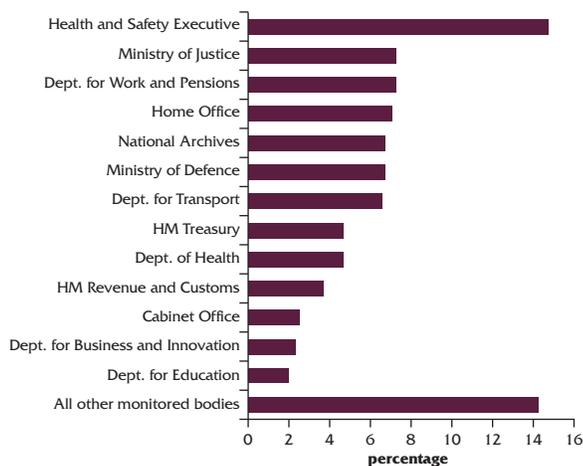
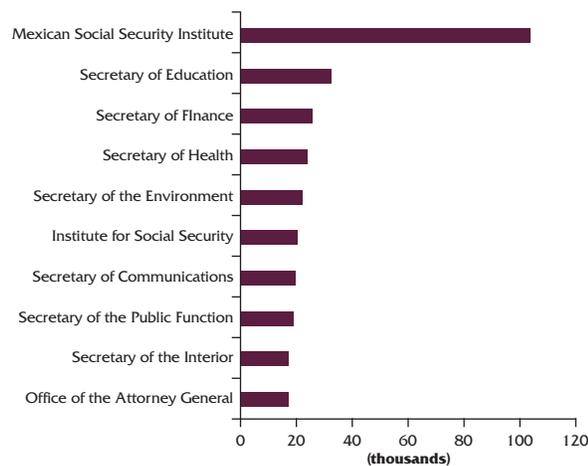
them. On the other hand, departments like Public Works, which are heavily engaged in the implementation of programs and receive many requests, set up more formalized systems, a higher number of information officers, and dedicated and well-staffed RTI cells.

MDAs and other agencies, of course, have information departments that already perform the functions of providing information to the public, and RTI functions can be added to their terms of reference. In fact, it is impractical to expect all agencies to set up new response units, as they are rarely given additional resources to fulfill the RTI mandates and are expected to find resources from existing budgets or by charging fees for providing information.

The MDAs with the bulk of the popular requests typically tend to be those that cater to information related to personal entitlements and records. In Mexico, for instance, the largest number of requests is directed to the social security institute, and in the United Kingdom to the health and safety executive (figure 2.1).<sup>35</sup> These agencies might need to expand their information management and dissemination cells and hire additional staff focused on implementing RTI. Other departments where RTI does not create significant additional demands could co-locate the handling of RTI requests with other functions, such as complaints-handling. The key immediate measure in such cases could be the retraining of existing officials charged with information management and dissemination functions, especially to improve understanding of their obligations under the law.

If existing liaison units are given additional responsibilities, it is critical that they be trained in the specifics of RTI. Information officers have typically tended to be public relations officers for the government; they do not see themselves as obligated to release information at the request of the public.<sup>36</sup>

Further, although RTI laws are primarily intended to democratize access, in several countries, access to information continued to be dependent on participation in privileged networks—information requests were often handled informally and through personal contacts. In Uganda, for example, several service-delivery NGOs that participate in policy committees within the administration have been able to access information easily while NGOs seen as more oppositional and focused on governance and accountability

**Figure 2.1. Proportion of Requests Received per Monitored Body—United Kingdom and Mexico****a. United Kingdom****b. Mexico**

Sources: United Kingdom—Ministry of Justice 2011; Mexico—IFAI.

were often denied it completely.<sup>37</sup> Signaling by the leadership on the importance of the law and modeling openness can help address these attitudes.

Leadership commitment to RTI can be evaluated by the profile that liaison units are given within the agency, the reporting lines of authority inside the agency, and the profile of officials in the liaison units and information committees. In Mexico, for example, the Secretary of Education appointed one of his closest collaborators and a high-ranking official to the information committee,<sup>38</sup> and devoted resources to train the department's staff.

Training and awareness-raising efforts to create understanding about obligations under the law are also critical to begin to shift the mindsets with which officials approach information sharing, but these efforts were inadequate in many countries:

- In Moldova, an NGO report looking at 95 public bodies demonstrated a lack of awareness among public officials about the law's provisions.<sup>39</sup>
- In India, 30 percent of rural public information officers polled in a survey did not know the provisions of the RTI law.<sup>40</sup>

- In Albania, a 2003 survey by a local NGO found that 87 percent of public employees were not aware of the law and very few institutions had appointed information officers.<sup>41</sup>
- In Mexico, a 2007 study conducted seven years after the passage of a high-profile law and the creation of an oversight agency with a strong promotional program found that 60 percent of public servants still believe that they own the information they generate.<sup>42</sup>
- In Romania, many publically-funded entities, such as public schools and hospitals, were still not aware of their proactive disclosure obligations under the law, ten years after its passage.<sup>43</sup>

Amendments to a law or to internal policies and procedures as well as modifications to implementation plans also require continuity in the training of information officers and other officials. In the United Kingdom, for example, significant training efforts occurred in preparation for the incremental introduction of the FOIA, including several roadshows by ministers of departments and agencies to emphasize their support for the FOIA. The shift to a “big bang” approach resulted in a loss of expertise because officials were redeployed to other positions, requiring retraining.

There was little evidence that efforts to harmonize broader systems and processes with the RTI mandate were being undertaken, inevitably leading to delays in responses. Training efforts tended to be narrowly focused on information officers, although fulfillment of RTI requests entails the involvement of officials across the implementing agency. Information officers typically act as dispatchers of requests to the relevant units within the department that then has to make the information available. Therefore, information management systems need to be improved across the units of all MDAs. Legal capacity needs to be shored up to enable the accurate interpretation of the nuances of the law and to handle litigation on RTI. In the United Kingdom, for example, although the FOIA states that the decision of whether or not to release information lies with the authority holding it rather than the authority that provided it in the first place, in practice, it is routine for all affected authorities to be consulted. Systems for communications and information-sharing, consulting and clarifying requests, and coordinating between different departments, must therefore be strengthened.

Lower-level officials who are typically the point of contact for information requests faced conflicting pressures and several disincentives for compliance. On one hand, they feared reprisals for releasing information that could be damaging to senior officials or politicians; on the other hand, they risked individual penalties for noncompliance. This led to a risk-averse culture, where lower-level officials can be over-cautious about releasing information, especially information on issues that might be seen as “sensitive,” pertaining to information about the agency’s performance or budget or to the behavior of senior officials—requests that often emanate from journalists or NGOs. Creating the right incentives through empowerment and rewards to encourage information officers to release information can unblock these constraints to implementation.

Further, RTI laws entailed additional responsibilities without necessarily providing additional resources or rebalancing of other responsibilities. In India, more than 30 percent of rural information officers polled in one survey admitted that they did not want RTI to be part of their responsibilities, and more than 10 percent of the public information officers cited a lack of financial and other incentives as reason for their reluctance.<sup>44</sup> Instituting incentives

for responsiveness such as rewards and recognition and ensuring that additional responsibilities are accompanied by commensurate remuneration could be useful, but there was little evidence that this was being done.

In some instances, robust internal appeals systems helped improve compliance. Initial nonresponsiveness might arise from an inadequate understanding of the obligations under the law or from a lack of confidence among the lower-level officials to release information. Decisions emanating from more senior officials could carry more weight and credibility with citizens. In Romania, there is evidence that the heads of institution receiving administrative complaints against the denial of information have supported plaintiffs in favor of the release of information.<sup>45</sup> But higher-level officials and committees could also refuse appeals if the MDA is keen to guard the information or if it interprets the law in a way that excludes the information from disclosure.

## 2.4. Request Procedures

Good practice RTI laws—usually set out details on the procedures for requesting information. However, implementing regulations are important to provide further details and create clarity in the procedures and processes for access, addressing such issues as establishing the schedule of fees for access, requirements for application forms, and internal procedures for processing requests. When such implementation regulations were not adopted—as was the case in Albania and Moldova—and regulations were left to individual agencies, only a few adopted them.<sup>46</sup>

Some countries adopted technology solutions that have considerably eased the request process, at least for those users who are technologically literate and have access to the Internet (box 2.1). However, while these technologies provide useful prototypes for potential application in other countries where conditions could be conducive, budget limitations and contextual realities also dictate what technology solutions are practical. For those sectors with a large number of personal requests, investments in technology platforms like Zoom might be useful, especially if the majority of the requester base is from the urban population with access to technology. Other departments might need

to put more effort into communications, creating incentives, and signaling from the department's leadership to create a more open culture. They might make more moderate incremental investments in technology platforms and develop a longer-term vision for full migration. State-of-the-art, advanced technology solutions might also be too expensive to implement in poorer countries and in smaller entities who might instead focus on creating a culture of responsiveness through training and incentives, in the short term.

Further, an electronic request system lacks human interaction and may make it harder for the requester to explain what he or she actually wants and for the official to provide the relevant information. Requests should therefore be accepted in a range of formats, including oral requests, electronic requests, in writing, or in person. Particularly in countries with low literacy, admission of oral requests is very important so that poorer and less-educated citizens without access to technology have access to information.

In several countries, laws enjoin public bodies to provide assistance to requesters. In practice, however, citizens encountered difficulties in lodging requests and gaining access that ranged from refusal to provide assistance to harassment. In India, respondents to a survey pointed out that they often had to make multiple trips to the government office in order to get information released, and that they were very rarely able to get assistance from officials in lodging requests; in fact, they reported harassment of RTI applicants by officials, particularly in rural areas.<sup>47</sup> The technical

difficulties faced by people in making RTI requests results in requests that are often incomplete or unclear, and this could be a major impediment to the fulfillment of requests. For instance, in a 2007 survey of Mexican officials, 77 percent of public officials complained that information requests were not well formulated.<sup>48</sup>

## 2.5. Performance Monitoring

Adequate systems for monitoring RTI performance enable an assessment of how well RTI is being implemented and offer an accountability mechanism for compliance. For instance, in Mexico, IFAI set up a system to systematically track statistics on requests and responsiveness from federal agencies, cross-check data from RTI monitoring platforms against data on other technology platforms, and monitor the outcomes of its appellate decisions. Since it has actively publicized its findings, this has served as an incentive for federal agencies to comply with the transparency law. Similarly, in the United Kingdom, the nodal agency has published quarterly and annual reports online that cover activities in the bodies under the purview of the FOIA.<sup>49</sup>

But in the other countries, monitoring RTI implementation has been a challenge; several countries did not put in place good monitoring systems and in those that did, sustainability has been challenging. In Romania, in the early years of implementation, all entities covered by the law published yearly newsletters, statistics, and activity reports, and data was regularly compiled and published. But

### Box 2.1. RTI Technology Platforms in Mexico

Mexico developed an electronic information request and response platform—the *Sistema Informatizado de Solicitudes de Informacion* or SISI—that enabled requests to be made anonymously online, responses to be fulfilled and monitored electronically, and appeals to be processed online. A search engine called “Zoom” allows users to search resolutions by topic, agency, or date. Users can also make requests in writing or by mail. When requests are presented in writing and in person, those request are transferred into the e-platform by a staff member so that they can be registered by the system. According to IFAI, 97 percent of all requests were received electronically.) Users not satisfied with the official response can—through INFOMEX—turn to IFAI for an appeal of their request. To comply with proactive disclosure provisions and make the formats for posting information uniform, the IFAI designed a central Internet portal called Portal de Transparencia (Transparency Portal or “POT”). Each government agency is required to set a link to the POT on their websites. POT has significantly helped in the verification of compliance with proactive disclosure provisions.

as bureaucratic restructuring led to a decline in budgets for oversight and marginalization of the department charged with these functions, the overall quality of monitoring data has also declined. For example, the Ministry of Interior included in its reporting all the applications for personal IDs, the traffic fine administrative appeals, and the like, pushing its number of requests into the tens of thousands per year; other ministries made similar uncoordinated calculations.<sup>50</sup> The completeness and accuracy of data was also suspect—data was sometimes only available for some years, and agencies over-reported to make themselves look good.

Monitoring and independent surveys on implementation were also carried out by civil society groups, such as the RTI Assessment and Analytical Study (RaaG), carried out by the National Campaign for People's Right to Information in India.<sup>51</sup> Civil society groups in other countries also conducted surveys and attempted to assess compliance by floating test requests to different agencies. But these *ad hoc* initiatives often depended on funding from aid agencies; provided incomplete data, and cannot be a substitute for rigorous and sustainable official monitoring systems.

The development of clear and consistent metrics for monitoring has also been challenging in the area of proactive disclosure. Proactive disclosure can be a cost-cutting measure in the medium term as easing access to the vast majority of frequently-sought information eliminates the need to process requests and reduces the burden on public agencies. But proactive disclosure efforts revealed several weaknesses that are not adequately captured in official statistics. In India, the RaaG study was able to determine some of the challenges of implementing proactive disclosure systems, including the percentage of agencies that had published information in various categories and how current it was, but there has been no sustained evaluation process to determine whether or not websites are being maintained or if the information is now outdated. Similar problems emerged in Romania. As countries launch ambitious open data initiatives, it is particularly important that they learn from these experiences and focus on the sustainability of these efforts. Appropriate metrics and systems of measurement will be key to this.

Performance metrics have also tended to narrowly focus on the numbers of requests and responsiveness, neglecting methods that assess or measure the quality, completeness, and ease of understanding of information or the ease of access to it. Agencies are responsible for categorizing their responses as positive or negative; official data does not address the quality of the information and responses. RTI laws usually require that information be disclosed in the format in which it exists. Therefore, although information was released in response to requests, it was often difficult to interpret, published in a format that could not be re-used, or contained pages of jargon that are difficult to understand for an average citizen—or even for CSOs without adequate training. In Uganda, for example, although details of transfers to primary education was posted on notice boards, communities have often been unable to decipher the technical figures.<sup>52</sup>

Budget reports that were released were at a high level of aggregation, and disaggregated data on expenditures, necessary for understanding the minutiae of budget allocations and expenditures (the data most critical for understanding where the funding pipe gets leaky) was seldom available. This could be the result of a deliberate manipulation to mask the information or of weaknesses in the underlying systems. For example, incomplete data on the flow of funds could come from the public expenditure management system because not all funds are channeled through the government budget or reported. Lack of consistency in gathering, documenting, and disseminating vital information in areas like the health sector can create further gaps in the information released. These challenges have emerged in several countries, but basic requests and responsiveness indicators neglect these complexities.

Aggregate indicators have also made it difficult to assess the usefulness of RTI for accountability. The requests that did not receive responses might be precisely the ones that pertain to information crucial for monitoring government expenditures and performance and eliciting accountability. Data suggest that individual citizens tend to find access laws useful for eliciting information about a number of areas of personal importance (such as basic entitlements and social security benefits) and for redressing grievances related to the nonprovision of basic services. Procedural

compliance to these requests is conditioned on the efficiency of the system. But requests that are denied or that receive no response—even if they constitute a relatively small percentage of total requests—could involve more “sensitive” requests, such as those that have to do with performance, expenditures, and procurement, among others. Developing appropriate metrics to measure impact is therefore essential.

## 2.6. Records Management

As RTI laws are set in place, the importance of records management increases because the absence of good records management systems<sup>53</sup> is often a constraint to the fulfillment of requests.<sup>54</sup> In a survey in India, for instance, 25 percent of urban information officers cited poor records management as a key constraint to the swift processing of RTI applications.<sup>55</sup> Recordkeeping has traditionally been regarded as an ancillary function, and archiving and recordkeeping perceived as an administrative or clerical function and as an overhead.

Digitization has been a challenge in several countries. Romanian officials, for instance, reported that officials usually access information from physical archives in response to requests because records have not yet been transferred to electronic platforms. Further, because of the widespread misconception by civil servants and elected officials that the documents they generate belong to them, when leaving their post or retiring, they were reported to have been taking the files home with them and they are forever lost to the archiving system.

Given the relatively massive effort that upgrading records management systems and digitizing them is likely to require, it can be quite daunting. It is, therefore, useful to take a more pragmatic approach that prioritizes actions that may have the largest payoffs and that addresses the most challenging constraints. It might not be useful to attempt to put in place a full records-management infrastructure before implementing the law; much could be accomplished with a sustained incremental approach. In fact, many of the review countries—India, Mexico, and even the United Kingdom—have implemented the law and demonstrated

fairly high rates of procedural compliance, even though records-management systems continue to have challenges.

In the short term, it might be useful to focus on some of the more pressing imperatives that set the foundation for effective records management.

- Addressing contradictions between regulations and setting in place clear roles, responsibilities, and coordination mechanisms is an immediate and basic priority. The relationship between the RTI and archival law was unclear in many countries, or the archives specifically excluded from the scope of the RTI law. This was problematic because it created two parallel and often inconsistent regimes for access to information, with civil servants not being sure which to apply. Archival laws were also inconsistent with modern recordkeeping systems (particularly in relation to electronic records) or conflict with access-to-information laws. These different regulations have to be harmonized.
- It would also be useful to set in place clear lines of responsibilities and effective coordination mechanisms as the foundation on which to build records-management systems. In Uganda, for instance, there has been a perception of fragmentation of institutional responsibilities on management, storage, retrieval, and dissemination of information. The Department of Records Information Management in the Ministry of Public Service was mandated to oversee records management, provide support and advisory services to registries in MDAs and local government, and train staff of registries in records management, while the Ministry of Information and National Guidance was put in charge of retrieval and dissemination. In Mexico and the United Kingdom, the various organizations seem to have been better coordinated. In Mexico, the national archive, in collaboration with IFAI, defines criteria for cataloging, classifying, and preserving administrative documents,” and the two institutions issue guidelines for the organization of archives in all federal government agencies. In the United Kingdom, where Section 46 in the FOIA requires the government to develop a code of practice on records management, the national archives and the information commissioner have cooperated to develop this code.

## 2.7. Proactive Disclosure and Open Data

The case studies also highlighted an important emerging issue. As transparency initiatives have proliferated over the last decade, several governments have launched open data initiatives intended to put government data in the public space in formats that can be reused. Various other initiatives to create transparency in budgets, contracts, and in specific sectors have been launched. But these initiatives have rarely been developed in an integrated manner or in conjunction with an RTI law, potentially leading to both a waste of resources and limited effectiveness.

Current international and national standards defining the scope of RTI typically focus on documents rather than on allowing access to full databases, raw datasets, or information in electronic or nonproprietary formats.<sup>56</sup> Integrating access to these types of data within RTI frameworks could address restrictions to the right of the public to reuse government data. For instance, in the United Kingdom, the *Protection of Freedoms Bill*, which was passed in late 2011, amended the Freedom of Information Act with the inclusion of an explicit right to many kinds of public datasets.

Coordination between the different departments overseeing different aspects of information management is also critical. In the United Kingdom, for instance, the Access to Information Central Clearing House which ensures consistent application of three main access regimes—the 2000 FOIA, the Data Protection Act, and the Environmental Information Regulations—has been a central source of advice for many authorities. In Moldova, the designation of an e-government center with committed professionals has resulted in significant momentum to the open data initiatives but has not been integrated into RTI implementation.

The momentum behind open data initiatives in several countries could potentially provide a boost to proactive disclosure initiatives. However, the experience with implementation also merits a note of caution. All the countries in the case study complement had initiatives for strengthening and improving their information-sharing systems and some countries, such as Moldova, launched ambitious open data programs. But overall, proactive disclosure systems suffered from problems of sustainability, a caution

that open data initiatives will need to factor this in going forward.

Further, open data initiatives should not become a substitute for establishing the right to information on an important principle of accountability.

## 2.8. Political Will for Implementation

Overall, the case studies showed that the implementation gap resulted from the erosion of political will once the law was instituted. The implementation phase rarely embodied the same kind of political momentum as the passage phase. As potential political dividends that can be gained from a high-profile reform measure dissipated, implementation became a low priority, leading to staggered efforts to put in place capacity. In Uganda and Romania, the executive oversight agencies faced budget constraints, and in India, the information commission complained of not being given adequate resources. In Albania, even though the government included favorable pronouncements on freedom of information and transparency in its programs after the 2005 and 2009 elections, it also issued regulations requiring permission from the head of the institution, a minister, or an agency director before releasing any information, demonstrating overt ambivalence to the transparency agenda.

Moreover, as political momentum behind the legislation eroded, both political actors and public officials also employed a variety of strategies to blunt the effectiveness of the law. Resistance to implementation came in the form of attempts to create amendments to the scope of the law, refusal to help requesters, or even outright harassment. In Moldova and India, for instance, the governments attempted to bring amendments to restrict the scope of the RTI law. In both countries, civil society efforts led to the withdrawal of these amendments.<sup>57</sup> In India, information requesters reported facing harassment and threats,<sup>58</sup> and a number of RTI activists were even allegedly murdered. Instances of efforts to block compliance have been evident in several developed countries as well.<sup>59</sup> Clearly, sustaining political will for implementation is the most momentous challenge of RTI and one that has to be kept on the forefront of implementation efforts.

# 3. Appeals and Enforcement

## 3.1. Rationale for Information Commissions

Information commissions are part of a multistage appeals process that might take on different models in different countries (figure 3.1). The first stage is an internal appeal to a committee or senior official within the agency if the official charged with responding to information requests does not respond or refuses information. If the internal appeal does not result in the release of information or the requester is not satisfied with the response, he or she can appeal the agency's decision to an external body—this could be direct appeals to the judiciary, information commissions constituted specifically for this purpose, or an administrative tribunal.<sup>60</sup> Information Commissions are usually more formal agencies and may have powers to issue rulings on the release of information that are binding on government agencies. Alternatively, the function could be entrusted to mediation agencies such as an ombudsman with nonbinding recommendation and advisory powers.

Finally, in most countries, both the government and the requester can appeal to the courts against the decision of the independent agency or the lower court. In Mexico, while individuals can appeal the independent commission's rulings to the judiciary, MDAs cannot.

An independent, specialized appeals tribunal is considered critical for adjudicating appeals against the denial

of information, primarily because general judicial mechanisms are thought to have several limitations as adjudication mechanisms for RTI.<sup>61</sup> RTI commissions can signal the importance that the political regime places on strengthening information access. Further, RTI-specific information commissions enable commissioners to become specialists on RTI, develop the competence to appropriately interpret the law, and deal with complaints expeditiously. It enables speedy resolution of cases and ease of access, especially in regard to more procedural cases on points of law or process.<sup>62</sup> Courts, on the other hand, can be inaccessible to common citizens; can be overburdened, leading to long delays; and entail high litigation costs—even in higher-income countries. The weaknesses of the judicial system might actually encourage officials to ignore the law or arbitrarily deny requests.

Information commissions are also considered stronger than the other common model of redress: the ombudsman. An ombudsman is a more informal agency with the mandate only to issue recommendations and advice rather than to execute binding rulings—a characteristic that can be a distinct disadvantage in countries where executive agencies do not show much deference to the agency. Information commissions, by contrast, are more formal agencies with powers to issue rulings requiring the release of information or to undertake other measures that are binding on government agencies. Additionally, an ombudsman, entrusted with multiple responsibilities, might be unable to

Figure 3.1. Typical Appeals Process



Source: Author.

dedicate resources to develop a specialization in RTI. Also an independent information commission with the power to issue binding rulings is more costly to administer because it is accompanied by a host of additional legal requirements and due process mandates. Its independence can be difficult to guarantee.

The effectiveness of such a commission depends very much on the local tradition and administrative culture, that is, how much real weight its recommendations carry and the relative efficiency of the system of checks and balances. Initially, in the United Kingdom, the decision to vest binding authority in the commission was seen as undermining the principle of ministerial accountability to the parliament; the FOIA incorporated the provision for a ministerial veto as a compromise. In practice, however, the executive has refrained from undermining the authority of the ICO and has rarely used the veto, even during potentially controversial rulings by the commissioner and the tribunal on issues like cabinet papers and the protection of names of the private staff of members of parliament because it would have been politically costly and could have been perceived as attempts to resist being held accountable.<sup>63</sup>

Three of the case study countries—United Kingdom, Mexico, and India—set up independent information commissions. In the United Kingdom—the ICO, in Mexico—the Federal Institute for Access to Information, and in India—the Central Information Commission (CIC) at the central level, and state information commissions at the state level. Two countries—Uganda and Romania—adopted the model of direct appeals to the judiciary. In Peru and Albania, an ombudsman was charged with the RTI function. In Albania, Law 8503, the Access to Information law, mandated an ombudsman—the People’s Advocate—with oversight over the law.

### 3.2. Record on Performance

The three countries that adopted RTI-specific independent tribunals have a better record of independence. In Mexico, between 2003 and 2010, IFAI confirmed the decision of the federal agency in only 17.6 percent of the 30,833 appeals it received.<sup>64</sup> Its rulings on several high profile cases—such as the deviation of resources allocated to the treatment

and prevention of HIV-AIDS to pro-life organizations and the embezzlement of resources of large government trust funds—also signaled its willingness and ability to take on politically-challenging cases and established the seriousness of the new transparency reform.<sup>65</sup> The British ICO was similarly responsible for improving the compliance of several MDAs, such as the Department of Health, the Department of Defense, and the cabinet office. Aggregate data on the India CIC’s performance is not available, but it has also ruled in favor of transparency in several high-profile cases.

In Uganda, where the law provides for direct appeals to the judiciary—first to the chief magistrate and subsequently to the high court—lengthy judicial processes, absence of independence from political influence, unaffordable access by citizens, low staff capacity, financial constraints, and current case backlog levels within the courts have been a deterrent to effective enforcement of ATIA.<sup>66</sup> The record of judicial appeals on one high profile case—that of Tullow Oil—and more broadly on accountability issues, shows that the judiciary does not have the specialist technical capacity to address ATIA issues. In response to an appeal on non-disclosure of oil exploration contracts with Tullow Oil, the judge ruled that because the plaintiff—the CSOs—had not demonstrated the public interest in the disclosure of the contracts, the government’s decision to withhold was valid. This was a considerable misinterpretation of the law.<sup>67</sup> Lack of specialist knowledge might be exacerbated by legacies of inefficiencies in the judicial system that stretch cases out over several years, as in Uganda, where cases have been pending for years, including several high profile cases involving the freedom of expression.

In Romania, the overall record of the judiciary in responding to RTI appeals is mixed. In the years following the adoption of the law, the progressive approach of the courts on the issues of disclosure and classification strengthened a culture of transparency and clarified the interpretation of provisions of the law, setting legal precedents in favor of disclosure. Several high-profile initiatives led to a deterrence effect, with public institutions becoming more forthcoming. But in recent years, judges have become swamped with heavy caseloads, and the effect is being felt on the overall record on adjudication.<sup>68</sup> An analysis of judicial decisions on 851 FOIA cases between 2005 and 2011<sup>69</sup> shows that only about 34 percent of FOIA cases were adjudicated

in favor of information requesters by the first instance court, and of the information requesters who appealed the initial court decision, only 29 percent obtained a favorable decision at the courts of appeal.

### 3.3. Ensuring Independence and Capacity

IFAI and ICO both had a high degree of political support, significant allocation of resources, politically-neutral appointment procedure, and protections against arbitrary dismissal. A politically-neutral appointment procedure for the agency leadership and other personnel, security of tenure, and protections against arbitrary dismissal were important in ensuring their independence. The requirement that the appointed commissioners fulfill criteria for technical expertise and political neutrality was also critical in ensuring competence and for safeguarding against politically-motivated appointments.

IFAI cannot directly negotiate its budget with the congress; its budget is presented to the ministry of the treasury, which then presents its budget to the congress. But it was politically empowered and given significant resources—US\$18 million in the first year<sup>70</sup>—enabling it to recruit a highly competent and well-trained technical staff, which provided it with institutional continuity and stability. In 2010, after the passage of the Federal Law of Personal Data Protection Held by Private Entities, the functions of the IFAI were further expanded to include the responsibilities of guaranteeing and overseeing compliance with the new law, providing guidelines for the protection of personal data held by private entities, and resolving disputes about personal data protection in the entire national territory.<sup>71</sup> When its mandate increased, it was granted additional resources. The Mexican transparency law was passed, and IFAI was established in the wake of what was seen as a transformational regime change: the Fox administration came to power after 71 years of Partido Revolucionario Institucional rule, championing the transparency law as a flagship program.

In India, on the other hand, where the CIC is funded from the central budget as part of the allocation to the ministry, it has cited dependence on the government for

budgets and staff as a key constraint to independence.<sup>72</sup> Unlike IFAI, for example, CIC has faced a staff shortfall, with several of its sanctioned posts remaining vacant. There is also a tendency toward bureaucratization; although the law provides for prominent individuals and experts from different fields to be appointed, commissioners at both the central and state levels have tended to be former bureaucrats who bring strong skills and experience on administrative matters but who have come to be viewed as perpetuating a bureaucratic culture and compromising objectivity.

In Albania, the experience of the People's Advocate demonstrated that a disabling political environment and resource constraints can render such a body ineffective. In Peru, the capacity of the ombudsman has been limited because it has several areas of responsibility and activities; the maintenance, expansion, or strengthening of RTI work depends on institutional priorities, the will of its directors, or both.

### 3.4. Sanctions

The sanctions system for refusal to provide information in the case study countries has displayed several weaknesses, creating disincentives for compliance. Sanctions for non-compliance are important to create a credible system of enforcement, but have been weak de facto. Although the laws themselves provide for some mechanisms for sanctions or reparations in the event of noncompliance, evidence of sanctions being imposed when information is not released despite the rulings of a court or commissioner are rare.<sup>73</sup> In most of the countries surveyed, there was little evidence of sanctions being imposed for noncompliance.<sup>74</sup>

When the mandate of the appeals and enforcement agencies on sanctions is limited, the effective functioning of the sanctions system might also require the support of the executive agency; this can be challenging. For example, in Mexico, although IFAI's decisions are binding and definitive for all 250 federal entities covered under the law, only the SFP can impose sanctions.<sup>75</sup> And since 2003, of the 68 officials accused of noncompliance with IFAI resolutions, only one has been sanctioned by the SFP. IFAI had only sent sanctions recommendations to the SFP as a last resort,

preferring instead to negotiate with government authorities and persuade them to comply.

Another important issue that was cited referred to on whom the sanctions are imposed. When junior-level information officials can be liable for the failure to provide information, they have felt this to be an unfair penalty on them. They might decide not to release what the department might consider “sensitive” information because it could lead to them being reprimanded or receiving other punitive action from senior officials; at the same time,

not releasing this information might make them liable for penalties. One way of addressing this is by designating a senior-level person to be responsible for noncompliance and designating a more junior officer for the day-to-day functioning of the law.

More systematic monitoring of the imposition of sanctions and follow-up actions that result from disclosure decision by courts or information commissions can also create a foundation for the development of stronger sanctions systems.

# 4. Enabling Environment

## 4.1. Significance of the Enabling Environment

In writing about the experience of the United States in implementing its freedom of information law, Kreimer (2008) suggests that transparency succeeds when it is embedded in “a broader web of legislation and regulation,” what he calls the “ecology of transparency.” He suggests that the United States FOIA has been effective because the federal government is surrounded by NGOs and media outlets with the resources to aggressively use the right to information. Roberts (2006) also points out that the countries that initially adopted disclosure laws were “... politically stable democracies with a long tradition of respecting citizen rights and the rule of law, a lively popular press, and healthy and independent nongovernmental organizations.”<sup>76</sup> The experience of the countries included in this analysis shows that those that provided evidence of the effectiveness of RTI in accessing information—both of personal interest for citizens and for holding government accountable—were ones with better rankings on a number of governance indices, including the rule of law, voice and accountability, political

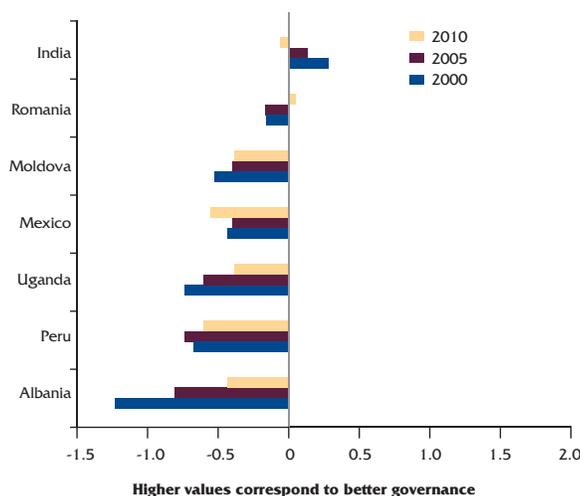
rights, and civil liberties (figures 4.1 and 4.2—data on U.K. is removed from these charts because it ranks significantly above other countries). This enables better comparison among the rest of the countries. In countries that rank lower on these indices, there was little evidence of the effectiveness of RTI in accessing information, especially on governance issues.

For instance, countries with stronger rule of law, as assessed through indicators such as Worldwide Governance Indicators (WGI) Rule of Law Indicator that measures, inter alia, the quality of contract enforcement, property rights, the police, and the courts (figure 4.1) are likely to perform better in terms of following the letter of the law, complying with information requests in response to the law’s mandate, and undertaking punitive and corrective measures when corruption or nonperformance is exposed. In the United Kingdom, for example, the operation of the FOIA has been facilitated by a dominant norm among public officials to fulfill their duties under the law. The exposés of malfeasance in the parliamentary expenses scandal has led to several members of parliament being censured or sanctioned (annex 7).

On the other hand, an administrative culture of nonresponsiveness and poor service orientation can drive lower-level officials to simply ignore information requests or can lead to an absence of corrective actions, even when information obtained through an RTI request exposes misgovernance. Stronger rule of law might also have an impact on the broader governance environment through a deterrence effect—if officials anticipate being held to account, they may alter their behavior accordingly, but this is difficult to measure. Other research has found that transparency policies do not have an impact on reducing corruption if other conditions for accountability—such as media circulation and free and fair elections—are weak.<sup>77</sup>

The case study approach in this study—as well as the limitations of the scope and the data that was collected—does not enable firm conclusions about the relationship

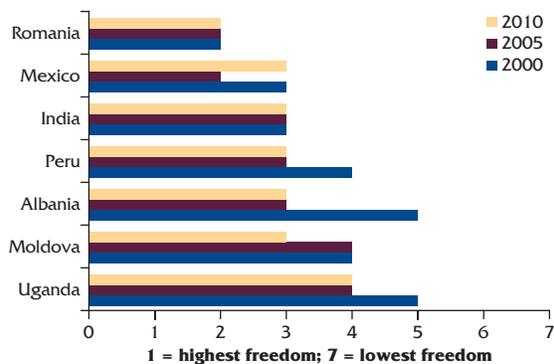
Figure 4.1. Worldwide Governance Indicators—Rule of Law



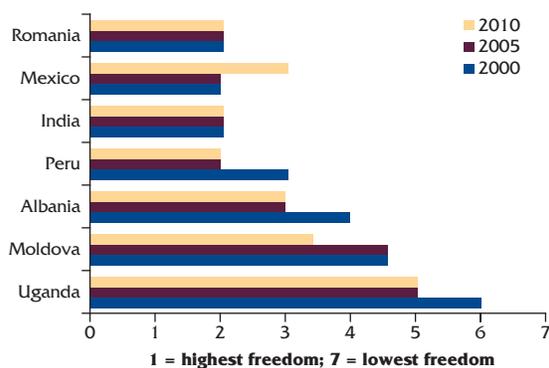
Source: [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp).

**Figure 4.2. Civil Liberties, Political Rights, and Voice and Accountability**

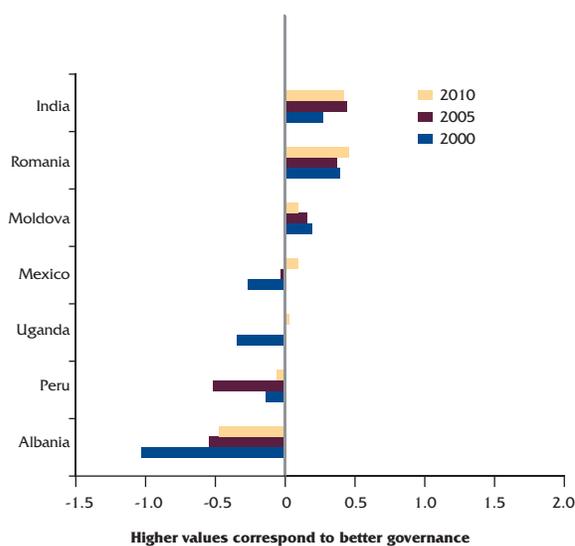
**a. Civil Liberties**



**b. Political Rights**



**c. Voice and Accountability**



Sources: Freedom House. [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp).

between various indicators of governance and outcomes on RTI.<sup>78</sup> Further, attempts to limit the scope and effectiveness of RTI are by no means absent in the more advanced democracies, as several studies have shown.<sup>79</sup> The empirical knowledge in this area is clearly rudimentary. Understanding the impact of the underlying political economy relationships and institutional forms on RTI outcomes will require devising appropriate methodologies and indicators for assessing outcomes. The present study attempts to draw out some of the dimensions that emerged as critical to the functioning of RTI.

**4.2. Capacity and Influence of Civil Society and Media**

The supply–demand link in RTI is particularly significant because it gives citizens a tool to request and gain access to information that is not part of the exclusions under the law. This request-driven aspect of RTI as a tool for transparency makes the demand side particularly important, providing access to information that otherwise might not be disclosed in the absence of a legal mandate because strong incentives might be attached to keeping it secret. It also implies that civil society and media groups are particularly critical to the functioning of RTI—not only as users or intermediaries for information, but also in using RTI to make information public. A large number of requests for information under an RTI law, of course, come from private citizens interested in information of personal interest about, for example, a health benefit, an adverse decision on school admission or immigration status, or entitlements to services (annex 6). But civil society, advocacy groups, media organizations, and oversight institutions are particularly important for the potential for RTI to serve as a tool for scrutinizing the functioning of government, forcing the disclosure of information on government expenditures, decision-making processes, performance, and contracts.

The evidence from the case study countries demonstrated the important role that civil society groups played during implementation phases, maintaining pressure for implementation of the laws, launching monitoring initiatives, mounting campaigns against efforts to bring amendments to the laws, and using the laws to seek out information on service delivery, corruption, and development issues. The capacity and diversity of civil society and

media actors, their awareness of the law, and their financial capacity and technical and legal expertise to seek out information and carry out legal battles against noncompliance were critical. But civil society groups had varying degrees of success in these efforts. In Moldova and India, for instance, CSOs were successful in resisting efforts to amend the law to restrict its scope.<sup>80</sup> In Albania, on the other hand, civil society efforts to resist amendments to the law that narrow the scope of disclosure failed.<sup>81</sup>

In India, Mexico, Romania, and the United Kingdom, media and NGOs gained several successes in using RTI to elicit information on several issues related to mismanagement of public funds, nonperformance of service-delivery agencies, instances of fraud, corruption or nepotism, in both urban and rural areas.<sup>82</sup> In Romania, for example, human rights, governance, and anticorruption NGOs pursued a “legal activism” or litigation strategy, pursuing cases on a number of topics, including sensitive issues like public procurement contracts and conflict-of-interest cases, with considerable success.<sup>83</sup> Similarly, in Mexico, NGOs<sup>84</sup> used the transparency law to access information about the operation and financial management of government programs. In other countries, CSO efforts to leverage RTI for disclosure have been less successful. In Uganda, NGOs<sup>85</sup> have actively tested the ATIA, floating requests for information under the law, but their efforts have been consistently met with refusals or nonresponsiveness. In Moldova and Albania, while CSOs regularly used and monitored RTI, the evidence on success in eliciting information, particularly on governance, was very sparse.

Why did the pressure of civil society groups succeed in some countries and not in others? The relative effectiveness of civil society groups in improving governance and policy outcomes in different contexts is likely a function of several characteristics in the broader governance environment. Two sets of factors might be highlighted here. The first is the capacity and diversity of civil society itself, which influences the level of independence under which they are able to operate. India, Mexico, and the United Kingdom, for instance, have strong, mature civil society groups with diversified sources of income and a historical track record of engaging the government on tough governance issues. Also, over the last two post-Communist decades in Romania, civil society groups have become mature and diverse, actively and effectively engaging the state on several laws

and policies, from the regulation of state advertising in the media to new procurement legislation.<sup>86</sup> In Moldova, Uganda, and Albania, on the other hand, civil society groups face significantly higher capacity constraints, sometimes even lacking basic resources.<sup>87</sup>

Further, in India and Mexico, RTI has been used not only by larger, metropolitan NGOs, but also by grassroots groups and NGOs in the service-delivery sectors. In India, following the genesis of RTI was in a grassroots movement,<sup>88</sup> the nationwide coalition, the National Campaign for People’s Right to Information Campaign (NCPRI), has brought together NGOs from across regions and sectors in the country as a powerful galvanizing force for RTI. In Mexico, similarly, there are a number of cases of the transparency law being used by people in poorer and rural communities as a tool to access basic services (annex 7). In the United Kingdom, while groups with more cooperative relationships with the state, and those attempting to influence policy development or implementation, are more inclined to get information through personal networks than through FOIA, there are a number of campaign and advocacy organizations,<sup>89</sup> animal welfare groups, and public interest groups working against agency capture by industry groups that have actively used FOIA to elicit information.

In Uganda, on the other hand, engagement on this issue seems to have been largely restricted to more prominent NGOs in the capital. Smaller NGOs, working in a number of service delivery areas, have not had the capacity to meaningfully participate in technical areas. In addition, increasing political competition has actually further polarized state-society relations.<sup>90</sup> Many NGOs are service providers, and have served as instruments for implementing government programs or filling gaps in service delivery; they were able to gain access to information through personal networks.<sup>91</sup> But for other NGOs, information has not been easily accessible in the absence of strong personal networks with public officials. The government sees NGOs that are working on governance and accountability issues as being strongly antagonistic to the regime rather than as being legitimate and important actors in the governance space. The RTI law is seen as a political tool rather than a developmental one, as an instrument that can be misused by the opposition and by antagonistic media and civil society groups.<sup>92</sup>

The second set of factors relates to the responsiveness of the state to civil society pressures. The overall accountability environment, as measured through indicators such as civil liberties, political rights, and voice and accountability—measuring, *inter alia*, freedom of expression and belief, associational and organizational rights, personal autonomy and individual rights, perceptions of the extent to which a country's citizens are able to participate in selecting their government, electoral process, political pluralism and participation, and a free media (figure 4.2)—might be used as a proxy for the state's responsiveness and accountability to civil society. Countries that ranked higher on these dimensions are the countries where there was evidence of better performance of RTI, both with regard to responsiveness to routine requests and evidence of RTI having been leveraged to gain information about governance.

### 4.3. Check-and-Balance Institutions

The capacity and independence of broader check-and-balance institutions—particularly parliamentary committees, judicial bodies, and audit and anticorruption institutions—is particularly relevant to the extent to which exposés of corruption, nonperformance, and other forms of misgovernance, elicited through RTI requests, leads to corrective and punitive actions, such as when government officials are made to resign when information exposes corruption or nepotism, officials are fired when nonperformance is exposed, firms are disqualified when collusion is exposed, and, more broadly, measures are put in place that boost openness.

In expanding on the relationship between transparency and accountability, Fox suggests that accountability is a composite of answerability (the obligation of public officials to inform about and to explain what they are doing) and enforcement (the capacity of accounting agencies to impose sanctions on power holders who have violated their public duties).<sup>93</sup> Transparency enables answerability because the actions of officials is in the public space. But it will only make them accountable, leading to safeguards against corruption, better governance, and performance improvements, if it impacts their incentives and is backed up by a credible threat of sanctions.<sup>94</sup> This requires an

enabling environment with strong enforcement institutions. For instance, the role of the judiciary is important, not only to push for compliance with the law—particularly in high profile cases, as discussed in chapter 3—but also to ensure that there is follow-up action.

To emphasize again, the anecdotal data collected as part of this project is limited. But several of the anecdotes in annex 7 show that broader check-and-balance institutions in the country are critical for pushing on accountability outcomes in response to disclosure.

### 4.4. Broader Regulatory Environment

It is also important to ensure that RTI is harmonized with transparency regulations in other areas. The most significant of these are secrecy and classification laws that might sometimes conflict with RTI laws, creating confusion and contradictory incentives for officials.

In some countries, asset disclosure laws clearly state that this information either shall or shall not be made public. In the latter case, this may create a potential conflict with the RTI law. Data protection laws now in place in a substantial numbers of countries establish particular regimes governing the collection, retention, handling, and sharing of personal or private data. Privacy protections under these laws place constraints on the disclosure of personal data. Efforts need to be made to harmonize RTI with these laws as well as with transparency clauses of other laws.

### 4.5. Implications for Policy

Where the institutional environment is challenging, with politicization of both the bureaucracy and check-and-balance institutions, and the political environment leaves little space for civil society and media organizations, it is important to help build strong internal constituencies for reform. Efforts to strengthen civil society capacity to use the laws are critical. RTI needs to be part of a complement of reforms that both strengthens the political and regulatory environment for civil society and helps improve capacity. The broader political economy environment—especially the extent to which CSOs have the capacity and

the political space to exercise voice and influence, and the way in which laws and regulations impact how effectively civil society groups are able to function—needs to be addressed as an integral, rather than residual, element in the implementation process. When advocating for RTI and when designing a law, it might be useful to have a diagnostic of the strengths and weaknesses of the larger regulatory

environment and candid discussions about how likely it is that the RTI is being used if other fundamental political and civil rights are not respected. A discussion of these aspects will enable a broader set of reforms that both strengthens the political and regulatory environment for civil society and helps improve capacity.



## 5. Conclusion: Future Directions

This report has attempted to sketch out the key areas that are important to address during the implementation of RTI. In particular, it has highlighted both the imperative of setting up a number of institutions to build capacity and support for RTI in the public sector as well as the challenges in sustaining implementation institutions as political will erodes. Further, it has highlighted the critical importance of the underlying political economy and governance environment, an area often ignored in devising reforms but that is key to whether RTI ultimately works effectively or has any impact.

Some of the key lessons emerging from the implementation experience of the case study countries bears repetition:

- **First, concerted attention to the establishment and maintenance of formal institutions of implementation to build capacity and support for RTI within the public sector should be an integral component of reform efforts.** Both a viable oversight entity within the government and an independent oversight agency have important roles, and sustainable funding for these entities is critical for them to continue to function effectively.

The need to maintain the continuity of implementation also suggests that locating the oversight function in a mainstream department with cross-cutting responsibilities instead of creating specialized bodies that could be both *ad hoc* and too close to the specific political group in power might be useful. A high-profile transparency initiative championed by the political leadership can lead to the oversight agency directly reporting to the chief executive. In the immediate term, this might be a useful measure to increase political support and acquiescence by the other ministries and provide the necessary boost of additional resources, but the implementation agency could be too closely tied to the fate of the political administration and could atrophy with a change in regime.

- **Sequencing and prioritizing implementation measures—for instance, an incremental rollout of capacity-building measures—can make RTI implementation feasible in lower-capacity environments.** Resource constraints mean that not all countries or agencies will be able to implement advanced state-of-the-art technology interfaces for requests or roll out full-fledged records-management systems, and that retraining for RTI rather than establishing new departments might be more feasible.
- **The “softer-side” of implementation—changes in mindset—is at least as important as putting in place the hardware and technology.** Implementation requires a shift in administrative culture. For example, junior-level information officers need to be empowered to release information, and training programs and rewards need to be instituted. Implementation should be seen as a systemic change management exercise, requiring awareness-raising for all officials, not only specifically-designated information officers.
- **Performance systems, including performance metrics, are a particularly weak area of RTI implementation and need to be strengthened.** Investment in performance systems is critical to monitor implementation and provide incentives for compliance. At the same time, appropriate metrics need to be devised for assessing implementation as well as impact.
- **The constraints of the political economy and the broader governance environment cannot be ignored.** RTI should be part of an integrated complement of reforms that also addresses the broader enabling environment. Diagnoses of the enabling conditions, support for training and capacity-building for civil society groups, strengthening other check-and-balance institutions, and harmonizing RTI with other regulations should also be integral to implementation efforts.

The report—an attempt to bridge the gap between the discourse on RTI and empirical analysis of how it actually works—also highlights several important areas that warrant further empirical investigation. These potential areas of future research would both help further the knowledge base in this area and provide guidance to policy makers on how RTI might be effectively implemented and how it might be leveraged for broader governance and development gains.

- First, one key challenge is understanding the challenge of implementation of RTI in poorer environments with budget constraints and poor administrative capacity. This is a challenge, not only for RTI, but for transparency measures more broadly, such as open data initiatives. There is clearly a global momentum toward transparency reflected, for instance, in the growing membership of the Open Government Partnership,<sup>96</sup> as well as a number of other transparency initiatives (annex 1). How will resource and capacity limitations influence what is feasible and how implementation choices should be made? Undertaking cost-benefit analyses, for instance, would be an important element of these efforts.
- Second, impact analysis for RTI reforms is a particularly weak area of research. Although there is some research on the impact of transparency measures more broadly (annex 5), on RTI specifically, there is very little empirical knowledge. This is critical to understand, not only as an academic question, but also to create an evidence

base as an argument for dedicating resources and support for its implementation. Devising appropriate indicators and methodology to assess the performance and impact of RTI is an important first step in this direction. This report has suggested some basic building blocks of such a methodology (annex 5), but clearly there is much to do in this area.

- Third, understanding the influence of political economy relations and the broader governance environment on the effectiveness of RTI is critical for both a pragmatic assessment of its potential in different country contexts as well as a basis for understanding how these issues might be addressed during implementation. The challenge of much political economy analysis is that it points to the constraints and limitations of a certain context without necessarily being able to suggest how these might be addressed through policy mechanisms or consultative interventions. Making this analysis actionable—drawing recommendations for action—should be a necessary part of such analysis to enable RTI to succeed in different environments.

A more extensive and comprehensive assessment of the implementation experience of other countries with RTI laws will also further strengthen understanding of the conditions under which transparency created through RTI leads to better governance and development gains, and, therefore, what policies and actions are necessary to create these conditions.

# ANNEXES



## Annex 1.

# Global Developments in Transparency and Openness

Over the last two decades or so, transparency has emerged as a powerful idea in discourses on governance and development. Undoubtedly, rapid developments in information and communications technologies have played an important role in this. The technology to process and share information at unprecedented speeds, has massively increased information flows, fundamentally changed cultures around information, and heightening citizen expectations of what they are entitled to know about the functioning of the government.

A fairly rapid expansion of global civil society groups has been another driver of this trend. Several prominent civil society groups, focused specifically on monitoring transparency in development contexts emerged and have become prominent pressure groups on the design and implementation of development programs: Transparency International, a preeminent and pioneering global anticorruption NGO; Open Society Initiative, funded by the Soros Foundation; Publish What You Pay, focused on enhancing transparency in the extractive industries; Publish What You Fund, focused on enhancing transparency of development aid agencies; and the International Budget Partnership, which publishes estimates of budget transparency.

This heightened focus on transparency is reflected in a number of initiatives: the Extractive Industries Transparency Initiative (EITI), a pioneering multi-stakeholder coalition, focusing on publication of revenues from extractive industries, and monitoring these revenues by third parties; initiatives such as the Construction Transparency Initiative that look to EITI as a model; the Global Transparency Initiative to press for IFIs to adopt transparency rules akin to national access to information laws; and the International Aid Transparency Initiative, a multi-stakeholder initiative to develop a voluntary standard obliging participating donor organizations to publish accessible and free information about their functioning. The latest expression of this move towards transparency is the Open Government Partnership, a multilateral initiative, with more than 50 governments drawing up action plans to boost

transparency. Formal laws establishing the right to information in several developing countries are part of this trend towards transparency.

The emphasis on transparency is also reflected increasingly in the work of the World Bank Group (figure A1.1). Within the institution, the role of information as important for governance gained prominence with the results of the Public Expenditure Tracking Surveys in Uganda. While subsequent research, showed that there are several other factors that determine outcomes, the publication of the PETS research pushed the role of information to the center of the discussions on governance at the Bank.<sup>96</sup> Subsequently, the World Development Report of 2004, focused on service delivery, highlighted information as critical to making service providers more accountable for performance and the delivery of services—in strengthening both the “short” and “long routes”<sup>97</sup> of accountability. In 2002, the Bank also became a partner in EITI.

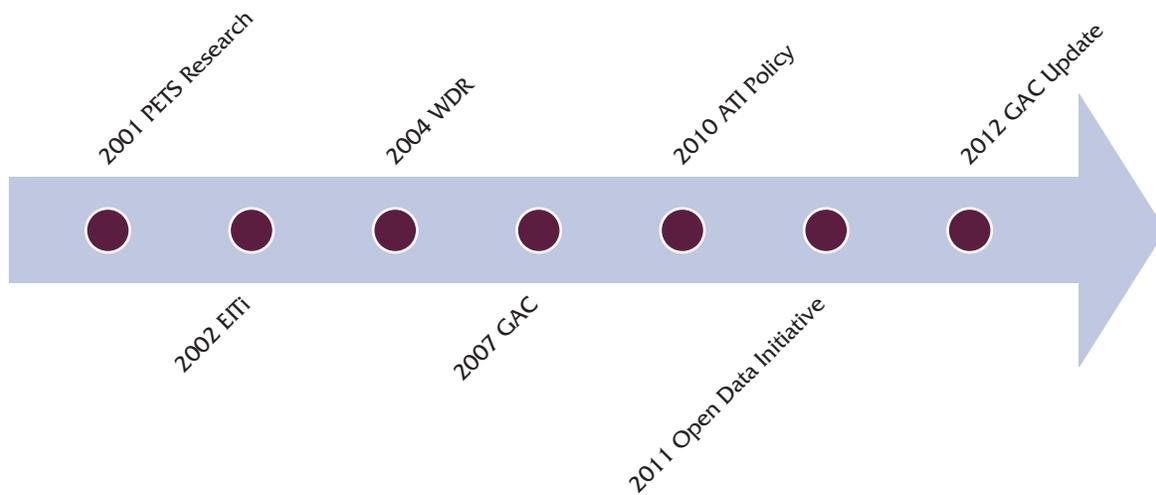
The adoption, in 2007, of the Governance and Anti-corruption (GAC) strategy,<sup>98</sup> was another milestone, and provided a strong institutional mandate to accelerate the Bank’s work in this area. The Strategy highlighted the role of information—on budgets, on procurement, and various other state records, and particularly access and use of this information by the multitude of actors that make up the governance ecosystem—civil society groups, media, advocacy groups, and citizens—as indispensable for improving accountability. The Strategy was updated in March 2012, further stressing the importance of transparency in the wake of the Arab Spring and the global fiscal crisis.

The Bank also amended its own Access to Information Policy, which was, interestingly, modeled on some of the more advanced RTI legislations from developing countries and expand the scope of disclosure of the organization’s documents. The opening of the Bank’s vast reserves of knowledge—more than 7,000 data sets—for public use in the form of the Open Data Initiative provided a further boost to the “Open Agenda.”<sup>99</sup>

On promoting RTI specifically, the Bank's work has been somewhat more limited, but increasingly important. The World Bank Institute, the learning and capacity building arm of the Bank, has a well-established program that has supported the sharing of best practices and South-South exchanges with countries seeking to establish RTI

laws. Support for the passage of RTI reforms has been part of the policy dialogue in several countries. More recently, the Bank has provided technical assistance for implementation in a number of countries—Tunisia, Bangladesh, Nepal, Chile.

**Figure A.1.1. Transparency and Access to Information at the World Bank**



## Annex 2.

# Observations on the Passage of RTI Reforms

Right to Information is not a politically neutral reform and in many countries, even when the right was recognized by the constitution, several years lapsed before it was operationalized with a formal law, either because of overt resistance or lack of attention. In Uganda, for instance, there was a ten-year gap between the adoption of the constitutional guarantee in 1995<sup>100</sup> and the passage of the RTI law in 2005. In India, the gap between the Supreme Court's recognition of the right to information as being contained in the constitution and the passage of the law was more than 20 years. In countries across continents—from Nigeria to Indonesia, from Bangladesh to Chile, civil society advocacy movements for the passage of the law lasted several decades before laws were adopted in recent years. In other countries, laws have still not been passed despite years of civil society advocacy.<sup>101</sup>

In several countries, despite several years—even decades in some instances—of struggles by civil society groups, pressures from development agencies and the international community, and repeated promises by political parties and governments, RTI bills have been blocked, and governments have repeatedly stalled on taking actions to convert such bills into laws. In Indonesia and Nigeria, for instance, the struggle for RTI legislation spanned a couple of decades before the laws were finally adopted in 2010 and 2011, respectively. In several other countries—Ghana, Sierra Leone, Kenya, and Zambia—bills are still pending despite years of civil society advocacy around the issue and despite the involvement of donor partners.

### International Influences

In its very first session in 1946, the United Nation's General Assembly adopted Resolution 59(I), stating that "freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."<sup>102</sup> The right was subsequently embedded in international and regional human rights

instruments like in Article 19 of the Universal Declaration of Human Rights as an intrinsic civic and political right of citizenship in democracies, a necessary complement to freedom of expression and media rights. Clause 2 of Article 19 states that the "right to freedom of expression" includes "freedom to seek, receive and impart information and ideas of all kinds." The International Covenant on Civil and Political Rights integrated the same language.

Regional human rights conventions also mirrored this. Article 9 of the 1963 African Charter on Human and People's Rights<sup>103</sup> declares that "every individual shall have the right to receive information" and that "every individual shall have the right to express and disseminate his opinions within the law." Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 13 of the American Convention on Human Rights protect the freedom of expression with provisions substantially similar to those contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The European Convention, however, states that this right may be limited "in the interests of national security ... for the prevention of disorder or crime ... for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."<sup>104</sup> The American Convention also contains the caveat that the exercise of the right to freedom of expression may be limited as necessary for "the protection of national security, public order, or public health or morals."<sup>105</sup> The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters links environmental rights and human rights. In June 2003, the Organization of American States General Assembly adopted in Resolution 1932, "Access to Public Information: Strengthening Democracy," which reaffirms that everyone has the freedom to seek, receive, access, and impart information, and that information is necessary for the strengthening of democracy.

At the country level, the principle of a legally-mandated “right” to public information was first established in Sweden as far back as 1776,<sup>106</sup> but it is only after the 1950s as part of post-war democratic consolidation that countries began to enshrine this right in law. Finland adopted the law in 1951, the United States in 1966, Denmark and Norway in 1970, France and the Netherlands in 1978, Australia and New Zealand in 1982, and Canada in 1983. The recognition of the right in international conventions meant that, in principle, signatory governments were legally bound to give effect to internationally recognized rights, but in practice, internal political dynamics—such as the need to check expanding bureaucracies and concerns about the erosion of accountability in the face of significant growth in the public sector<sup>107</sup>—rather than international conventions, drove the enactment of RTI laws. Although a majority of countries are signatories to these conventions, up until 1990, only 13 countries had adopted RTI laws, all of them western liberal democracies.

The example of the western liberal democracies undoubtedly created precedents and led to the incorporation of RTI in the constitutions and legislative systems - in Eastern European countries over the past two decades in the wake of the post-Soviet democratic transition process, as part of democratization movements;<sup>108</sup> in South Africa in the wake of the end of apartheid; in Mexico at the end of Partido Revolucionario Institucional rule; and more recently, in the post-revolutionary Arab countries. The latest wave in the adoption of legislation has come in countries with significant governance and economic challenges in Latin America, Asia, and most recently in Africa.

The increasing international momentum toward transparency and the importance of access to information have undoubtedly been influential in propelling more than 75 countries to adopt RTI laws between 1990 and 2012. The pressure from international sources, including development aid agencies, the European Union, and participation in international and regional conventions, has been important as an informal pressure point,<sup>109</sup> a form of “norm transmission.” The role of international policy networks and epistemic communities was important,<sup>110</sup> and in less-developed countries especially, pressure from development aid agencies and international organizations was important.<sup>111</sup> A global advocacy movement through groups such as Article

19, Open Society Institute, Transparency International, and the Carter Center created an additional pressure point.

Global civil society—comprised of groups such as Transparency International, the Sunlight Foundation, and Global Integrity, among others—has helped foster a global acceptance of increased transparency and the creation of widely-used transparency benchmarks, both of which create an environment in which states may see added benefits to adopting RTI as well as negative consequences stemming from the absence of RTI legislation (for example, the loss of investor confidence). Moreover, international transparency networks now link activists in each country, enabling them to share information about best practices and approaches in supporting the passage or implementation of RTI. A global environment that both favors and rewards transparency—and RTI as a tangible measure of this—may create a climate conducive to RTI passage in states where strong popular support and some political support for transparency already exists.

While international considerations played less of a role in India and Mexico, the design of legislation was still influenced by international engagement. In several of the countries, South-South exchange, and the formation of networks of civil society groups has been very important in supporting local movements advocating RTI reform. Where possible, supporting continued engagement of the countries still attempting to pass the law with international actors can be useful.

In Romania, Moldova, and Albania, the influence of European organizations like the Council of Europe and the Organization for Security and Cooperation in Europe proved influential both in precipitating reforms as well as influencing the process that the reform adoption process took. In the case of Romania, which adopted the law in 2001, the pressure of European Union accession was very significant. Albania and Moldova are further behind in the European Union accession process, but European institutions were closely involved with the discussions around the passage of their RTI laws. In Uganda, in 2005, ahead of the elections, the pressure from aid agencies likely exerted significant influence.<sup>112</sup> A number of governance assessments of the country, such as the 2005 Good Governance Assessment by USAID—criticized the government for limiting

the space for political participation.<sup>113</sup> Access to international resources was also premised on improving governance. Expanding pluralism, impending elections, and the need for a reformist face within the country as much as with external partners was also significant. The threat of political competition led the ruling NRM Party to seek out mechanisms to win legitimacy, both among the people and with aid agencies by passing a series of progressive reforms. In Uganda, for instance, NRM, took the winds out of the opposition's sails in presenting the law to the parliament itself.

Promoting RTI legislation and transparency norms more broadly through international forums can accelerate the pressure for reform when countries see membership in these forums as important. Aid agencies, including the World Bank, can also exert pressure for reform, but it is important that reforms not be driven purely by international actors and that there are strong domestic constituencies and national ownership.<sup>114</sup> In Uganda, as well as in Albania, because internal constituencies for reform were weak, implementation has lacked champions. The 2009 Global Integrity Report found that, of all the countries studied, Uganda—along with Bosnia and Herzegovina had the biggest “implementation gap” between laws and implementation.<sup>115</sup> The report points out that these two countries are also among the largest recipients of international donor assistance, supporting the argument that aid-dependent countries establish laws and institutions to meet donor requirements but do not necessarily implement.

## Domestic Political Transitions

RTI reforms have often been passed when political elites perceive that it is to their advantage to support the law in order to win political points with domestic constituencies and establish their democratic credentials. The passage of right-to-information reforms followed soon after new political parties came to power, in some instances, electoral shifts in the party in power and in other instances, a much deeper political transformation. Ruling parties and coalitions that championed the law were driven by the quest for legitimacy or popularity and the need to establish democratic credentials—either to appease external partners or to gain domestic popularity. Historical junctures that created

incentives for political elites to espouse progressive reforms provided the opportunity for pro-reform coalitions to be forged between civil society groups and political elites.

In India and the United Kingdom, the coming into power of political parties committed to RTI laws as part of their political platforms, and the deep public expectations that had been built up as a result, precipitated the passage of right-to-information legislation. In the United Kingdom, the Labour Party came into power after 17 years of the sway of the Conservatives, who were firmly opposed to RTI legislation. Even though the political leadership wavered—even in the Labour Party—freedom of information had been a long-standing promise of the Labour Party, and popular expectations were too high to ignore.

In India, a grassroots movement had been ongoing for close to a decade before the RTI law was actually passed, and discussions on its passage for even longer—since the 1970s. A particular moment in political evolution when the leaders of the grassroots movement were able to align with the political elite created a unique situation for reform. The Congress Party-led coalition came to power and formed the National Advisory Committee, which included some members who had championed the grassroots movement. In India, the passage of the law was seen as one of the biggest achievements of the congress-led government in subsequent elections.

These groups are not homogenous. In India, for instance, several champions emerged from within the bureaucracy that allied with civil society groups working on this issue. Officials might choose to support the passage of RTI reforms because it helps them gain access to information. In the United Kingdom, there were also several differences within the Labour Party.

Transitional periods provide a particularly important opportunity for reform. In the eastern European countries, the 1990s were characterized by breakdown of the Soviet Union, post-Communist transition, and over the course of the decade, the establishment of democratic institutions. The establishment of right-to-information reforms was part of this process of decade-long institutional reform. It was critical for governments to establish credentials as democratizing agents in the wake of the transition from communism. In the wake of the transition, RTI laws were

seen as part of instituting new structures to enhance state legitimacy.

Several other recent examples show that political change provides a fairly unique opportunity for passage of reforms. In Liberia, after years of conflict, in 2005, Ellen Johnson Sirleaf was elected president and quickly took steps to broaden accountability within government. The passage of the RTI law in 2010 occurred within the context of a broader set of accountability reforms. In Nigeria, where advocacy groups such as Media Rights Agenda, Civil Liberties Organization, and Nigeria Union of Journalists began pressing for access-to-information legislation in 1993, the Freedom of Information Act was finally signed into law in May 2011 by the newly-elected President Goodluck Jonathan who had previously stated support for the bill and who had campaigned on a reform agenda. In Indonesia, the fall of the long-standing authoritarian Suharto government in 1998 precipitated a democratic transition and a host of accompanying measures to increase decentralization, accountability, and transparency. Advocacy around freedom of information began at that time, but it took eight years and four successive administrations for the law to finally come into effect in 2008. Thailand's passage of the Official Information Act in 1997 coincided with a period of increased support for democratic accountability and transparency under the administration of Prime Minister Chuan Leekpai, who pushed for a number of domestic political reforms, including reducing corruption and leakage of public funds.

Where there has been a broad-based consultative process, it helped ensure ownership. In India, Mexico, and the United Kingdom, the discussions and debate around the passage of RTI legislation provided the space for extensive participation by civil society. Civil society pressure helped sustain political will in the face of opposition from or ambivalence on the part of the government in the UK and in India, as examples. These are also the countries in which civil society groups have sustained momentum for the use of the law during the implementation process. Civil society groups had an important influence in narrowing the exceptions regime in some of the countries. In India, civil society efforts, including its role in National Advisory Council, helped ensure that important provisions, such as the disclosure of information about corruption and human rights violations by intelligence agencies and the extension of the law to cover state governments, were reinstated in a diluted

government draft. While the National Advisory Council draft excluded key security and intelligence organizations, it provided that the exclusion did not apply to information related to allegations of corruption and violations of human rights. When this was removed from the government draft, civil society lobbied for this provision to be added back in.

Popularization of the law and advocacy through the media have been critical in taking forward the passage of the law. In some instances, where other restrictions on press freedom are pervasive, the media might see the law as important. Although the media was in some instances—such as in Romania—somewhat ambivalent, mostly out of fear that the adoption of such legislation would either obstruct current systems for accessing information or undermine its role as social leaders in purveying information of public interest, compromise its exclusive access to information sources, and create longer timelines for responses, it was largely supportive and played an important role in maintaining support for the legislation. The next few sections briefly discuss the passage of the law in case study countries.

## ALBANIA

In Albania, a key driver for the adoption of an ATI law was international pressure and support coupled with a general acceptance of the idea of by local decision makers. Albania was a member of the Council of Europe and had also ratified the International Covenant on Civil and Political Rights. Many provisions from these international human rights treaties were included verbatim in the new constitution. In 1995, Albania was accepted into the Council of Europe, requested membership in NATO (obtained in 2009), and is a potential candidate country for accession to the European Union. As part of the effort to reconsolidate democratic gains in 1998 following the meltdown of state institutions after the bankruptcy of the pyramid schemes in 1997,<sup>116</sup> Albania approved its constitution through a popular referendum. The new constitution, which replaced a package of laws introduced after the collapse of communism, provides for the separation of powers, rule of law, and the independence of the judiciary; it also established a parliamentary democracy.

As with other political and democratic reforms of that period, the initiative to adopt an ATI law came from the political elite, and in the environment of reform, the

bureaucracy did not resist democratic reforms. Although there was support from the media and fledgling CSOs, the drafting was mostly a closed process with little public input. Civil society during the early 1990s was still at an early stage of development, and the few recently established NGOs did not yet have the capacity to play an influential role. With the intervention of the Organization for Security and Cooperation in Europe, one civil society representative—a legal expert from the Institute for Political and Legal Studies was included in the drafting committee. The constitutional commission tasked with drafting the 1998 constitution maintained an inclusive, open approach to international advice. Civil society groups participated in the drafting of the 1998 constitution and strongly advocated for the inclusion of the right to information in it.<sup>117</sup> In July 1999, nine months after the 1998 constitution came into force, the People's Assembly adopted an ATI law.

## INDIA

The 2005 RTI Act of India was unique because of its deep grassroots support; and the ability of the RTI movement to forge a consensus with the top political elite was critical. The Indian constitution does not explicitly recognize a right to information but, in a series of progressive judgments in the 1970s and 1980s, the supreme court recognized the right as an aspect of the fundamental right to freedom of speech and expression under the constitution.<sup>118</sup> The espousal of the right to access information by a small grassroots organization in rural Rajasthan in the 1990s—the Mazdoor Kisan Shakti Sangathan (MKSS), Organization for the Empowerment of Workers and Peasants—as part of its broader struggle to secure living wages for rural peasants, gave information access a distinctly developmental orientation. The mass base of farmers and villagers that MKSS mobilized propelled the adoption of a right to information law in Rajasthan in 2000. Organizations working on the environment and human rights, such as the Save the Narmada Movement, the National Alliance of Peoples Movements, the Rural Workers Campaign, and Dalit Sangharsh Samiti—had all also challenged official secrecy and demanded the release of documents related to their causes. These groups were able to draw on the support of opinion makers and prominent individuals, including retired bureaucrats, lawyers, senior journalists, and academics. A nationwide coalition of civil society groups—the National

Campaign for the People's Right to Information was formed in 1996.

The National Campaign for the People's Right to Information managed to elicit considerable support from the top echelons of the Congress-led United Progressive Alliance government,<sup>119</sup> which in its manifesto during the 2004 election campaign promised a new, stronger, right-to-information law.<sup>120</sup> The creation of the National Advisory Council, which included key RTI advocates, and strong lobbying by civil society were crucial in bringing about progressive changes to the government's draft RTI bill. Passed by both houses of parliament in May 2005, it formally came into force on October 13, 2005.<sup>121</sup>

## MEXICO

The adoption of the ATI law represents a distinctive moment in Mexican politics. The 2000 federal elections represented a turning point in Mexican politics. President Vicente Fox and his Partido Acción Nacional (PAN), came to power replacing the Partido Revolucionario Institucional, which had controlled the presidency uninterrupted since 1929. The new government faced several challenges: it did not control the congress, and the president faced opposition—even within his own party. There was, therefore, considerable pressure to demonstrate quick wins and a commitment to democracy and accountability. The passage of progressive RTI legislation was part of this effort.

A new generation of public officials in the federal government, many of them from civil society; a consensus for change; a newly assertive, independent media, and open support from the academic community created an unprecedentedly favorable political environment for reforms. For the first time in decades, different—even competing—political and social groups who had been unable to agree on virtually any major public policy reform in the past came together on this agenda. The media also attempted to vindicate and distance itself from its reputation of subjection and lack of independence from government controls. No political party could afford to oppose this legislation in the new environment. For opposition parties, the law also offered an important mechanism for keeping the new government in check.

In 2001, a leak of the government's draft bill to the press provoked the formation of a loose coalition of media

executives, journalists, and academics, which became known as “*Grupo Oaxaca*.”<sup>122</sup> The group drafted an alternative transparency bill, lobbied members of congress, negotiated with government officials, and organized conferences and public forums to disseminate information about the law and generate stronger bases of support, putting the topic in the public agenda. It even drafted progressive provisions that were included in the draft bill that went to congress. Grupo Oaxaca members were even invited to participate in congressional discussions on the draft—unprecedented in Mexico where civil society is not formally entitled to participate in the law-making process (although they can be consulted). The bill that the executive finally presented to congress included many of the changes proposed by the group. In April 2002, the law was unanimously approved by congress and a few months later, Grupo Oaxaca decided to dissolve.

## MOLDOVA

Declaring its independence in 1991, Moldova held its first free and fair popular elections in 1994; since then, it has held several more direct elections to parliament and—until 2000—for the presidency. In 1997, Petru Lucinschi, the former first secretary of the Moldavian Communist Party, became the country’s second president (1997–2001). In 2000, the constitution was amended, transforming Moldova into a parliamentary republic, with the president being chosen through indirect election.

The Moldovan ATI law was adopted in May 2000 by the ruling grand coalition made up of center-right and center-left parties. Media and civil society groups created the necessary pressure for the adoption of an ATI law and contributed significantly to its drafting.<sup>123</sup> The campaign for an ATI law attracted little resistance from either politicians or the bureaucracy in the heat of the electoral campaign in 2000.

The first parliamentary debates began with a draft that was a combination of a media law and an ATI law. Following suggestions by international experts on Article 19, the adoption of two different laws—one on access to information and the other on freedom of expression and the media. The unanimous adoption of the law in the Moldovan parliament in 2000 was preceded by heated debates and a series of 44 amendments.<sup>124</sup> The vote on the law was delayed

by these debates, during which 16 amendments proposed by communist members of parliament were accepted.<sup>125</sup> The law was adopted on May 11, 2000. The Communist Party, though initially reluctant to support this law, voted for it in the end.

## PERU

In Peru, the right of access to public information was first recognized in the 1993 constitution, but not written into a law till 2002—the Law on Transparency and Access to Public Information, which went into effect in January 2003.<sup>126</sup> Although RTI was included in the 1993 constitution, through the 1990s, the constitutional right was never operationalized into law. Toward the end of 2000, however, the move towards a formal RTI law, as well as other progressive legislation, was precipitated by an anti-corruption movement that was in turn triggered by exposes of corruption in the Fujimori government. Popular outrage triggered the passage of several legislative measures to improve transparency. The Peruvian Press Council and the ombudsman’s office had already been quite actively propagating the passage of the law, including with support from the British Council and the international NGO Article 19, and the participation of national and international experts, journalists, media directors, government opposition leaders, and public servants. The corruption scandal resulted in legislators from across parties throwing their support behind the new reform measures. A key result of these meetings was the Lima Principles document of November 2000, which listed ten principles of transparency and access to public information to guide legislation and government policies on these issues.

Most of the draft legislation was submitted by representatives of the Perú Posible Party, which had made a campaign promise to fight corruption. It had the support of other Fujimori opposition groups as well as from a range of societal actors, such as the Peruvian Press Council, the Press and Society Institute, and the ombudsman’s office, all of whom had provided several contributions to the draft. The working group encouraged broad-based participation of these organizations and incorporated their views in the draft legislation. After it was approved by the Congressional Committee on the Constitution, Regulations, and Constitutional Accusations, the bill was passed by the congress, becoming Law 27806, the Law on Transparency and

Access to Public Information, on August 3, 2002, and went into effect in January 2003.

## ROMANIA

Pressures for European Union accession played a significant role in the adoption of the legislation in Romania. Although there is no specific European Union-level regulation or directive dealing with a general law on access to information, a “*soft acquis*” emerged dealing with rule of law, the anticorruption framework, civil service reform, and access to information, which were regarded as prerequisites to the official start of negotiations on technical chapters. This also created political pressure on accession governments, formally and informally, to do something about improving transparency and integrity.

After the fall of the Ceausescu regime, the Social Democratic Party governed Romania from 1990 until 1996 through several coalitions. In 2000, the Social Democrats returned to power and championed the proposal for an access-to-information law. Civil society was especially active during these years, influenced the adoption of several pieces of key legislation, and organized the campaign to push for the law’s introduction. The mass media also saw the law as a good instrument, although they were concerned about a formalization and bureaucratization of interaction with institutions, with information being provided exclusively in response to written requests, and responses postponed until the legal deadline for several weeks.

A group of conservative members of parliament (mostly ex-communists and members of the extreme right) were pushing a draft of the Classified Information Act<sup>127</sup> in the chamber at the same time, which both the government and civil society perceived as a threat. If the Classified Information Act was passed first and FOIA later, then non-disclosure would be taken as the norm and disclosure as the exception. This resulted in a common agreement by all parties to a draft FOIA—a rare consensus in the Romanian parliament. In 2001, the parliament approved the Law on Access to Public Information (544) under considerable pressure from domestic and international NGOs. The final version of the law represented a merger between the drafts of the ministry and of the opposition as well as various provisions and articles proposed by NGOs. The Classified

Information Act was passed later<sup>128</sup> and operationalized the system of exceptions created by the FOIA.

## UNITED KINGDOM

The United Kingdom Freedom of Information Act (FOIA) was a long time in the making, with the adoption of the law featuring in Labour Party platforms since 1974. A limited system for access had already been put in place prior to 2000 in the form of the 1993 regulatory Code of Practice on Access to Government Information. When the Labour Party came to power in 1997, the discussion was reopened. But divisions remained even within the Labour Party. Responsibility for the ATI law was given to the Home Office, which oversees—among other things—the police, the security services, and immigration, sectors that have traditionally been less enthusiastic about openness.

However, election commitments and the white paper had produced so much public momentum that abandoning the law had become too politically risky. The government’s consultation draft bill was significantly weaker than the proposals in the white paper, containing much broader exemptions, less effective enforcement and appeal mechanisms, and a more restrictive public-interest test. Civil society groups fought back hard against the weaker proposals contained in the draft law, which was also severely criticized by select committees in both the House of Lords and the House of Commons. This resulted in a number of progressive improvements. The FOIA was passed in 2000. The main operative provisions relating to requests came into effect, in a single so-called “big bang,” on January 1, 2005. It is widely assumed that the electoral concerns of senior political figures were an important contributing factor. Additionally, some observers have noted that the timing of the announcement—in November 2001, shortly after the attacks of September 11 in the United States—might have been significant.

## UGANDA

Uganda predates its African counterparts in the passage of access-to-information legislation by several years. The 1995 constitution incorporated a guarantee on access to information to all citizens, and Article 41(2) required the parliament to make laws for obtaining access to information, reflecting the concerns of the progressive Uganda

Constitutional Commission regarding the human rights abuses of the preceding decades. In 2001, the NRM party won the single-party election with nearly 70 percent of the vote, but challenges to the NRM's political dominance were already emerging amid concerns over the lack of progress on democratic reform and the introduction of a constitutional amendment to eliminate presidential term limits. There was also considerable pressure from aid agencies to make governance reforms and open the political space concerns about the worsening political and governance environment.

Between 2001 and 2006, key pieces of legislation were passed, probably as a result of the imperative faced by the NRM to seem progressive and reformist in the wake of the 2006 elections—especially as a perception about a decline in the political and governance environment and pressures by aid agencies to open up the political space both increased. The 2005 Access to Information Act was part of this complement of reforms at the international level, Uganda signed and ratified several international and regional conventions and several international and regional

treaties that advance the right to access information. However, the ambivalence of the regime was evident by the fact that a number of restrictive pieces of legislation were also passed during this period, including the Anti-Terrorism Law 2002, in the wake of the terrorist attack in the United States, which provided the pretext for it); the Uganda People's Defense Forces Act 2002; and the Police Act 2005.

Between 2002 and 2005, a number of prominent civil society groups, including Advocates Coalition for Development and Environment, Foundation for Human Rights Initiative, and the Anti Corruption Coalition Uganda were engaged in trying to promote the right to access information, actively advocating for ATI as a tool for development and for fighting corruption. In 2004, a group of CSOs moved toward introducing a "private members bill." However, the government requested the withdrawal of that bill and subsequently, the minister of information introduced the government's bill. It passed in July 2005, and came into effect on April 20, 2006.

## Annex 3.

# Ratings of RTI Laws by the RTI Ratings Index

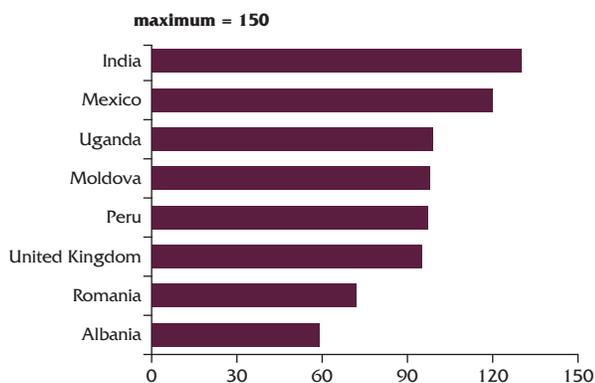
Global standards in RTI legislation have been driven primarily by advocacy groups, and championed particularly by a London-based global advocacy group, Article 19.<sup>129</sup> Some more recent efforts by the Organization of American States (OAS) has also been directed towards developing these standards. An active NGO community links global experts on legislation with local contexts—among them Carter Center, Open Society Initiative, Commonwealth Human Rights Initiative, and the World Bank, among others, and have been important in the quality of legislation, leading to convergence on legislative standards across countries.

In fact, as a recent assessment by two authoritative organizations in the field, Access Info Europe and the Centre for Law and Democracy, points out, newer laws might be more advanced than the earlier Western democratic adopters, because they have the advantage of benefiting from

innovations in legislative provisions, as well as the influence of the international policy and epistemic networks, lower income countries are adopting fairly progressive legislation. The RTI Ratings Index, developed by these organizations is a detailed assessment of global RTI laws against 61 indicators in seven categories: Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures, drawn from a range of international standards and a comparative study of RTI laws from around the world. Figures A3.1–A3.8 provide a snapshot of the rankings of the case study countries in the seven categories. The x-axis represents the total score possible for each country. While several of the laws followed global standards, specific provisions might reflect negotiated compromises between different stakeholder groups, local power relations, and specificities of the national context.

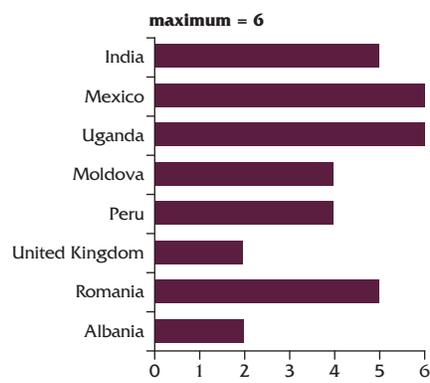
**Figure A3.1. RTI Ratings Scores for Case Study Countries**

### a. Quality of RTI Laws



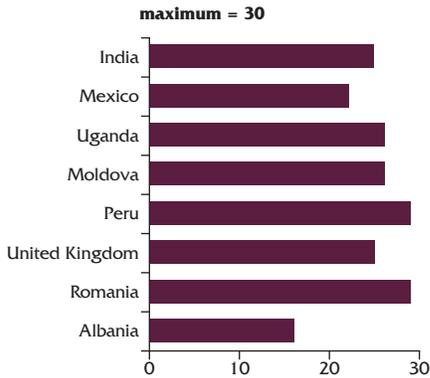
Source: <http://www.rti/rating.org>.

### b. Right of Access



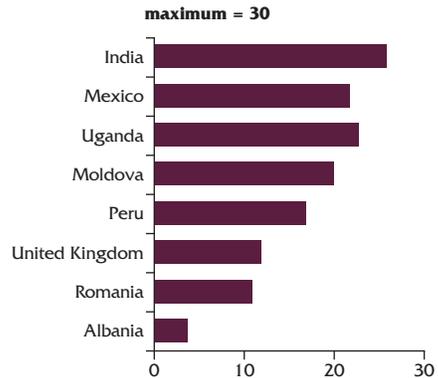
Source: <http://www.rti/rating.org>.

**c. Scope of Legislation**



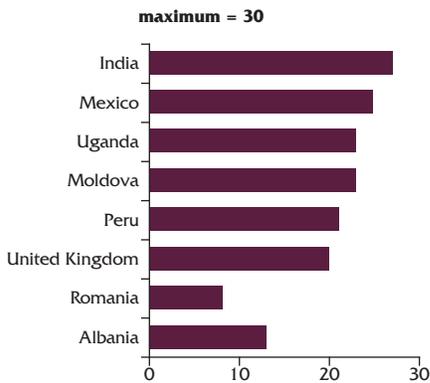
Source: <http://www.rti/rating.org>.

**d. Exceptions and Refusals**



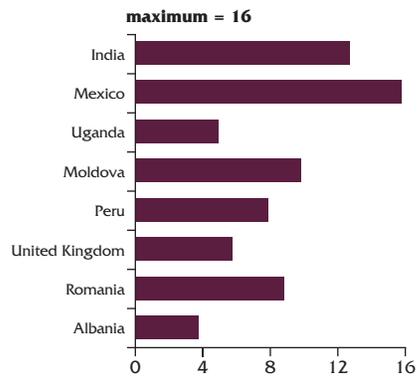
Source: <http://www.rti/rating.org>.

**e. Procedures for Access**



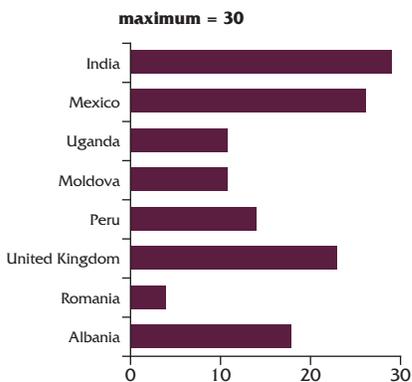
Source: <http://www.rti/rating.org>.

**f. Promotional Measures**



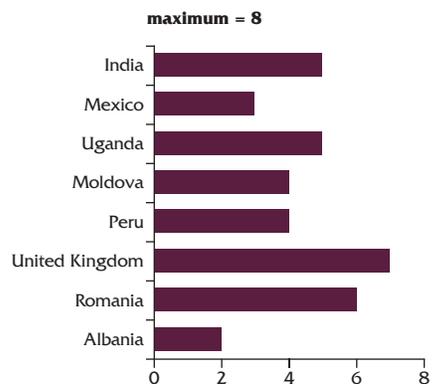
Source: <http://www.rti/rating.org>.

**g. Appeals**



Source: <http://www.rti/rating.org>.

**h. Sanctions and Protections**



Source: <http://www.rti/rating.org>.

## Annex 4.

# Scope of RTI Legislation

Since transparency is only useful if it exposes relevant information, the scope of disclosure—the relative scope of what information is mandated to be disclosed and which is not, and the entities that it covers—matters for how effectively the law can be used to elicit transparency, and accountability in governance. Laws that mandate the disclosure of only a limited amount of information will not be an effective instrument for accountability. On the other hand, laws might incorporate a very strong disclosure regime, but the capacity among public officials to understand and interpret the exceptions, among the judiciary to interpret the scope of disclosure, and the independence in the judiciary to apply the exceptions and the letter of the law with fairness might be limited. Further, which agencies come under the purview of the law is important. The right to information applies to public agencies, but the definition of what constitutes a public agency, and which arms of government fall under the law, is not the same across jurisdictions. On the other hand, laws might incorporate a very strong disclosure regime, but the capacity among public officials to understand and interpret the exceptions, among the judiciary to interpret the scope of disclosure, and the independence in the judiciary to apply the exceptions and the letter of the law with fairness might be limited.

While this report has focused on implementation measures, it is useful to highlight the good practice standards vis-a-vis the scope of coverage of the law, dynamics that influenced the relative scope of the law in different countries, and assess significant challenges that have come up during implementation. The experiences of these countries in designing and applying the law demonstrates that broadbased consultative processes expand the scope of the legislation, particularly providing a check against efforts to restrict the scope of the law. It also demonstrates that there are challenges in the course of implementation, ranging from implementation of the law to attempts to restrict in scope ex-post.

A good practice RTI law is undergirded by the principle of *maximum disclosure*, which has a few key corollaries:

- All information held by public bodies should be disclosed, unless explicitly forbidden by a limited regime of exceptions to protect overriding public and private interests. When the law specifies a *positive list*—that is, it enumerates the categories of information that should be subject to disclosure, it implicitly limits the scope of disclosure—only those categories of information that are in the list are mandated to be disclosed. On the other hand, when it includes a *negative list*, that is, enumerates the categories of information that are exempted from disclosure, it implicitly expands the scope of the law to all other categories of information.
- Related to this is the principle that exceptions should be clear and narrow. Good practice standards suggest some legitimate exceptions, typically extending to: national security; public health and safety; prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; fair administration of justice and legal advice privilege; and legitimate policy making and other operations of public authorities.<sup>130</sup>
- Further, exceptions are usually subjected to certain criteria, with the application of a harms test—covering only information, the disclosure of which would cause harm to the protected interest.
- Another key principle is that of a *public interest override*, meaning that information should still be released if the overall benefit of disclosure outweighs the harm to a protected interest. “Hard” overrides apply absolutely, for example for information about human rights, corruption or crimes against humanity.

- Specificity on exemptions is also useful. The UK FOIA, for instance, is considered weak on exemptions because it has a long set of exemptions compared to most other laws, and something that CSO advocates have been critical of—23 sections exempting various kinds of information.<sup>131</sup> Yet, because it specifies the exceptions in detail, in contrast to many other laws, which rely on a smaller number of more general exemption statements, some of the impact of this is mitigated as it limits officials' ability to exploit the law's ambiguities.
- It is also considered good practice to have an overall *time limit* on exceptions, particularly in relation to protected public interests.

While most of these principles are reflected in the design of the laws in the case study countries, civil society groups had an important influence on narrowing the exceptions regime during drafting and consultations on the law. In India, civil society efforts, and its role in the National Advisory Council (NAC) helped ensure that important provisions, such as the disclosure of information about corruption and human rights violations by intelligence agencies, and the extension of the law to cover state governments, were reinstated in a diluted government draft. Section 23 of the Indian law explicitly overrides antecedent secrecy laws, such as Official Secrets Act, 1923. Further, notwithstanding the regime of exceptions, any information which can be provided to Parliament or a state legislature must also be provided to citizens. In the UK, information on investigations into health and safety (for example, product safety reports, pollution investigations and documents concerning workplace accidents), were initially exempted from the consultation bill, but this exemption was removed in Parliament under pressure from civil society groups. They also played an important part in narrowing of exemptions covering commercial interests and information provided to governments in confidence (that is, by regulated industries to regulators). However, the UK has a number of exceptions that are not harms-tested, and the public interest override also does not apply to nine of its exceptions.

To the largest extent possible, the RTI law must be harmonized with other regulations so that the legal environment as a whole does not provide contradictory signals. For instance, pre-existing legal institutions such as Secrecy laws provide for broad categories of secrets, and severe

punishments for breach, and are backed up by the Criminal Code. Contradictions with other legislation—for instance, contrary legislation on secrecy, as well as provisions for secrecy and openness in other pieces of legislation—can create lack of clarity and contradictory incentives, weakening the overall environment for accountability. Disclosure provisions and restrictions in other laws—such as asset disclosure laws, general administrative or civil service laws, archival laws, whistleblower laws, budget laws, local government laws—can create lack of clarity and contradictory incentives and lack of clarity. For instance, the Albanian Cold War Studies Center (ACWSC) and the Cold War International History Project have been hampered by contradictions between the access to information, state secrets (Law 8457), and declassification laws in accessing records in the Central, State, and Foreign Ministry Archives<sup>132</sup> Data protection laws, in place in many countries, place constraints on the disclosure of personal data. These might be complementary to the privacy exceptions of RTI laws, but in some cases, there might be a conflict with how the two laws define personal data.

The inclusion of “deliberative information” is another controversial area. For instance, in the UK, the FOIA bill included an exemption on policy advice from civil servants in response to ministerial desire to preserve confidential advice from civil servants and the neutrality of the civil service.<sup>133</sup> Debates focused on distinguishing between factual material on which policy recommendations are based, and the specific advice that ministers receive from the civil service. As a result, instead of the government's proposed absolute exemption for policy advice, a qualified exemption was included—although information can still be withheld while a policy is being developed, once a decision has been made, the grounds for withholding information are far fewer. That this was not an anticipated effect is suggested by Tony Blair's admission, in 2010, that he considers the FOIA to be one of his greatest mistakes because it impinges on the ability of ministers and civil servants to discuss policy proposals frankly.<sup>134</sup> In India, the government has been reluctant to disclose file notings—the opinions and notes of civil servants on government files that sum up the decisions taken on a particular matter. In 2006, soon after the law was enacted, the government issued a notice stating that file notings were not to be disclosed under the RTI Act. Subsequently, it prepared draft amendments to

exclude file notings from the purview of the act.<sup>135</sup> Civil society groups and activists challenged the notice before the central and state information commissions, who supported the view that file notings could be accessed under the law. They also launched a major campaign with the support of the media, successfully stalling the government from pushing through the amendment.<sup>136</sup>

A key challenge with exceptions is to ensure that they are interpreted in an appropriately narrow manner. This is something of a challenge, since it is almost inevitable that the RTI law describes exceptions in rather general terms. It can be difficult for decision-makers to assess whether disclosure of information will cause harm to the protected interest, and applying the public interest override is even more challenging. Training and expertise to interpret the law is important to prevent the scope of the law from becoming too restrictive during implementation. Attempts to strengthen secrecy might be made even after the passage of the RTI law. In Albania, for instance, in 2006, the government attempted to strengthen secrecy, creating a new level of classification. While the Parliament approved the amendments, the Albanian Helsinki Committee successfully intervened, sending a letter to the Speaker of the Parliament requesting her to stop approval of the amendments. In 2005, the Moldovan authorities drafted legislation on state and service secrets—media and NGO groups, supported also by the international community, vehemently opposed the draft, which was subsequently withdrawn.<sup>137</sup> In 2006, Peru adopted separate legislation<sup>138</sup> establishing longer time limits for the declassification of information, even though this could still have been done under the RTI law.

Which agencies come under the purview of the law is also important. The right to information applies to public agencies, but the definition of what constitutes a public agency, and which arms of government fall under the law, is not the same across jurisdictions. Most countries extend coverage of the law to all public agencies, with some exceptions, usually specialized security and intelligence bodies. In India, while the NAC draft excluded key security and intelligence organizations, it provided that the exclusion did not apply to information related to allegations of corruption and human rights violations.

The extent to which national RTI laws cover sub-national entities, provincial and local governments is

important because most information impacting the welfare of citizens and delivery of services lies at these levels. In India, the government draft of the Central 2005 law initially applied only to the Central government, but as a result of strong civil society reaction, coupled with support from the NAC, the original, broad provisions, extending the law to cover sub-national entities, particularly important for the poor, was reinstated. Although most states have separate RTI laws and state-specific implementation institutions, such as the state information commissions, the central law overrides the state-level laws. In most countries, however, there are separate laws—federal laws governing access to information held by federal public bodies and state or provincial laws governing access to information held by state bodies. In most countries—for instance, Mexico, Canada, Germany and the United States—the national law only applies to federal public bodies and the federal government has no power under the Constitution to regulate openness at the sub-national level. The transparency standards of sub-national bodies might vary and minimum standards of good practice might be difficult to apply uniformly. For instance, in Mexico, concern has been expressed that the RTI laws which have now been adopted by all 32 sub-national entities do not meet minimum transparency standards.<sup>139</sup>

The law might apply to only the executive in some countries, to the exclusion of the legislature, the judiciary, or oversight institutions, but leaving out non-executive institutions from the purview of the Law can be problematic, for instance, when parliamentary or judicial discussions and debates cannot be made public. In many Common Law countries, however, the courts are excluded (Uganda and the United Kingdom), and in Uganda, the legislature is also excluded. In Uganda, the law also includes an exception of Cabinet records (which are only accessible after a minimum of seven years), which civil society sees as being a key weakness.<sup>140</sup> In Mexico, because of constitutional division of powers, the oversight body, IFAI, only has jurisdiction over bodies that form part of the executive. The law prescribes very precise rules for the executive, but calls on congress, the judiciary and the constitutional autonomous agencies to put in place comparable arrangements.<sup>141</sup> In India, the Supreme Court has resisted being under the RTI Act, but the CIC has ruled that in a conflict between the RTI Act, and the internal rules of a Public Authority, including the Supreme Court, the RTI Act must prevail.<sup>142</sup>

Moreover, as several public services are increasingly delivered by private contractors under various kinds of public private partnership arrangements, the extent to which these entities should be subject to disclosure laws also becomes relevant. This is of growing importance in many countries given the increasing privatization of government and the increasingly prominent role private bodies play in the delivery of to be public services. In the United Kingdom, for instance, quasi-autonomous government organizations (so-called “QANGOs”) were often criticized for their opacity and lack of accountability. Their inclusion in the FOIA was a victory for openness proponents. In Romania, the precedents created by courts lean towards a liberal, pro-transparency notion of the term “public institution,” suggesting that the law should cover not only bodies financed entirely from the public purse, but also those where

the government exerts influence over governance (e.g., through appointments governing boards), or through regulation, especially when operating in conditions of a State-protected monopoly (postal service, forest management, state export-promotion bank, and so on). For instance, when the prominent NGO, APADOR-CH requested from Bucharest Municipality information on public procurement contracts for road construction and repairs during 2000–05, the Bucharest Municipality only communicated the list of contracts concluded, but refused to send copies of the contracts, invoking confidentiality clauses. The courts found that how public money is being spent—including through procurement—is information in the public interest, and that confidentiality clauses in public procurement contracts do not supersede the public’s right to know.

## Annex 5. Methodological Issues in Assessing RTI Effectiveness and Impact

### Theoretical Links Between Governance and Development

Economists have long recognized the importance of information for the functioning of markets.<sup>143</sup> Better information flow helps private agents make more rational decisions about asset prices, consumption, and investment, leading to more efficient markets. Lack of transparency, on the other hand, increases the risk of investment, which translates into higher risk-premiums.<sup>144</sup> Transparency is seen as creating a more favorable environment for investment, reducing market uncertainty about policymakers' preferences, which results in more predictable monetary policy and efficient financial markets.

In the political space, there is also intrinsic information asymmetry between officials and citizens. While political leaders and public officials are supposed to know more about a range of public issues, including the defense and the economy, they lack incentives to work in the public interest because citizens have little control over decision-making and policies—except during elections. Highlighting the implications of information asymmetries between officials and citizens, Stiglitz points out:

“There are asymmetries of information between those governing and those governed, and just as markets strive to overcome asymmetries of information, we need to look for ways by which the scope for asymmetries of information in political processes can be limited and their consequences mitigated ... Just as asymmetries (of information in the market) give managers the discretion to pursue policies that are more in their interests, than in the interests of the shareholders, so they allow government officials the discretion to pursue policies that are more in their interests than in the interests of the citizenry. Improvements in information and the rules governing its dissemination can reduce the scope of these abuses in both markets and in political processes.”<sup>145</sup>

RTI laws are based on the premise that because information asymmetries enable officials to pursue policies and actions that are in their own narrow interests rather than ones that are for the broader public welfare, regulatory intervention is necessary to reduce information asymmetry; this would lead to more accountability, less corruption, and, eventually, better development outcomes.

Highlighting the importance of information as critical to accountability in service delivery, the *2004 World Development Report (WDR)*<sup>146</sup> contended that information enables citizens both to hold policymakers accountable—who, in turn, hold providers accountable (i.e.g, the long route of accountability)—and exercise direct influence over service providers (i.e., the short route of accountability):

“Perhaps the most powerful means of increasing the voice of poor citizens in policy-making is better information.... Better information—that makes citizens more aware of the money allocated to their services, the actual conditions of services, and the behavior of policymakers and providers—can be a powerful force in overcoming clientelist politics....”<sup>147</sup>

Access to information can be cast in intrinsic terms: as a democratic right of citizens to access information about the state's functioning and the democratic responsibility of the state to make this information public. But the rapid spread of RTI legislation in developing countries has led to a focus on RTI in more instrumental terms, addressing some of the most difficult governance, welfare, and development challenges by opening up the decision-making and functioning of the state to public scrutiny.<sup>148</sup> Access to information, in this instrumental formulation, is important because it is a precondition for enabling citizens to hold governments accountable; it enables them to exercise voice and participation; and it controls corruption.<sup>149</sup> This would, in turn, lead to positive development outcomes, such as improved allocation and use of public resources and better outcomes with regard to service delivery and human development.

Seen through a rights-based lens, RTI can be seen as essential to the exercise and realization of “second generation rights,” that is social and economic rights, including health, education, and livelihoods.<sup>150</sup> Calland (2003) notes that since the right of access to information empowers citizens to demand information from the state, it changes the balance of power between them: citizens can hold the state to account, not only for information, but also for how it is delivering on its other obligations, including their social and economic rights.

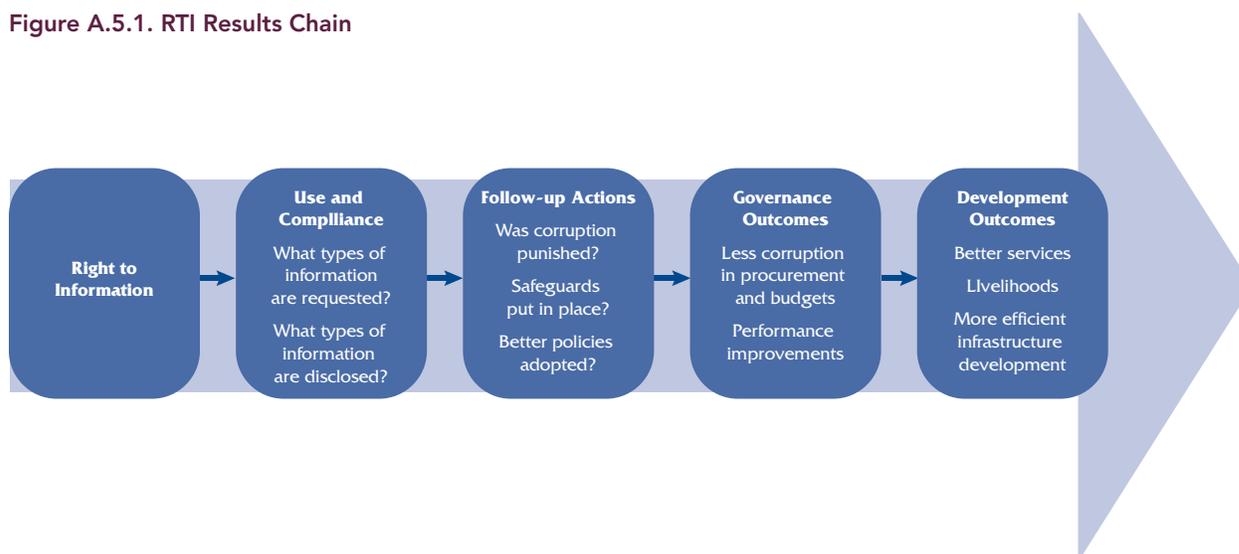
Jenkins and Goetz (1999) credit the Indian grassroots NGO, Mazdoor Kisan Shakti Sangathan (MKSS)<sup>151</sup> with a prominent role in shifting the discourse on RTI. The movement, anchored in the right for wages and livelihood at the local level, located the right to information within the Indian Constitution’s provisions guaranteeing the right to life and livelihood, characterizing it as necessary for the exercise of socioeconomic rights for better livelihoods and access to better services from the state. It exemplified it in such slogans as “the right to know is the right to live.” Subsequently, in India and elsewhere, the right to information became characterized as critical for citizens to understand public policy decisions regarding basic services, such as health, education, sanitation, water, and infrastructure, and to exercise a more direct form of accountability for the provision of these services. The next section looks at the results chain between RTI and development outcomes.

## RTI Results Chain

The project looked at the effectiveness and impact of RTI in terms of a results chain, linking the passage of an RTI law to eventual development outcomes through intermediate impacts on use and compliance, follow-up actions, and broader governance and anticorruption outcomes. The results chain is depicted in figure A.5.1, and the methodological issues related to different outcomes along the results chain are explained in the following sections.

**Assessing use and compliance.** The effectiveness of an RTI law in making information available—the first link on the results chain—is usually measured by assessing statistics on the extent to which citizens exercised the right to information (through number of requests made annually) and whether the existence of a legally-mandated right propelled officials to disclose information (through statistics fulfillment versus denial of requests).<sup>152</sup> Additional information on the profile of users, the kinds of information requested, and the purposes for which it was requested provides insights into how RTI regimes are working in different countries. But in most countries, monitoring systems are extremely weak. Data on use and responsiveness are available in some countries where oversight agencies track statistics on different agencies.

Figure A.5.1. RTI Results Chain



Source: Author.

Even when such data are available, they might only be available only for a few years, and is sometimes incomplete. Agencies might occasionally over-report in order to make themselves look good. The absence of baseline data about the responsiveness to information requests before RTI makes assessing improvements difficult. The absence of baseline data also makes it difficult to assess whether or not the existence of an RTI law has led to an increase in the available information or in making accessible information that would not have otherwise been released. With these caveats in mind, the case studies collected data on requests and responsiveness to the extent they were available. Official data was available the United Kingdom, Romania, Mexico, Peru, and India. The study drew from these to understand levels of use and responsiveness.

Official data were supplemented with data from studies implemented by civil society groups, which provide a rich dataset on use, responsiveness, profile of users, kinds of information requests, procedural and governance issues, the visibility of the law, and public awareness.<sup>153</sup> These studies use a triangulation of methods, including floating test requests to a sampling of government agencies and drawing conclusions about responsiveness. The largest country-level study of this kind was a 2010 exercise carried out by the Research and Analysis group (RaaG) in India, using test requests, triangulated with surveys, interviews, and official data sources.<sup>154</sup> These studies are valuable for their breadth, scope, and content, but are costly enterprises—a drain on CSO resources; funding for such exercises occurs on an *ad hoc* basis.<sup>155</sup> Absent the high profile and significant civil society momentum, such exercises are difficult to implement in most countries. They can be useful sources of information, but they are not a systematic substitute for robust monitoring mechanisms.

Anecdotal data about specific instances of information requests, especially when the information is related to accountability or corruption, and about responsiveness to these requests is helpful in understanding if information related to government functions is accessible through the use of RTI; this type of information can be particularly useful for accountability and might expose corruption and non-performance. Extensive research from secondary sources, including media articles, court cases, and research papers, in addition to in-depth interviews with several stakeholders, enabled access to anecdotal data.

**Does disclosure make a difference?** The second step in the results chain refers to whether any actions are taken as a result of exposés through RTI—such as when officials are sanctioned when corruption is exposed, when sanctions are imposed or corrective measures are taken when poor performance is brought to light, when better safeguards are established to improve governance and prevent corruption, or when service providers are held accountable for the efficient delivery of services. Specific instances and anecdotal data also enable the examination of whether or not these actions were undertaken.

**Has there been a systematic improvement in governance and development outcomes?** The third and fourth links in the results chain relate to whether disclosure through RTI and subsequent follow-up action lead to broader improvements in governance and, subsequently, the strengthening of development outcomes, that is, better allocation and use of public resources and better outcomes on service delivery and human development indicators.

## Empirical Evidence on Transparency, RTI, and Development

The empirical evidence of the impact information access and transparency have on accountability, better governance, and better service delivery is fairly limited. One method is macro-level, cross-country analyses that investigate links between different indices of transparency and various governance indicators.<sup>156</sup> These studies show that transparency is associated with better socioeconomic and human development indicators as well as with higher competitiveness and lower corruption.<sup>157</sup> There is a positive correlation between RTI legislation, the length of time it has been into existence, and a series of good governance indicators, like voice and accountability, regulatory burden, government effectiveness, graft and corruption, and bureaucratic quality.<sup>158</sup> These are mostly studies of correlation, not of causation.

Other micro-level quantitative research looks more specifically at the link between an increase in citizen access to information on specific issues and improvements in service delivery or reduction in corruption. For instance, research showed that a newspaper campaign aimed at distributing information about school grants helped to reduce

capture of these funds at the local level in Uganda.<sup>159</sup> Subsequently, it has been argued that other factors accounted for the decrease in corruption in this case and that the impact of information dissemination was overstated.<sup>160</sup> Besley and Burgess (2001, 2002) find that regions in India where the media are more active are also the regions least likely to suffer from famines during droughts because voters are more informed about political choices and are able to cast votes accordingly; this makes political leaders more accountable. But other examples show mixed results. One

examination of a community-based information campaign on school performance in India found that information intervention had a positive impact, particularly on teacher presence and effort. Another study of the impact of information on the ability of communities in India to engage in service delivery-related accountability mechanisms demonstrated that providing information had little impact on accountability.<sup>161</sup> In comparing two cases from India and Uganda, two different studies of community engagement with information came to two different conclusions.<sup>162</sup>

#### Box A.5.1. Evidence from Research and Studies on Impact of Information

- Pandey et al. (2009).<sup>a</sup> Disseminating information to communities in three Indian states about their mandated roles and responsibilities in school management contributed to a number of improvements in education, including reading, writing, and mathematics scores in some of the grades that were tested; teacher attendance and effort; the delivery of certain benefits to which students were entitled, such as a stipend, uniform, and midday meal; and increasing community participation.
- Nguyen and Lassibille (2008).<sup>b</sup> In Madagascar, bottom-up interventions involving parents in school monitoring and action-planning were effective in improving teacher behavior, student attendance rates, and test scores, while top-down control interventions seemed to have minimal effects.
- Bjorkman and Svensson (forthcoming).<sup>c</sup> A sustained effort to inform and involve citizens and communities in monitoring health care providers in Uganda resulted in improvements in both the quality and quantity of health care provision due to increased effort by the staff to serve the community. However, other randomized control trials do not come to similarly encouraging results.
- Banerjee et. al. (2008).<sup>d</sup> In a randomized evaluation of an education program in India, the study found that providing more information to communities had no impact on community involvement in public schools and no impact on teacher effort or learning outcomes in those schools.
- Olken (2007).<sup>e</sup> It was found that increasing grassroots participation in the monitoring of Indonesian village road projects had little average impact, reducing missing expenditures only in situations with limited free-rider problems and limited elite capture.
- Ferraz and Finan (2008).<sup>f</sup> Disclosure of corruption in local governments in Brazil reduced the likelihood of the incumbent reelection, and this effect was more pronounced in municipalities with radio stations.
- Wantchekon (2009).<sup>g</sup> Town hall meetings in Benin, during which candidates present specific and informed policy proposals, have a positive effect on turnout and electoral support for the candidates—as opposed to a strategy based on campaign rallies with targeted or clientelistic electoral promises.
- Malesky et. al (2011).<sup>h</sup> Delegates whose activities in the national legislature were publicized extensively via Vietnam’s highest profile online newspaper showed less participation and higher conformist behavior, and they were significantly less likely to be reelected than the control group.

a. Pandey, Goyal, and Sundararaman 2009; b. Nguyen and Lassibille 2008; c. Bjorkman and Svensson 2009; d. Banerjee, Banerji, Duflo, Glennerster, and Khemani 2008; e. Olken 2007; f. Ferraz, Claudio, and Finan 2008; g. Wantchekon 2009; h. Malesky, Schuler, and Tran 2011.

One of the comparatively better-researched aspects of the connection between more information and better accountability is the impact of community information and monitoring on a range of service-delivery outcomes—primarily in education and health. Box A.5.1 summarizes some of these findings.

A research project undertaken by the University College London<sup>163</sup> analyzed the statement of policy-makers to identify six broad objectives of FOIA and used a combination of a review of official literature and records, interviews with officials and other stakeholders, an online survey of RTI requesters, and an analysis of media articles to assess its impact on these objectives. First, regarding *transparency*, a majority of the official respondents felt that FOIA made public authorities more transparent and led to greater proactive disclosure in such areas as expenses, details of gifts, salaries, overseas travel, and hospitality. But the shift toward openness was not only FOIA-related; it was also connected to other drivers, such as information and communications

technologies and a broader attitudinal change in government. Journalists felt that while government had opened up to an extent, opacity persisted.

The study found some impact on accountability and little evidence of impact in the other four areas: quality of advice or records for government decision-making were not significantly different; there was little impact on *public understanding* of government decision-making; evidence on increasing *political participation* was sparse, with less than 0.1 percent of the population making FOI requests, and many of those who did were already engaged in the political process; and little change in *trust* levels. In another perceptions survey of mid-level federal public officials undertaken in Mexico by IFAI in 2007, 59 percent of the respondents believed that Mexico's 2002 transparency law had contributed to increase transparency and access to information, but only 7 percent said that it had resulted in reduced corruption.<sup>164</sup>



## Annex 6.

# Findings on Use and Compliance

This annex summarizes the findings from the study on use of RTI, responsiveness, and proactive disclosure.

### Request Volumes

In the five countries where data was available (for different years since the passage of the law), there was a fairly significant increase in the number of RTI requests filed year-to-year since the institution of the law. It is difficult to get a measure of the extent of the use of RTI in three of the countries—Uganda, Albania, and Moldova. Data about the number of requests for information that are filed as RTI requests are not available at either the state or central levels.

- In Mexico, the number of RTI requests to *federal* government entities increased from 8,000 in 2003 to about 50,000 in 2009. A large percentage of requests involved information generated by the agencies, such as concessions, legal procedures, and statistics. Other requests include personal data, remuneration of public officials, subsidy programs, list of beneficiaries, and eligibility requirements. Requests were also made on agencies' activities, such as work plans, project results, and procurement information—this could have been by civil society groups.
- In India, statistics showed a steady increase in RTI applications to the central government from about 24,000 in 2005–06 to 260,000 in 2007–08. The RaaG study showed that between 2005 and 2008, 2.5 million people submitted RTI requests across the country (including central and subnational) or about 800,000 per year.
- In the United Kingdom, official data showed that the number of requests has grown steadily from approximately 16,000 in 2006 to 44,000 in 2010.
- In Romania, official data showed that the number of requests has remained consistent at approximately 600,000 since the law was adopted.

- In Peru, according to PCM data, the number of requests increased from about 56,000 in 2004 to 68,000 in 2010.
- In Albania and Moldova, the absence of monitoring data makes it difficult to assess the absolute number of requests, but interviews suggested that awareness and use of RTI was very limited.
- In Uganda, apart from civil society and media groups filing requests, often to test the efficacy of the ATIA, there was no evidence of use by the general population.

While the study could not access data on regional requests, if requests at the subnational level are taken into account, the numbers are likely to increase substantially. In India, for example, while the number of requests in 2007/08 was about 250,000 nationally, taking into account requests at both the central and state levels, the number was more than three times higher, approximately 800,000. A recent study in the United Kingdom found that while requests to the central government had not risen significantly in recent years, requests to local governments had increased dramatically from 2005 to 2009. In 2005, according to the survey, there were approximately 25,000 requests to the central government and 60,000 requests to local government. In 2009, there were 40,000 requests to the central government and 165,000 requests to the local government.<sup>165</sup> These numbers might not exactly correspond to the number of people filing requests because many people—especially CSO representatives and journalists—are likely to file several requests. But they are a close approximation.

In countries where people might not be able to get access to even basic public information, an effectively-enforced right can be useful to gain access to information that might otherwise be difficult to obtain. But they also suggest that RTI is a specialized instrument. As a percentage of the population, the request numbers are almost miniscule, in the 0.03–.04 percent range. And this is not reflective of lower capacity or the newness of the law. The annual number of RTI requests in even higher capacity countries with a longer experience base in the implementation of the law

is still very small, ranging from 0.1–0.4 percent. Hazell and Worthy (2010) point out that by definition, FOI requesters are extraordinary—they represent a small fraction of the population and are usually activists or professionals.

There can be several reasons for this relatively low percentage of requests to population. Information management and information sharing is a general government function, and people might not need to use RTI to gain access to most of the information they need. In most countries, citizens might be able to get personal information (about, for example, a health benefit or an adverse decision on school admission or immigration status) without necessarily invoking the law. Further, filing RTI requests is fairly technically demanding, and even in countries with established disclosure laws, making a request requires technical understanding of the process. Since RTI laws provide access to “records,” prior knowledge about the specific kinds of records required is important.

## Who Uses RTI and for What?

Requests for information can be separated into three broad categories. The first is personal requests for information requested by citizens. For citizens and communities in many countries, where officials tend to be unresponsive to even basic information about their personal benefits, the existence of an RTI law can be important. The second broad set of requests is on information about government decision making, likely to be made by NGOs, advocacy groups, and media outlets. The effectiveness with which civil society groups are able to use RTI for these purposes determines its usefulness as an instrument for social accountability. The third big category of users is of businesses, with an interest both in personal and business environment-related information.

Where requests are monitored, some data are available on the kinds of information that are requested under RTI. In Mexico, the reports categorize the types of information requests as:

- information generated by the agencies, such as concessions, legal procedures, and statistics;
- personal data and remuneration of public officials;

- subsidy programs, list of beneficiaries, and eligibility requirements; and
- activities of agencies, such as work plans, project results, and procurement information, which could have been by civil society groups.

In Romania, a large number of the requests were related to legislative acts, a reflection of the absence of adequate measures for proactive disclosure. Information on budget allocations and the use of public funds represented about 25–30 percent of the information requested and could have been from civil society groups. In Albania, interviewees suggested that almost 90 percent of the requests are for basic information like access to drugs or medicine, procedures to get diploma accreditation, and deadlines for application for the universities, possibly arising from the absence of proactive disclosure in these areas.

The U.K. study<sup>166</sup> also found that in 2009, individuals accounted for 37 percent of local government requests, businesses accounted for 22 percent, and the media accounted for 33 percent. Over the past five years, the percentage of individuals and businesses making requests had dipped slightly, while the percentage of media making local requests had risen significantly, from 11 percent. While users who were surveyed generally thought that RTI legislation at the local level had significantly increased the transparency of local government, officials felt that the legislation had only had little impact.

In order to prevent discrimination among different requester categories, most laws are “requester-blind,” providing for anonymous requests, but some data emerged on the socioeconomic and demographic characteristics of users from surveys, interviews, and monitoring data when available. In India, for instance, the RaaG survey showed that awareness is very limited among the rural and poorer sections and that men file many more requests than women. But civil society groups have filed requests on behalf of poor and rural communities. In Mexico, the study was only able to access data collected by IFAI based on self-reporting of user data by the requesters at the central level, and the picture that emerged is that of fairly educated and technically savvy requesters.

Other research has found that, in the more-developed countries, the most frequent categories of requesters are private citizens, the media, and businesses.<sup>167</sup> In the United States, a report by the Coalition of Journalists for Open Government<sup>168</sup> that analyzed 6,439 FOIA requests to 11 cabinet-level departments and six agencies in 2005, found that over 60 percent of requests came from the private sector, including professional data brokers working on behalf of clients, seeking information such as asbestos levels on navy ships, cockpit recordings from crashed airliners, and background data on prospective employees. The rise of professional data brokers is thought to be due to the desire of companies to mask their interests in obtaining particular pieces of information, and it is somewhat controversial because it is not necessarily the type of government accountability-driven FOIA usage envisioned by the drafters and supporters of the law. The second-largest group of requesters, at roughly 33 percent, was comprised of private citizens seeking a wide variety of personal and other information. Requests from the media accounted for only 6 percent of the total. CJOG noted that many journalists felt that the long wait times for official response made FOIA less useful for regular newsgathering than it was for longer investigative pieces. Another earlier study of U.S. usage of FOIA found that 40 percent of total requests came from corporations and 25 percent from lawyers.<sup>169</sup>

An earlier survey of Canada, New Zealand, and Australia also showed a high percentage of personal requests as opposed to accountability-related requests. Statistics from Australia and Canada showed that between 80 and 90 percent of all requests were for access to personal files, with 90 percent of Canadian requests being received by just five institutions: efense (from servicemen), corrections (from prisoners), archives (former servicemen and public servants), police (criminal records), and employment and Immigration (immigration records).<sup>170</sup> While this type of usage does not preclude transparency outcomes, it suggests a focus on immediate personal—and, in the case of civil servants, personnel—matters rather than broader government accountability goals.

## Responsiveness

In the five countries, where data was available, there was a fairly high level of procedural compliance.

- In Mexico, between 2003 and 2010, 96.9 percent of the requests received a response: either the information was provided, a reason for refusal was provided, or the requestor was directed to where the information could be found. The administration also responded to public information requests in 12.8 days, well below the limit of 20 days established by the law. These responsiveness rates are comparable to higher-income countries, which of course have greater capacity and resources.
- In the United Kingdom, data suggested that between 75–90 percent of all requests receive a response within the required timeframes, and among all monitored bodies, 91 percent of requests are handled within the 20-day deadline or with a permitted extension.

In Romania, according to government data, central and local public institutions respond favorably to 95–98 percent of the requests received,<sup>171</sup> but interviewees from the monitoring agency suggested that agencies might be inflating figures to look good.

In India, based on RTI applications filed by RaaG, the central government has a compliance rate of 81 percent. Government data also suggests that a relatively small number of requests have been rejected by public authorities in the central government, although data on the kinds of information requests that have been rejected is unavailable.

In Peru, the compliance rate for processed requests—that is, all requests responded to with a positive or negative answer—over the last few years has been around 90–95 percent.

In Uganda, Albania, and Moldova, civil society groups regularly attempted to test the effectiveness of RTI by floating requests using it. But in all three countries, according to interviews conducted with these groups, they met with no or limited success.

In Moldova, according to a study conducted by Access Info, a local NGO focused on RTI, rates of response were very low, although there was a marginal improvement in

recent years from 22.6 percent in 2007 to 34.6 percent in 2010.<sup>172</sup> In interviews with public officials across ministries, they claimed that responses to RTI requests are processed in a regular manner and that there is adequate institutional capacity to process routine requests.

In Albania, civil society surveys, such as that by the Citizens Advocacy Office<sup>173</sup> suggest that information requests are often ignored, there are delays in answering requests, and there is absenteeism among information officers. Another report found numerous cases of administrative silence or mute refusals.<sup>174</sup>

In Uganda, while the 2005 ATIA was not used by citizens for the most part, a study carried out by the local NGO Hurinet on the generic levels of information requests and compliance showed that of the survey participants that had requested information from a public institution—police, local government, and the ministry of Education—as many as 70 percent had not received a response. In a study carried out by the Uganda Debt Network, requests were sent to different ministries over five months; the energy ministry was the only one that even acknowledged receipt of the request, and the education ministry eventually provided the information requested for. Organizations such as the Anti Corruption Coalition Uganda have floated numerous requests under ATIA, with a lot of back-and-forth communication with ministries, but no release of information.

But even in countries with high officially-reported compliance rates, these numbers only tell part of the story. For instance, disaggregation by the responsiveness on specific kinds of requests as well as specific requesters will enable a more comprehensive understanding of the biases of officials. Noncompliance could range from illegal measures like refusing to respond properly to requests, deliberate nonrecording of information, or the destruction of information to deliberately responding only at the end of the established timelines and only making available minimal information. On specific requests that might be considered more “sensitive,” officials often stonewall requests. Compliance rates might also denote procedural compliance to routine requests, but there might be resistance to completion of requests that were of a particularly sensitive nature. High compliance rates might also mask the many subtle mechanisms public officials use to deny information requests while still formally complying with the law.

The law usually requires that information needs to be disclosed “in the format in which it exists.” In many case study countries, interviewees suggested that agencies reply to requests by issuing information that is difficult to interpret; published in PDF format that is difficult to reuse; or lengthy, with pages of legalistic argumentation that is virtually impossible to decipher. Budget reports might be released at a high level of aggregation.

A number of global studies have been recently undertaken that attempt to look at the level of responsiveness by officials to information requests. In 2004, a study conducted by the Open Society Justice Initiative called “Transparency and Silence”<sup>175</sup> submitted a total of 140 requests in 14 countries.<sup>176</sup> The “Ask Your Government!” study was led by Access Info Europe, the Centre for Law and Democracy, and the International Budget Partnership, with cooperation from local civil society organizations who submitted six questions about budget openness in three thematic areas: maternal health, development assistance, and the environment. A total of 1,061 requests for information were made to 80 countries, accompanied by phone calls, additional letters, faxes, emails, and sometimes personal visits. Data from these studies provide an interesting complement to the findings from the case studies. These global studies typically use the methodology of floating information requests to government agencies across countries and drawing comparative conclusions based on responsiveness.

These studies suggest find that responsiveness across countries continues to be low. Less than half of the requests resulted in information being provided. In the Open Budget study, only one in four requests led to full information being provided, and only 45 percent yielded any information at all. Fully 42 percent of the requests met with responses that were not compliant with RTI standards. The level of mute refusals was a high 38 percent, even after up to three attempts to get a response. They also found that there is a positive correlation between having an RTI law and responsiveness. Countries with RTI laws were more responsive than countries that did not. The case of Chile is interesting. When the “Transparency and Silence” study was carried out in 2004, Chile did not have an RTI law and performed badly, with a level of mute refusals at 69 percent. In the intervening time, civil society has been galvanized, and Chile has both adopted a law and recognized RTI in

its constitution. There was a huge improvement in the performance in Chile in the “6 Question Campaign,” where it provided positive answers in response to five out of the six requests.

## Proactive Disclosure

In the United Kingdom, the goal of establishing a virtuous circle between publication schemes and the right of access has been realized to some extent. Pressure from civil society organizations has encouraged the proactive, routine publication of some information that was initially handled on a case-by-case basis—for instance, information such as salary information for officials employed by local authorities who earn over £100,000. FOIA has also been successful in facilitating the disclosure of information about how public funds are spent because of a combination of pressure from organizations such as the Taxpayer’s Alliance, which was founded in 2005 partly to take advantage of the opportunities offered by the FOIA, and a series of decisions by the commissioner and the tribunal that restricted the opportunities to withhold this information. For instance, when salary information of public officials was first requested, this information was considered to be sensitive by authorities such as local councils. Over time, a consensus has emerged that information concerning salaries of senior staff are legitimate matters of public interest. Many councils now proactively publish this information on their websites, and the current conservative government’s transparency agenda has extended this even further by mandating the proactive disclosure of all local government spending above £500 as well as a wide range of data on central government spending.

But in most countries, information disclosed under proactive disclosure provisions face two sets of problems: sustainability and incompleteness. Both sustainability and completeness of proactive disclosure provisions have been

major challenges. In India, for instance, while several departments put information enumerated in Section 4—the proactive disclosure section under the RTI Act—online, maintaining these websites became a challenge. Information tended to become out-of-date fairly quickly. For example, the RaaG study found that while 65 percent of urban public authorities had published the details of their organizations on their websites, only 45 percent had published information on public information officers (PIOs), and only 25 percent had published information on budgets and salaries. PIOs are also often unaware of their obligations to update and upload this information. Responding to the PWC survey, 43 percent of PIOs reported that they were not aware of the proactive disclosure provisions. All four departments assessed under the India case have RTI links on their websites, providing citizens with some basic information on the RTI, the list of PIOs, and various other kinds of information as mandated by the law, although information gaps remain. In Romania, websites lacked interactivity, and the quality of information was not user-friendly.<sup>177</sup> While core government ministries published information required under FOIA, ten years after the law was passed, other publicly-funded entities, such as public schools and hospitals, were still not aware of their obligations.

In Albania, while progress is being made in some areas, such as electronic procurement and publication of procurement notices and tender dossiers on the website of the Public Procurement Agency (PPA), publication of administrative instructions by the sectoral ministries is inadequate, according to the 2009 CPII monitoring report. According to another study conducted by CPII in June 2010, aside from Tirana Municipality, none of Albanian municipalities publish their city council’s decisions on official websites or local gazettes. Civil society pressure can have some effect: an “extra” edition of “138 Council of Ministers Decisions” was published following the publication of the CPII study.<sup>178</sup>



## Annex 7. Examples of Use of RTI for Governance and Service Delivery

### **Ration Cards—India**

A field experiment found that slum dwellers who submitted information requests under India's RTI received their ration cards almost as fast as those paying "speed-money" to the administration (four months versus two-and-a-half months on average), while most of those that applied for the card in the standard prescribed manner did not receive the card during the one-year window in which the research was conducted.<sup>179</sup>

### **Land Entitlements—India**

In 2006, a coalition of NGOs in Orissa called Soochana Adhikar Manch mounted a campaign that resulted in 42,000 FOIA requests being submitted to authorities. One of the submissions made during the campaign related to an application filed in 2002 by thirty-two landless claimants to receive their land entitlements; within a few days, twenty-six of them received their land allocations.

### **Public School Access—India**

In Delhi, a NGO helped low-income families obtain access to a public school by placing RTI requests about the availability of seats for the poor and eligibility norms.<sup>180</sup> The information obtained helped prove that the school in question was not making places available for low-income students as mandated by law; as a result, more low-income students were accepted, giving them access to public education.

### **Municipal Water—South Africa**

Villagers in Emkhandlwini used South Africa's FOIA law, with the help of the Open Democracy Advice Centre, to request the minutes of council meetings about the provision of water, the municipality's integrated development plan (IDP), and its budget. The documents, which were released after a six-month delay, showed that the village was supposed to receive access to clean water. Villagers were able to apply pressure on the municipality by getting the media to cover the issue. In response, the municipality installed fixed water tanks and delivered mobile ones in the community. When the mobile water tank supply became erratic, villagers utilized the FOIA again, this time to request the service-level agreement between the municipality and the

company delivering the water. The request brought to light the fact that there was no such agreement or contract—a breach of South Africa's public finance legislation; it resulted in the municipality being reported to the Auditor General for investigation.<sup>181</sup>

### **Water Treatment—Mexico**

In 2006, Maderas del Pueblo del Sureste—a nongovernmental environmental organization supporting indigenous people and rural communities in Chiapas, Mexico—filed access to information requests using the federal transparency law, seeking information about a sewage project that was negatively impacting a village that was receiving waste from a neighboring town and had no access to clean water. Information released through these requests showed that the water treatment system was not properly designed and needed a filter system that had not been installed. The Cintalapa sewage project was halted, and authorities publicly acknowledged that changes had to be made to ensure water was properly treated.<sup>182</sup>

### **Farm Subsidies—Mexico**

In 2007, a Mexican NGO—FUNDAR—requested from the Ministry of Agriculture the list of beneficiaries of PRO-CAMPO, the largest federal farm subsidy program in the country that is designed to support the poorest farmers and reduce inequality in the rural sector. The Ministry of Agriculture did respond to this information request, but the information was incomplete and issued in unreadable formats. When more complete and legible information was finally made available at the direction of the information commission—IFAI—it showed that the bulk of farm subsidies were not being allocated to the country's poorest and smallest farmers but instead to the richest and most productive farmers, and there was evidence of nepotism and patronage. FUNDAR and other NGOs created an online repository of this information<sup>183</sup> to keep pressure on the ministry. The Minister of Agriculture was removed from his post, but no changes to the list of beneficiaries or to the program's rules of operation were made. When subsequent investigations revealed continuing evidence of corruption and nepotism, more resignations followed, and

the government imposed ceilings on eligibility for subsidies. But abuses have continued.<sup>184</sup> Although the actions on PROCAMPO have resulted in more widespread audits and study of the program, including ones by international agencies, the information obtained through the transparency law was crucial in the uncovering of corruption and misallocation of subsidies.

### **Municipal Contracts—India**

In 2002, information procured under the Delhi RTI Act 2001 by Parivartan, a Delhi-based NGO, as well as subsequent public hearings, revealed massive corruption and embezzlement of funds in 64 of the 68 Delhi municipal corporation contracts; Of the Rs. 13 million officially sanctioned for improving civic amenities, items worth approximately Rs. 7 million were nonexistent. The incident prompted the local municipal councilor to offer full transparency in public works programs, and the MCD agreed to a series of corrective measures, like displaying information about public works projects at worksites and in offices and local communities. The Delhi high court directed the police to investigate allegations of corruption, but the police were unable to collect evidence.

### **Diversion of Funds—Mexico**

In 2002, FUNDAR was able to procure information from the Ministry of Health on the arbitrary allocation of special funds earmarked for the purchase of retro-viral HIV/AIDS medications to an anti-abortion NGO—Pro-Vida. Together with a coalition of six other civil society organizations, FUNDAR requested information on all the financial reports Pro-Vida had submitted. The information showed numerous irregularities in the use of funds, such as payments to fictitious organizations, frivolous expenditures, excessive expenditures on publicity campaigns, and preferential diversion of funds to Pro-Vida. Following a media campaign, Pro-Vida was forced to return the funds received from the Ministry, was banned from receiving public resources, and was charged a fine of 13 million pesos, but no public official was investigated or sanctioned.<sup>185</sup>

### **Trust Funds—Mexico**

In Mexico, trust funds have traditionally been very resistant to disclosing information about financial operations, arguing that they are not technically public institutions and are thus protected by bank secrecy laws. When the Supreme Audit Institution identified a significant deviation of resources in financial transfers to some trust funds

related to the customs department, the ministry refused to reveal financial information on these transfers. In 2005, the IFAI ruled that the information had to be released because the origin of the resources was public even if invested in a “private” trust fund. Information subsequently released revealed that the trust fund managed resources in a highly discretionary manner and that there were resources missing to the tune of US\$750 million. No public official was sanctioned. As a result of this scandal, the reforms to the Transparency Law proposed by a Congressional Committee in 2011 included a provision forbidding trust funds from appealing to Bank secrecy laws. However, these reforms have not yet been approved by the congress.<sup>186</sup>

### **Corruption—South Africa<sup>187</sup>**

After several reports on corruption in provincial administration in South Africa in the 1990s, a civil society group created and made publicly available a database of audit queries, which demonstrated that although 90 percent of the budget was questioned in the official audit, corrective action was taken in only 10 percent of cases. The findings, which were published on the Internet, were also publicized in the mainstream media. After a cabinet team was established to follow up on the findings, the portion of the budget with audit disclaimers decreased to 54 percent, but after the team was disbanded, the portion of the budget questioned in audit rose again to nearly 90 percent.

### **Public Works—India<sup>188</sup>**

The Indian state of Rajasthan passed an RTI law in 2000 requiring similar disclosure of information by public officials of the state. In 2001, suspicion of diversion of public works funds caused citizens to protest. The protest resulted in the exposure at a public hearing of what amounted to US\$140,000 in fraud by a government official. However, as of 2006, there had yet to be any criminal charges filed in connection with this matter.

### **Corruption in Medicine Procurement—India<sup>189</sup>**

In 2006, RTI applications with the PIO of South Eastern Coal Fields Ltd. (SECL) in Madhya Pradesh and Chhattisgarh procured information through the RTI Act that revealed that fictitious companies were listed as suppliers of luxury items in the name of procurement of medical supplies, and that there were overcharges. These details were published in a local magazine, after which the vigilance unit instituted a formal investigation and action against the officials concerned was initiated.

### Public Procurement Contracts—Romania

In Romania, when the prominent NGO, APADOR-CH requested information on public procurement contracts for road construction and repairs during 2000–05 from Bucharest Municipality, the response only communicated the list of contracts concluded; the municipality refused to send copies of the contracts, invoking confidentiality clauses as the reason. The courts found that the way that public money is spent, including through procurement, is information that is in the public interest. This was the first time a court found that confidentiality clauses in public procurement contracts do not supersede the public’s right to know.

### Parliamentary Expenses—United Kingdom

In the United Kingdom, several MPs have been convicted, reprimanded, or suspended in 2010, as a result of claims they made under the parliamentary expenses system that were subsequently judged to have been illegal or unethical. The origin of this scandal was a series of FOI requests lodged by NGOs and investigative journalists that were resisted by Parliament for a considerable period and were even the subject of an aborted attempt to amend the FOIA to exempt the material. Although the details were initially leaked to the *Telegraph* rather than released under the FOIA, this leak occurred only when it became clear the information would be released.

### Public University Websites—Romania

In Romania, SAR, a Bucharest-based think tank,<sup>190</sup> ran a series of projects for approximately 5 years to measure the transparency and quality of public information on public university websites. Evidence from the second round of evaluations of the same universities showed marked improvement as a result of this monitoring. The same exercise was performed in several rounds on a sample of around 300 “core” public authorities (ministries, territorial agencies, and local governments), either by testing them on their compliance with the general FOIA provisions or by explicitly requesting more “sensitive” information, such as the full record of public procurement from the previous budget year. In all cases, rankings were prepared and published by sector and institution, and these became widely debated in the national and local media.

### Road Construction and Repairs—Romania

APADOR-CH requested information on public procurement contracts for road construction and repairs during 2000–05 from Bucharest Municipality, including the value

of contracts, the existence of a guarantee clause, the number of times that guarantee clause was invoked and against which companies, and copies of the contracts themselves. In response, the Bucharest Municipality, invoking confidentiality clauses, communicated about the concluded contracts but refused to send copies of them; all other questions were left answered. The court found that the way in which public money is spent—including through procurement—is information in the public interest that cannot be “hidden” from citizens because of confidentiality clauses. This was the first time a court found that confidentiality clauses in public procurement contracts do not supersede the public’s right to know.

### Court Fees—Romania

APADOR-CH requested information from the MoF on the number of applications to waive court stamp fees and about which payment exemptions, reductions, rescheduling, postponement, or other subsidies had been granted between 1990–2002 as well as how many challenges against court fee amounts were received and approved in the same period. Initially, the MoF did not respond to the request. When APADOR-CH filed an administrative appeal, the MoF denied the information on the grounds that they did not possess it, that processing the data would take longer than 30 days—the legal time limit for answering FOIA requests, and that the data was personal and not of public interest. In response, APADOR-CH took the MoF to court and throughout the appeals process, the courts found in favor of APADOR-CH, ruling that the requested information is not personal, that it is of public interest, and that it is the MoF’s responsibility to organize itself in such a way as to be able to provide answers to public information requests. After the verdict, the MoF still did not fully comply with the court decision in a timely manner. APADOR-CH took MoF to court yet again. The court’s final decision found that “administrative abuse is obvious” and that the MoF had to pay APADOR-CH compensatory (“moral”) damages for not complying with the initial court sentence in time and for violating APADOR-CH’s right to information.<sup>191</sup>

### Surveillance—Romania

One of the most interesting and high-profile cases of using FOIA in sensitive areas is APADOR-CH’s request for information from the Romanian Secret Services (or Romanian Information Services—SRI) and the General Prosecutor’s

Office (GPO) on secret surveillance of Romanian citizens that was requested, approved, conducted, and which resulted in the prosecution and conviction of the monitored individuals.<sup>192</sup> Both the SRI and the GPO refused to release the information on the grounds that it was a state secret. The court found that, according to the Law on Classified Information, all information on activities of the SRI is classified, rejecting APADOR-CH's argument that the SRI must prove that the release of information would harm national security and that the Law on Classified Information forbids the classification of information in order to cover up breaches of the law—which would mean that information revealing possible unlawful surveillance cannot be classified. This case highlights the limits of FOIA as well as the contradictions between the Law on Classified Information, the law governing the SRI, and the FOIA. Even though APADOR-CH continued its advocacy for aligning these laws with the FOIA, these limitations persisted.

However, the lawsuit against the GPO achieved better results. Even though the initial administrative appeal was rejected, all courts involved in the process—including the Supreme Court of Justice—found that the information requested could not be classified because it represented aggregated statistical data, and its release would not endanger national security. This represented a significant breakthrough because it was the first time that information on the secret surveillance of persons was made public by Romanian authorities. However, even after the final verdict of the court, the GPO did not provide the full information requested by APADOR-CH, and what information was released was delayed by over 200 days. But even this partial information was revealing, and APADOR-CH used it to further its human rights advocacy, for example, by pointing out that the prosecutor's office never turned down a surveillance request received from the SRI, that there was a very large number of people under surveillance, that many of these people were monitored over a long period of time, and that only a small fraction of them were convicted of a crime as a result of the surveillance.<sup>193</sup> When APADOR-CH filed another request for information regarding secret surveillance of persons, GPO released partial information

in a timely fashion, demonstrating that court decisions have impacts on agency behavior by clarifying what kind of information must be released and by changing agency expectations about how FOIA will be enforced.

#### **Advertising Contracts—Romania**

In another case, the Center for Independent Journalism (CJI) requested information on public institutions whose advertising contracts were approved by the prime minister and the minutes of meetings in which the awarding of such contracts was discussed. This was a reaction to a press article about a memo issued by the then-Prime Minister Adrian Nastase noting that all advertising contracts of ministries required his prior approval, presumably in order to direct them toward supporters of the ruling party. “Avoidance strategies” employed by the prime minister's office included the issuing of a press release that was then presented as an answer to the information request despite the fact that it did not provide any of the requested information, questioning the legal standing of the plaintiff and of the Chancellery of the Prime Minister (CPM) itself to initiate and stand trial, and arguing that the information requested was not in the public interest was classified. After a first court finding in favor of CJI, the CPM reached an agreement with the NGO and released the information.

#### **Conflict of Interest—Romania**

In 2004, an individual member of APADOR-CH requested from the Prime Minister's Control Department information about the number of controls for conflict of interest performed by the institution, the persons verified, and the outcomes for each case. The CPM refused to answer on the grounds that by the time the request for information was received the control department no longer existed. After a court struck down this argument by finding that the CPM was responsible for communicating the information, the CPM changed its reason, arguing that the information was not in the public interest. Again, the court struck down this argument, finding that the information was in the public interest and requiring CPM to release it; the court also awarded the defendant compensatory (“moral”) damages for having her rights breached.

1. Labeled in different countries as “Right to Information,” “Freedom of Information,” and “Access to Information” laws. The term “freedom of information” was the most common label for the earlier set of laws, and also reflected the close link with freedom of expression. The idea of freedom is tied to the concept of liberties, or freedom from restraints from censorship, for example. The idea of “right” on the other hand, connotes a positive right to public information. The view of access to information as essential to enabling citizens to monitor the performance of public agencies and hold them accountable, suggest that access to information is more usefully characterized as a positive right, not a negative freedom. “Access to information” is a more generic category, and while several laws are labelled “access-to-information laws,” it does not denote the same principle as a legal entitlement. Rather, the right is supposed to enable access. As more developing countries view the idea of citizen access to information as a fundamental right for participatory and open development, the term “right to information” has become more commonly used. This report uses the terms “right to information” in preference to the other terms, but it is synonymous with “freedom of information”).
2. Freedominfo.org 2012; Banisar 2006.
3. Article 19 of the Universal Declaration of Human Rights recognized the right to information as a fundamental human right. Clause 2 of Article 19 of the International Covenant on Civil and Political Rights states that the “right to freedom of expression” includes “freedom to seek, receive and impart information and ideas of all kinds.”
4. Bennett 1997.  
Grigorescu 2002.
5. Among them: The Carter Center, Open Society Initiative, Commonwealth Human Rights Initiative, and Article 19.
6. Jenkins and Goetz 1999.
7. The Indian grassroots NGO, Mazdoor Kisan Shakti Sangathan (MKSS), widely credited with being the driving force for the RTI movement in India, epitomizes this idea of “the right to know” as fundamental to the “the right to live” as well as the exercise of socio-economic rights for better livelihoods and access to better services from the state. Roy and Dey 2004; Roy and Udupa 2010. The MKSS was founded by Aruna Roy, a retired Indian civil servant; Nikhil Dey, a lawyer who left his studies in the United States to take up rural activism; and Shankar Singh, an expert in rural communication.
8. Lord Meghnad Desai at the Fourth Annual Convention on RTI, New Delhi, October 2009, quoted in Roberts (2010: 3).
9. Narayanaswamy 2010.
10. Banisar 2006; Bennett 1997; Mendel 2004, 2009, 2011; Puddephat 2009. The RTI Ratings Index framework developed by two leading institutions in this area—Access Info Europe and Center for Law and Democracy, and has developed a good framework to assess the quality of legislation and provides a useful guiding framework to identify the key dimensions on implementation. <http://www.rti-rating.org/>.
11. Hazell and Worthy 2010.
12. A local NGO, the Human Rights Network Uganda (HURINET-U) conducted a study on more generic requests for information (not using ATIA), and found that 70 percent of the participants in the survey reported not having received a response (HURINET 2010).
13. Citizens Advocacy Office 2003; Access-Info 2011.
14. These numbers might not correspond exactly to the number of people filing requests because many people—especially CSO representatives and journalists—are likely to file several requests, but, they are a close approximation. In some countries, only data at the national level could be accessed, and if requests at the subnational level are taken into account, the statistics on use would be even higher. In India, for example, while the number of requests in 2007–08 was about 250,000, nationally—taking into account requests at both central and state levels, the number was more than three times higher, approximately 800,000.
15. Hazell and Worthy 2010.
16. Ibid.
17. Hazell and Worthy 2010. Although there is little detailed analysis of how RTI is used in different countries, in developed countries, a majority of people can presumably get information—especially information on personal data—through simple requests for information or through online databases rather than having to use RTI. In developing countries, lower awareness about RTI might explain the small percentage of requests.
18. Satark Nagrik Sangathan 2007.
19. Journalists working for The Sunday Times (Heather Brooke and Jon Ungood-Thomas) and the Sunday Telegraph (Ben Leapman).
20. Samia Costa Tavares 2007. <http://www.deccanherald.com/content/184246/power-rti-act-cracking-land.html>.
21. For instance, priorities might include focusing on implementing minimum standards such as creating updated lists or registers; prioritizing archiving documents of the greatest value to citizens, such as those related to budgets, education, and justice; and setting in place clear roles, responsibilities, and coordination mechanisms as another short-term priority.
22. As the 2009 Global Integrity Report pointed out, countries that are among the largest recipients of international donor assistance tend to have the largest implementation gap, suggesting that aid-dependent countries might establish laws and institutions to meet donor requirements but do not necessarily implement them, which leads to a proliferation of legal and regulatory reforms on paper with no actual benefit.
23. Roberts (2006) points out that the countries that initially adopted disclosure laws had a long tradition of respecting citizen rights and the rule of law, a lively popular press, and healthy and independent NGOs, and that the efficacy of RTI in countries with a poorer record on key governance dimensions, such as political and civil liberties, rule of law, and accountable governance, had yet to be tested.
24. Kreimer 2008; Roberts 2006.

## NOTES

25. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23253090~pagePK:148956~piPK:216618~theSitePK:286305,00.html>.
26. In some instances, the right extends to all interested parties, including noncitizens.
27. Weber 1922.
28. Government of India 2010.
29. Chapter III, IV, and V; RTI Act 2005.
30. As evident, for instance, in the file-notings controversy (see endnotes 57 and 80).
31. The original nodal agency was the Lord Chancellor's Department, which was responsible for administering the courts and judicial system. This was merged into the Department of Constitutional Affairs in June 2003, and then renamed the Ministry of Justice in 2007, following the transfer of responsibility for probation, prisons, and prevention of reoffending from the Home Office.
32. Department for Constitutional Affairs 2002.
33. The Council of Ministers repeatedly dragged its feet on promulgating the implementation regulations, even though these were prepared and submitted by the department of information in charge of implementing the 2005 ATIA. The regulations were finally passed in April 2011, gazetted in May, and published and publicly released in July 2011. Even after regulations were adopted after significant delay, potentially high costs, procedural complexities—including multiplicity of forms and processes, and lack of adequate guidance for implementing agencies have been identified as particularly weak. World Resources Institute 2011.
34. In interviews, officials in charge of monitoring implementation in agencies pointed out that agencies might be mis-reporting figures, but there are no resources to audit or cross-check their validity. Interview with DGS, August 2011.
35. Bookman and Guerrero-Ampan 2009; Ministry of Justice 2011.
36. In Albania, for instance, ministers continued to use political spokespersons to deliver information to the media rather than approaching information dissemination from the perspective of RTI.
37. Interview with CSOs, August 2010.
38. Interview with officials, 2010.
39. Cozonac, Guja, and Munteanu 2004.
40. RaaG 2009.
41. Centre for Development and Democratization of the Institutions 2003.
42. Probabilística 2007.
43. Interview with officials, August 2011.
44. RaaG 2009.
45. Last published annual report (2010) compiled by the Department of Government Strategies; 69 percent in 2003; 92 percent in 2004; 79 percent in 2007; and in more than 50 percent of cases in all year.
46. In India, the variations in the rules framed by the central and state governments have resulted in as many as 88 different RTI rules currently in operation in India.
47. RaaG 2009: 10.
48. Probabilística 2007.
49. Ministry of Justice 2011.
50. Interview with DGS, August 2011.
51. RaaG 2009; Access-Info 2009; Citizens Advocacy Office 2003.
52. Interview with CSOs, September 2010.
53. Roberts 2006. Poor organization also made tracking down specific pieces of data impossible.
54. Neuman and Calland 2007. Institutional weakness, lack of resources, cutbacks in civil service, and poor maintenance have made the management of records a major challenge in many of the case study countries.
55. RaaG 2009: 25.
56. Access-Info Europe and the Open Knowledge Foundation 2011.
57. In India, the government attempted to introduce amendments to restrict from the purview of the law—"file notings"—notes that officials make on policy files that are critical to understanding the policy-making process; it also attempted to introduce other amendments. Venkatesan 2010.
58. Over 40 percent of rural and 15 percent of urban applicants polled in a survey reported facing harassment and threats.
- RaaG 2009. Safeguarding the Right to Information: Report of the People's RTI Assessment 2008. Executive Summary." Raag and National Campaign for People's Right to Information (NCPRI). [http://rti-assessment.org/exe\\_summ\\_report.pdf](http://rti-assessment.org/exe_summ_report.pdf)
59. In New Zealand, research showed that straightforward, non-politically-sensitive requests resulted in on-time satisfactory compliance, while politically sensitive requests were delayed, transferred, and refused. Palmer 2007.
60. Neuman 2009.
61. Ibid.
62. Interview with officials, 2010.
63. For instance, in the United Kingdom, the ruling of the ICO can be appealed to the Information Rights Tribunal, a specialist quasi-judicial body. Further, appeals against the tribunal's decisions can be appealed to the Administrative Appeals Chamber of the Upper Tribunal. Finally, appeals against the decisions of the Administrative Appeals Chamber lie with the Court of Appeal. Such a complex structure requiring building capacity at multiple levels of the enforcement system might not work in countries with more limited financial and human capacity. In Australia, a hybrid model is used, where requesters may appeal procedural shortcomings in relation to the processing of their request to the ombudsman, but they have to file an appeal with the Administrative Appeals Tribunal if they want to challenge the substantive decision by the agency in its application of the act's exemptions. Requesters in Hungary have the option to go directly to court for a binding order or to the less powerful information ombudsman. Most choose the information ombudsman route specifically because the courts take so long to determine cases.
64. IFAI 2009.
65. Fox, Jiménez, and Haight 2009; Gozzo 2006.
66. There are only a few cases of the noncompliance being taken to appeals. One high-profile case, Tullow Oil case, demonstrated the weakness of the judiciary in addressing RTI issues. In 2009, a number of CSOs filed a case against the government's refusal to release certified copies of oil exploitation agreements because of alleged confidentiality clauses. The CSOs argued that the information was of public interest. But the chief magistrate said in his ruling that the petitioners had not proved the public benefit from disclosure of the information—a considerable misinterpretation of the law. Interview with CSOs, September 2010.

67. The record of judicial appeals on the Tullow Oil case, and more broadly on accountability issues, shows that the judiciary does not have the specialist technical capacity to address ATIA issues.

68. <http://www.ipp.ro/jurisprudenta544/>; Moraru 2011.

69. *Ibid.*

70. In 2003, the IFAI was allocated close to US\$18 million. This budget increased minimally over the years. By 2009, the IFAI obtained a little over US\$22 million (official information obtained from the IFAI).

71. Ley Federal de Protección de Datos Personales en Posesión de los Particulares, Chapter VI, Article 38.

72. Central Information Commission 2006.

73. A study found that the failure to impose penalties cost the government Rs. 86 crores (Tiwari, Ruhi, and Anuja 2010). The Indian law provides for the imposition of financial penalties, compensation to applicants for any loss or detriment suffered, and disciplinary action against public information officers for noncompliance, but data suggests that less than two percent of penalties imposable under the RTI Act are actually imposed.

74. The RTI law provides for a maximum penalty of Rs. 25,000, whereas several high courts, such that of Calcutta and Gujarat, impose a maximum penalty of Rs. 1,000. See Chauhan 2012.

75. In 2010, an executive decree gave the IFAI the power to sanction individuals who misuse the IFAI's personal databases. Yet, it still does not have the power to sanction public officials who do not comply with the IFAI's decisions (Barajas 2010).

76. Kreimer 2008; Roberts 2006.

77. Lindstedt and Naurin 2010.

78. Access Info Europe and Centre for Law and Democracy 2011. In fact, a study assessing the level of responsiveness across countries found that among countries with longer-standing RTI legislation, newer democracies performed better in terms of greater openness.

79. In countries ranging from the United States, to Ireland, to New Zealand, there has emerged a pattern of initial enthusiasm and use of RTI legislation, followed by official government retrenchment, either through attempts to formally amend the law or through bureaucratic procedures designed to blunt the impact of politically-sensitive information requested by civil society. This official resistance, whether manifested through delays, refusals, or other means, appears to be more of a reaction to politically-sensitive requests filed by journalists or opposition politicians rather than personal requests.

In Ireland, when newspapers published stories revealing official impropriety and misconduct, there was evidence of officials "pre-empting" information requested by opposition politicians or friendly journalists. In Canada, in the 1980s, senior officials hid background papers, sometimes secretly shredded records, and resisted requests for results of public opinion polls, and attempted to limit the effects of the law in practice, shifting tasks to quasi-governmental organizations not covered by RTI—thus excluding data from public exposure, and adopting elaborate procedures for handling politically-sensitive requests, which ultimately led to a delay in their processing (Roberts 2006).

One analyst of New Zealand's law concluded that there were in practice two laws: one that applied to straightforward, non-politically-sensitive requests, which resulted in on-time satisfactory compliance; and one that applied to politically-sensitive requests, which were delayed, transferred, and refused. (Palmer 2007).

The early years of FOIA in the United States were marked by executive branch distrust of the legislation, leading to amendments in 1974, 1976, and 1986. More recently, following the attacks on the United States on September 11, 2001, the United States government tried to significantly narrow the scope of the FOIA. Waning of congressional oversight from 2001 to 2006 may have also led to the slowing of the processing of FOIA requests. FOIA request delays in 2005 increased by 11 percent over those in 2004, while the backlog of unprocessed FOIA requests grew from 20 percent in 2004 to 31 percent in 2005, even though the total number of requests dropped (Relya 2009).

80. In 2005, the Moldovan authorities drafted two pieces of legislation that severely limited access to information: one on state and service secrets and another new law on access to information. Media and NGO groups, supported by the international community, including the Organization for Security and Cooperation in Europe vehemently opposed the draft, which was subsequently withdrawn. In 2005, coordinated action between civil society groups and the international community prevented the government from adopting some controversial laws. The Information and Security Service proposed a draft "Law on State and Official Secrets," which was approved by the government on December 2, 2004, and submitted to the parliament for approval. In addition, the Ministry of Informational Development elaborated a draft law on information. Civil society groups, Transparency International Moldova, and Access-Info actively opposed these laws on the grounds that they would limit access to information. After coordinated pressure, the Moldovan government withdrew both draft laws from parliamentary consideration.

In India, File notings are essentially the opinions and notes of civil servants on government files that sum up the decisions taken on a particular matter. The unease with the disclosure of file notings appears to extend to the highest levels of government, with even the president of India expressing his concerns about this to the prime minister in a string of official correspondence. In 2006, soon after the law was enacted, the DoPT issued a notice on its website stating that file notings were not to be disclosed under the RTI Act. Civil society groups and activists were quick to protest this move and challenged the notice before the central and state information commissions who supported the view that notings could be accessed under the law. The government prepared a draft RTI amendment bill, the main purpose of which was to exclude file notings from the purview of the act. Civil society groups and leading RTI activists rallied against this bill and launched a major campaign with the support of the media, successfully stalling the government from pushing through the amendment. Again, in 2009–10, in response to an RTI request, the government confirmed that amendments to the act were under consideration to improve the functioning of the law and prevent its misuse. These included exemptions of frivolous and vexatious requests for information, discussions on policy decisions, and information from the office of the chief justice of India. After civil society groups addressed letters to the prime minister and Sonia Gandhi to contest these possible amendments, the government decided to shelve them, assuring activists that they would be considered only after consultations with a range of stakeholders. In this way, civil society groups have not only played a crucial role in the passage of the legislation, but also as watchdogs of the RTI Act, remaining vigilant and responsive to any government pushback on the law.

81. In 2006, the Albanian Helsinki Committee successfully intervened, sending a letter to the speaker of the parliament requesting that she stop approval of the government-proposed amendments to Law 8503 that would have added more categories of restricted information. In 2008, CSO groups, with support from Open Society Foundation Albania and the Centre for Development and Democra-

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- tization of Institutions, proposed amendments to Law 8503 to bring it more in line with advanced standards of European legislation. The amendments were prepared in open meetings with representatives of the public administration, members of parliament, interest groups, media, and civil society, but these efforts have still not succeeded. In 2008, CSO groups, proposed amendments to Law 8503 to bring it more in line with advanced standards of European legislation. The amendments were prepared in open meetings with representatives of public administration, members of parliament, interest groups, media and civil society. But the changes never took place.
82. Fox, Jiménez, and Haight 2009; Fox and Haight 2010; Jenkins and Goetz 1999; Singh 2007; Sulaimani 2006.
83. APADOR-CH 2006.
84. Such as FUNDAR, Colectivo por la Transparencia, Fundar, Freedom of Information—Mexico (LIMAC), and Center for Research and Teaching in Economics (CIDE).
85. Such as Uganda Debt Network (UDN), Advocates Coalition for Development and Environment, HURINET, the Foundation for Human Rights Initiative, Anti-Corruption Coalition of Uganda, and the umbrella and the Coalition on the Freedom of Information (COFI).
86. Freedom House 2012.
87. *Ibid.*
88. Jenkins and Goetz 1999.
89. Such as Friends of the Earth, Greenpeace, and Campaign against the Arms Trade.
90. Interviews with CSOs.
91. For instance, the nodal coalition of health NGOs—UNHCO—sits on the Health Advisory Committee and has access to policy making.
92. In Africa, groups such as the Kampala-based African Freedom of Information Centre have encouraged media organizations to play a more strategic—and therefore less overt—role in campaigns for greater openness.
93. Ackerman 2005.
94. Fox 2007.
95. <http://www.opegovernmentpartnership.org/>.
96. PETS, conducted initially in 1996, showed that when information about funding allocation to district schools was publicized (for instance, in national and local newspapers), leakage of funds reduced from 74 to 20 percent—that is, more than 80 percent of the funds were received by local primary schools after the publication of data as opposed to about 26 percent before it was published. While the Uganda PETS initiative is widely cited as a success, following attempts at PETS in other countries did not meet with the same success. Donor studies have concluded that local context is important and governments may not be willing to share unfavorable findings with the public, as was demonstrated in a Tanzanian PETS project. Sundet 2008: 8.
97. World Bank 2004.
98. World Bank 2007. Governance and Anti-corruption Strategy.
99. <http://data.worldbank.org>.
100. The legal foundation for the ATIA was provided by the 1995 Constitution that incorporated a guarantee on access to information to all citizens. This came directly from the concerns of the progressive Uganda Constitutional Commission led by Justice Benjamin Odoki, for the human rights abuses of the preceding decades. Article 41 of the 1995 Constitution reflects the Commission's belief in the importance of fundamental freedom of expression and the right of every person to information as core to the rule of law and democracy: "Every citizen has a right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person."
101. Ghana, Sierra Leone, Kenya, Tanzania, Zambia in Africa, Sri Lanka, and the Philippines in Asia are a few examples.
102. United Nations General Assembly Resolution 59(1).
103. African Charter on Human and People's Rights: [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).
104. European Convention for the Protection of Human Rights and Fundamental Freedoms. <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>.
105. American Convention on Human Rights. <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>.
106. Chapter 2 of the 1776 Swedish Freedom of the Press Act entitled "On the Public Nature of Official Documents" provides for access provisions. [http://www.riksdagen.se/templates/R\\_Page\\_\\_\\_\\_\\_6313.aspx](http://www.riksdagen.se/templates/R_Page_____6313.aspx).
107. Roberts 2006.
108. Szekely 2007.
109. Florini 1999; Roberts 2006.
110. Bennett 1997, 2001; Grigorescu 2002.
111. Roberts 2006.
112. Interviews with stakeholders involved in the adoption of the law.
113. Republic of Uganda 2005.
114. Roberts (2006) suggests that the very reasons that many developing countries—what he, quoting Gunnar Myrdal, characterizes as "soft states"—are adopting RTI legislation, even though they don't have the preconditions of Western liberal democracies, is precisely because they are soft states—because they are more easily susceptible to pressures from international organizations.
115. For instance, auditing and monitoring of the declared assets of elected officials have proven ineffective despite a strong asset disclosure legal regime.
116. Freedom House 2012.
117. OSCE 2006.
118. Article 19(1)(a).
119. For a detailed history of the campaign for the right to information see Singh 2007, 2009; Jenkins and Goetz 1999; Goetz and Jenkins 1999; and Banisar 2006.
120. Singh 2010.
121. Certain provisions of the law came into immediate effect.
122. For a comprehensive overview and analysis of the formulation and approval of the transparency law in Mexico, see Luna Pla 2009: 61.

123. Such as IDIS-Viitorul Foundation. Interview with Igor Mocanu.
124. Law No. 982 from May 11, 2000, regarding access to information, published in the Official Gazette No. 88–90, article 664 from July 28, 2000.
125. Neicovcen 2000.
126. This law was subsequently modified by Law 27927 of February 4, 2003, systematized through a Single Revised Text, adopted through Supreme Decree, and later developed through regulations in Supreme Decree.
127. [www.cdep.ro/pls/proiecte/upl\\_pck.proiect?idp=2517](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=2517).
128. Law 182/2002.
129. Which derives its name from Article 19 of the Universal Declaration of Human Rights.
130. Mendel 2004.
131. Mendel 2003: 96–8.
132. Ostermann 2005.
133. Prime Minister 1969.
134. Kettle 2010.
135. Singh 2010.
136. Outlook India 2006; IBN Live 2006.
137. Banisar 2005.
138. Law 28664 on the National Intelligence System and the National Intelligence Directorate.
139. For a comprehensive analysis of all state access-to-information and transparency laws see, Diego Ernesto Díaz Iturbe, coord. “Métrica de la Transparencia.” CIDE, 2007.
140. Views expressed in discussions with various stakeholders.
141. In these cases, the results are mixed. Very few institutions have established effective mechanisms to receive requests for information; only the supreme court is credited with designing a good system.
142. [http://articles.timesofindia.indiatimes.com/2010-04-13/india/28130376\\_1\\_judiciary-chief-justice-information-act](http://articles.timesofindia.indiatimes.com/2010-04-13/india/28130376_1_judiciary-chief-justice-information-act); [http://articles.timesofindia.indiatimes.com/2010-01-13/india/28135423\\_1\\_cjhc-verdict-judicial-independence](http://articles.timesofindia.indiatimes.com/2010-01-13/india/28135423_1_cjhc-verdict-judicial-independence); <http://www.thehindu.com/news/national/article2013124.ece>.
143. George Akerlof, Michael Spence and Joseph Stiglitz received the Nobel Prize in 2001 for their analysis of how imperfect information lead to market failures. Also see Akerlof 1970; Spence 1973; and Stigler 1961.
144. Islam 2006 and others.
145. Stiglitz 2001.
146. World Bank 2004.
147. Ibid.
148. Jenkins and Goetz 1999.
149. Accountability has been characterized as being comprised of “answerability” on the one hand and “enforcement” on the other. Access to information by itself enables answerability or “the obligation of public officials to inform about and to explain what they are doing.” But enforcement requires “... accounting agencies to impose sanctions on power holders who have violated their public duties.” Ackerman quoting Schedler 1999; Fox, 2007.
150. Jenkins and Goetz 1999.
151. Workers and Farmers Union. Roy and Dey 2004; Roy and Udupa 2010. The MKSS was founded by Aruna Roy, a retired Indian civil servant; Nikhil Dey, a lawyer who left his studies in the United States to take up rural activism; and Shankar Singh, an expert in rural communication.
152. Hazell and Worthy 2010.
153. For example, CDDI in Albania and Access-Info in Moldova.
154. The RaaG study used a triangulation of methods, floating requests, conducting surveys, and accessing CIC data. Individual interviews were conducted with 18,918 persons across ten states and Delhi, including 1,415 PIOs and heads of offices and departments. A total of 630 focus group discussions were organized in villages and districts. The total number of participants in the study was 37,704 including 18,786 people who participated in these groups. More than 1,000 public authority offices were inspected in both rural and urban areas. Over 800 RTI applications were filed with various public authorities across the country. Data from over 25,000 RTI applications was analyzed. Over 60 papers and magazines were analyzed for content and coverage. Over 5,000 case studies were extracted, depicting successes, failures, and peculiarities of the RTI regime.
155. The RaaG study, for instance, was funded by Google Foundation.
156. Islam 2003; Kaufmann and Bellver 2005.
157. Kaufmann and Bellver 2005.
158. Islam 2006.
159. Reinikka and Svensson 2005.
160. Hubbard 2007.
161. Joshi 2010.
162. Ibid.
163. Hazell, Worthy, and Glover 2010; Worthy 2010.
164. Probabilistica 2007.
165. Worthy, Amos, Hazell, and Bourke 2011.
166. Ibid.
167. Holsen 2007.
168. Coalition of Journalists for Open Government 2011.
169. Ibid.
170. Hazell 1989.
171. There is one discrepancy: the percentage of refusals went up spectacularly, from 1–3 percent before 2006 to 39 percent in 2008, but no one from central institutions interviewed was able to explain why.
172. Access-Info 2011.
173. Citizens Advocacy Office 2003.
174. Open Society Justice Initiative and Centre for Development and Democratization of the Institutions 2007.
175. Open Society Justice Initiative 2006.
176. Argentina, Armenia, Bulgaria, Chile, France, Ghana, Kenya, Macedonia, Mexico, Nigeria, Peru, Romania, South Africa, and Spain.

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177. For example, staff charts or budgets that are scanned and attached as graphic files have poor resolution; budgets cannot be converted into spreadsheets for analysis.

178. State Publication Center.

179. Peisakhin and Pinto 2010.

180. McCall and Wilde 2007.

181. Dimba 2008.

182. Martinez-Moralez 2009.

183. <http://cic.gov.in/bestpractices.htm>.

184. [www.subsidiosalcampo.org.mx](http://www.subsidiosalcampo.org.mx).

185. Fox and Haight 2010: 140.

186. See Gozzo 2006.

187. *El Universal*, March 30, 2011.

189. Sundet 2008.

190. [http://rti.gov.in/rticorner/studybypwc/progress\\_made.pdf](http://rti.gov.in/rticorner/studybypwc/progress_made.pdf).

190. [www.sar.org.ro](http://www.sar.org.ro).

191. Cases taken from APADOR-CH (2006) and from [http://www.apador.org/acc\\_cases.php?tip=8&order=date%20desc](http://www.apador.org/acc_cases.php?tip=8&order=date%20desc).

192. Specifically, APADOR-CH asked the Romanian Information Service General Prosecutor's Office for information about requests for secret surveillance measures against members of political parties, civic associations, and journalists filed with the general prosecutor's office; warrants granted and extensions; total duration of surveillance in each case; commercial companies set up or taken over; and their revenues and expenditures. Requests for secret surveillance measures filed with GPO between 1990 and 2002 on grounds of national security and criminal investigation; warrants granted and extensions; persons subject to secret surveillance; persons prosecuted; final convictions; persons notified of being under secret surveillance after expiration of warrant; complaints against secret surveillance activities or warrants; number of those found legitimate; and longest duration of an authorized surveillance.

193. "Of the 5,489 warrants for monitoring, only 1,451 persons were sued and only 692 sentenced definitely. It results that the privacy of 4,500 persons was violated without any reason." See <http://bignews-magazine.com/2003/12/apador-ch-discontent-with-information-from-prosecution-office/>.

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The fundamental right of citizens to access information about their governments was first recognized in Article 19 of the United Nations Declaration on Human Rights and was also subsequently integrated into the constitutions of several countries. For much of the twentieth century, the right remained primarily theoretical and aspirational, except in a handful of countries—mostly western industrial democracies—that adopted legislation to operationalize the right to information. Over the last two decades, however, the number of countries with laws guaranteeing the right to information and enjoining the government to put in place necessary measures to enable the exercise of this right has grown exponentially—from less than 13 before 1990 to more than 90 by 2012.

The adoption of an RTI law is an important statement of a country's move toward more accountable governance. Access to information might be cast in intrinsic terms—as a democratic right of citizens to access information about the state's functioning and the democratic responsibility of the state to make this information public. But the rapid spread of RTI legislation in developing countries has led to a focus on RTI in more instrumental terms to address some of the most difficult governance, welfare, and development challenges, by opening up decision-making and functions of the state to public scrutiny.

However, while there is considerable literature on good practices and standards of legislation, there is little empirical research on how these provisions worked in practice, especially in developing-country contexts, if they have been effectively enforced, or on the effectiveness of RTI laws in fulfilling stated claims of improving transparency, accountability, good governance, or service delivery. The research on which this report is based was undertaken as a means of bridging this gap and on understanding the dynamics of implementation and effectiveness of RTI laws.

It looked at a number of issues on the effectiveness and impact of RTI laws and the factors that might explain how effectively the law works. What happens after the law is passed? Does it actually enable citizens to gain access to information, and what kinds of information? What evidence exists of the broader impact of RTI laws—for instance, in strengthening accountability of public officials, in anticorruption, and so on? In countries where there is evidence of the law working well, what were the strengths of the factors that might explain this? In countries where it is not being used, what constraints and challenges can be identified?

The project looked at these issues in eight countries that have all passed RTI laws in the course of the last decade or so, span across different regions, and represent a range of income levels and varying political and administrative traditions. Although the number of countries under review is small, their experience offers useful lessons on potential challenges and constraints in setting in place the institutional changes, capacity enhancements, and normative shifts necessary for RTI laws to function effectively. The report draws lessons from the experience of these countries to inform policymakers and officials charged with implementing RTI in other contexts, who must be cognizant of and make concerted and explicit efforts to address these challenges if the Right to Information is to become a reality.