



“Freedom of Information and Sustainable Development, Sealing the Link”

Final report of the UNESCO Experts Meeting held in Paris on March 17-18, 2008

Drafted by Caroline Millet

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The PDF version of the report as well as full text of experts’ presentations, Meeting’s concept paper, and additional background material on freedom of information can be downloaded at www.unesco.org/webworld/en/foi

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Executive Summary:

At a time when the overarching priority for the UN and the international community at large is achieving the Millennium Development Goals and the difficulties of doing so become apparent; development stakeholders are broadening the discussion as to what elements of the development process need to be more widely focused on. This can be seen with the increasing inclusion of human rights and governance into the development agenda, which have become more widely incorporated within the development dialogue in recent years. In this context, the fundamental right to freedom of expression, and its corollary of freedom of information, is pivotal for the achievement of sustainable and human development, poverty eradication, good governance, peace and reconciliation, environmental sustainability, and respect for human rights. Therefore, UNESCO, as lead UN agency for the promotion of free flow of information and freedom of expression, in recent years has been organizing a series of advocacy and research activities to explore, to “seal the link”, between freedom of expression, freedom of information and sustainable development.

This report is an outline of a two-day experts meeting on the link between the realization of freedom of information and achieving sustainable development. The meeting, organized by UNESCO at its headquarters in Paris, brought together 20 international experts as well as other participants and observers from the civil society, UNESCO Member States and the Secretariat. By sharing specific experiences from around the globe the participants aimed to draft strategies which would make implementation and advocacy more effective in this area.

The meeting was divided into three sessions at which the participants made presentations, followed by a day of group work and ensuing presentation open to the wider public. The report provides a summary of all the contributions made by the participants in each of the three panel sessions, as well as some of the points raised during the open floor discussions. It will serve for further work on this topic during the conference for the celebration of World Press Freedom Day 3 May 2008 in Maputo, Mozambique, which is to focus on Freedom of Information, Access and Empowerment.

The first panel looked at how right to information can advance the development process and be used to make the development agenda “pro-poor”. The session also explored what information would be useful and the potential benefits of right to information for marginalised communities. It was agreed that whilst a good law is essential for implementation, the involvement of a wide range of bodies including local communities and civil society groups is key. The importance of proactive disclosure within the law was stressed and it was agreed that this was one of the most important elements of any policy on right to information.

The second panel examined what have been the challenges for right to information advocacy and implementation of the legislation, with a special focus on developing countries. This provided an opportunity to detect common problems shared by many countries, which is especially interesting given that the adoption of many access to information laws are a recent phenomena. This section focused on the importance of getting governments to incorporate access to information within the development process, including providing adequate training to civil servants. Indeed it is not just a right to information law which has to be passed, but rather a cultural change within the authorities from a culture of secrecy to one of openness.

The third panel addressed the issue of promoting the visibility of right to information on the development agenda. It was widely agreed that this was an essential component when discussing the practicalities of aid effectiveness and one which has sadly been overlooked by many donors and international organizations. It was agreed that if international organizations are to have any credibility in pushing through right to information on their agenda then they must lead by example and be more transparent in house. In order to really make the development process participatory, citizens should also be included within the very process of deciding what information is important to them rather than simply having certain types of information handed down to them.

The last part of the report summarises the findings of the two working groups. The first group examined the barriers confronting the right to information process and if they are going to have an impact on sustainable development. These include low levels of literacy, poor infrastructures and infrastructures and lack of political will in applying legislation and making information available.

The recommendations made by the second group draw on the lessons learnt from implementation of right to information legislation and laid out future strategies for development actors to strengthen right to information advocacy. This last section spells out the role and necessary engagement from governments, civil society and international organizations. It also stresses the importance of partnerships with the private sector, especially those bodies engaged in collecting public information.

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Terminology: The term Freedom of Information (FOI) has been in common usage and this is reflected in the title of the Experts Meeting as well as in UNESCO's programming documents (34 c/4 and 34 c/5). However, given that the term Right to Information (RTI) is now increasingly being used by FOI/RTI experts' community and it was the prevalent one during the Experts Meeting; this is the terminology which will be used within this report.

Methodology: This report was drafted by Caroline Millet in the month following the experts meeting. It contains information gathered during the experts meeting in the form of note taking as well as video and sound recording. The summaries of the participants' presentations were verified by the participants themselves. This report does not seek to be an exhaustive account of everything discussed within the two days but rather to present the case studies discussed by the participants and convey the underlying issues and complexities with the implementation of RTI and its link to sustainable development.

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The objectives of the Experts Meeting which brought together 17 international experts, participants from civil society, the UNESCO Secretariat as well as UNESCO Member States; were as follows:

- 1 Explore the link between RTI, sustainable development and empowerment
- 2 Analyze regional specificities of RTI laws and the link to specific development contexts
- 3 Brainstorm strategies as to how RTI can be made more visible on the development agenda
- 4 Share challenges faced by RTI advocacy campaigning
- 5 Share challenges faced in the implementation of RTI laws

Opening Remarks by Mogens Schmidt, Deputy Assistant Director-General for Communication and Information, and Director of the Division Freedom of Expression, Democracy and Peace, UNESCO:

The very notion of “Free flow of information by word and by image” is at the core of UNESCO’s Constitution – it is indeed at the heart of our mandate. The right to access information held by public bodies is a pillar for putting into practice “free flow of information”, as well as working towards the fundamental human right of freedom of expression.

The overarching priority for the entire UN family is the achievement of the Millennium Development Goals. Several studies have analysed and validated the link between on the one hand citizens’ and journalists’ access to information, and on the other hand good governance, transparency, the fight against corruption, environmental sustainability and many other preconditions for sustainable development. Nonetheless, it remains a problem that only very rarely has this link been highlighted on the development agenda. Donors tend to ignore the role that media and information provision can play; and even UN Country teams could pay more attention to this area.

Three years ago, Resolution 55 of UNESCO’s 33rd General Conference stated that freedom of expression is a fundamental condition for good governance, for human rights-based development and for the prevention of violent conflict; all of which are key contributors to poverty eradication. These synergies were further examined during the World Press Freedom Day Conference in Colombo on “Media, Development and Poverty Eradication” on 3 May 2006.

However there is still a lot to be done. UNESCO has a clear responsibility to deepen and widen this discussion, and honor the specific request which was formulated by the participants at the World Press Freedom Day Conference in Dakar in 2005 on “Media and Good Governance” whose final declaration called for UNESCO: “to promote the adoption of national access to information legislation and to develop international principles on access to information”.

There is no doubt that the first edition of Toby's book had a considerable impact, not least in its translations into several languages such as Arabic, Farsi/Dari, Nepali and Bangla. However, the rapid developments in the sector of RTI legislation have made it necessary to update this book. I am therefore extremely grateful to Toby who agreed to write this newly revised and updated edition. New countries have been added to the comparative analysis, such as Azerbaijan, Jamaica and Uganda; all the sections have been updated and a new introduction has been written. A translator is already working on the French version, while the Arabic translation is also in the pipeline.

UNESCO hopes that this book will continue to serve as a tool for "living" information to support the development of legislations enabling freedom of information. In the meeting today and tomorrow we want to pick your brains; to listen to you and to learn from you in order to sharpen our knowledge about how freedom of information, how free access to public information can actually contribute to social and human development. We are interested in hearing your views on this and collecting and sharing some best-practices for advocacy, drafting and implementation.

Toby Mendel, Law director, Article 19 and author of "Freedom of Information: A Comparative Legal Survey"

(In presenting the second revised and updated edition of his comparative study, the author took the opportunity to take a closer look in the field of access to information after the trend of RTI legislation swept the globe.)

There have been several key developments in RTI since the first edition of the book was published five years ago. At the time, recognition of access to information as a fundamental human right was just beginning to emerge. However, today it is fair to say that recognition as a human right is embedded and that it is referred to not just by activists in this field, but also by civil society more generally and even by governments.

The claim made by some that the pace of adoption of new laws is slowing down is incorrect, given that 4 of the 14 laws analyzed in the book were passed after 2002 and another 3 were adopted in 2002. Indeed the importance of this concept has now been acknowledged in every region of the world, with the adoption of the Jordanian law last year. At the time of the first edition, there had been some statements on this right from courts around the world, but the seminal *Claude Reyes and Others v. Chile* case, decided in 2006 by the Inter- American Court of Human Rights, was the first to provide clear and unequivocal recognition of the right to information as a human right founded in the right to freedom of expression.

Most of the RTI laws in place today provide for proactive disclosure of information even in the absence of a request. This is becoming a more important element in more recent laws and, over time, this may become the most important component of these laws, ensuring widespread access for all members of society, especially the marginalized. This system does however impose high implementation costs.

Another subject of debate concerning RTI laws has to do with the obligation that they place on private bodies to disclose information. So far, South Africa is the only country which imposes that obligation. However the problems experienced with the implementation of this in SA show what a potential Pandora's Box this could be. The difficulties lie in deciding how to delimit what bodies should disclose information to the public and what information the law should cover. In this matter, as indeed in all matters concerning the implementation of RTI laws, we are reminded of the value of an independent oversight body.

To date, a number of other areas have proved problematic, both in the content and implementation of RTI laws:

- The list of exceptions remains too broad in scope
- Most RTI laws do not overwrite secrecy laws, so that existing secrecy rules remain in place
- It is essential both to train civil servants in the ways in which they should respond to information requests and to protect them for good faith disclosures
- The difference between disclosing documents and information is misleading and must not be used as an excuse for non-disclosure.
- Promotional measures, including communicating to citizens as to how they may use RTI laws, is something that governments need to take greater responsibility for

There are still some questions which need to be answered in terms of how much effort is required in the area of producing/extracting information. How much processing of data are public bodies supposed to engage in? Access to raw data will not facilitate the participation and empowerment of most citizens, therefore to what extent should the data be rendered consumer friendly? A related question is whether public are bodies expected to create information which they do not already possess. This would entail additional manpower or perhaps software. Put differently, what information should public bodies be required to maintain?

3 categories should be examined when assessing the impact RTI laws can have within any particular context. These categories were referred to throughout the meeting and were used as a tool to pinpoint problems areas.

- 1 Legal content.** What are the provisions made in the law itself and will they facilitate access to information? The omission of certain key elements such as an independent oversight body can severely limit the impact of a law. Subtle legal problems can fundamentally undermine the implementation of RTI laws. For example, Thailand lacks timelines, which has led to an effective collapse of the information request system.
- 2 Political will.** Do governments, public bodies and administrations engage positively in implementing the law? Do they provide the necessary training and resources for their officials? Often the very culture which has been nurtured within administrations has to shift from a culture of secrecy to a culture of transparency.
- 3 Civil Society.** A law could in theory be excellent, but if it is passed in a vacuum and there are no actors willing to put it to good use for the benefit of citizens, then it serves little purpose and will likely wither and die.

When the link between sustainable development and freedom of information was introduced there was consensus that the very actors engaged in the development process had to lead by example. Development agencies and donors should be more transparent about their actions, budgets and administration if they expect it from other actors. The Global Transparency Initiative is currently working towards promoting this idea among international financial institutions.

Finally, it was noted with disappointment that the UN system has not issued more statements on the importance of the RTI. This should be examined and we should urge the UN to play more of a leading role on this issue.

Q+A Points raised in the discussion

It was pointed out that the Council of Europe in its recent bid to harmonize principles on freedom of information stipulated that disclosure of documents did not apply to those that were stored electronically. This was seen as a potential loophole in the standards and one which could undermine the breadth of the documents accessible to the public.

The question of record management was raised. Usually RTI laws authorize a central figure to set record management standards. In some more sophisticated laws the record managing institutions are specifically mentioned within the law such as Mexico, even if the management of the records is not in itself stipulated.

Ultimately it was commented that fireproofing a law is impossible. As long as the mechanisms for appeal exist, then some problems will be ironed out through usage.

Session 1: **'Right to information' and sustainable development**

Activists are intuitively convinced that there is a link between development and right to access information through the empowerment that it creates. The challenge however, lies in mobilizing the international community into understanding and endorsing the fact that RTI is a key contributor to development.

The culture of secrecy that exists in many countries forces us to examine how we look at Human Rights. While international jurisprudence is stipulating that human rights are indivisible, interdependent and non-hierarchical, sometimes there is an attempt to establish a "de facto" hierarchy within the rights. In some cases socio-economic rights do not have the same place as civil, political or human rights. However, increasingly a consensus has developed that the interdependence implies that all these rights should be considered together. RTI should be considered by all actors as a facilitator in the actualization of all human rights.

What we need to consider in establishing the link between access to information and development is: what would a pro-poor FOI law look like?

Steve Buckley, President, World Association of Community Radio (AMARC)

Over the last 10 years there has been a close parallel between the adoption of RTI laws and the development of policies and laws that enable community broadcasting. It is perhaps not surprising that these have been concurrent trends since they are two sides of the same coin. As RTI legislation comes into practice, a plurality of independent media, including community broadcasting is needed to ensure that information is actively disseminated. Indeed a lack of media pluralism will seriously reduce the benefits and the impact of RTI legislation.

Access to information legislation can assist in reducing the information asymmetry between citizens and governments and contribute to public accountability by enabling the watchdog

function of the media. Although combating corruption and promoting good governance have been a primary focus of RTI legislation, it is also important to consider the wider benefits of enabling people to make better informed social and economic choices - the knowledge function.

When we consider RTI legislation, the primary focus is often at a national level, however the international and local levels should not be overlooked. Access to information can also contribute to improved local governance and to local knowledge for development. At the international level we need UN and other intergovernmental bodies to set a good example by becoming more transparent in their own processes, including mechanisms to ensure information disclosure.

From the perspective of sustainable development, we also have to be conscious of the many other obstacles to access to information for people experiencing poverty and marginalization. RTI legislation is necessary, but by itself it is not a sufficient remedy. These obstacles include low levels of education and literacy, poor communications and transport infrastructure, cultural and language barriers and discrimination based on gender, caste, class, ethnicity or other factors.

* * *

Helen Darbishire, Executive Director, Access Info Europe, and Chair, FOI Advocates Network (FOIANet)

How can we make right to information a tool for ensuring economic justice so that it works towards the pro-poor agenda? In essence, being pro-poor translates into being proactive. Many access to information laws contain generic lists of information to be disclosed proactively without the need to file requests. Although these serve as guidelines as to what types of information should be available, it is difficult to come up with an exhaustive list. In some specific sectors, such as the environment, more detailed lists have been developed. For example, the Aarhus Convention establishes the types of information which should be collected by governments from private bodies in order to assess the impact of their activities on the environment. Proactive disclosure of information is part of the right to information and should be incorporated into all access to information and sector specific laws.

The right of access to information applies to all information held by public bodies, and this includes information collected from private bodies. International and comparative standards have not yet defined the extent to which the right to information applies directly to private bodies. In the meantime, the onus is on governments to collect sufficient information from the private sector so that people can have the information necessary for defending other rights. This information should be collected in sufficient detail so that it can be of use to the public. For example, there was concern recently in the USA that the Environmental Protection Agency was reducing the amount of information which companies were obliged to provide about their emissions and waste. The failure to collect such information would have had a direct impact on the people's ability to access information on pollution in their environment.

It is also not enough to simply require that information should be available: It has to be made available in a timely fashion so that people can put that information to use and participate in the decision-making processes. The right to information cannot be simply about facilitating a retroactive exercise in accountability.

Another key element of pro-poor transparency is information about international aid flows. National access to information laws can be used to access some of this information, but much aid does not go through the government. Therefore, if we want to develop aid transparency

one should require aid agencies (including multilateral organizations), as well as other actors in the field to disclose their information. Such transparency should not be seen as a threat, but as a way of securing participation from stakeholders and ensuring effective and pro-poor aid delivery. The "Publish What You Fund" campaign is working towards this goal of increasing aid transparency.

Issa Luna Pla, Professor, Legal Research Institute, Autonomous National University of Mexico

Access to Information legislation in many countries around the world has been passed with the aim of contributing to anticorruption and good governance objectives. A recent survey of over 2000 Mexican civil servants showed that most saw the 2002 right to information act as benefiting the government rather than civil society. The act was perceived as a way of keeping themselves accountable and not as benefiting their own citizens. Clearly there is a need for government agents to understand the benefits of this law for the people.

Because requesting information often requires a certain level of knowledge about the government, proactive disclosure of information could be achieved which better targets the poor. This implies knowing more about the poor's information needs, in order for RTI to have a more direct impact on their lives.

Development is a process aiming to expand the freedoms that people enjoy and information is a way of enabling people to live better lives through empowerment. To achieve this there should be a special focus on the sectors whose information will most affect people, such as information on education, health, labour opportunities, land property and social programs. Bearing these in mind would help in drafting legislation which targets poor communities with strong proactive targets regarding information policies. There is a need to correct information asymmetries and really focus on local communities by providing them with information on their rights and opportunities in order for the impact on development to be real.

Manju Menon, Kalpavriksh, Environmental Action Group, India

The right to information should be regarded as a right to life. The availability of relevant and timely information is essential for individuals and communities in exercising this right and in protecting their lives from harmful and threatening situations and events. For example, this was articulated by the Supreme Court of India in *Oleum* regarding a gas leak case that took place in a fertilizer plant in the city of Delhi in 1986.

The process of law making is as important as the text of the law itself. In India the ATI law was the result of a widespread movement, which included citizens from different walks of life such as doctors, media professionals, teachers, historians; their inputs during the law making process helped to develop a robust legislation and importantly one that would benefit ordinary people.

However, problems still exist with the implementation of the law. Our experience has been that a significant number of requests go into first appeal. The Information Commissioners in charge of ensuring the implementation and redressing grievances are mostly ex-bureaucrats who continue the bureaucratic culture of withholding information.

The use of RTI in India has increased public availability of information such as the extent of ecologically sensitive land (such as Protected Areas) that has been diverted for mining and other industry/infrastructure etc. It has also increased the availability of information regarding the levels of compliance to environmental impact mitigation conditions by project developers.

The Act has also enabled environment groups and civil society to get access to and understand the workings of experts committees which advise government departments and ministries. This has exposed the fact that these committees in fact are disconnected from land struggles and other critical realities on the ground. Their reliance on scientific data alone, to address questions of equitable resource use has resulted in mitigation based approaches rather than preventive ones when dealing with environmental problems.

Summary of the key points focused on in Session 1:

A good law is essential for successful implementation. The process of law-making is a crucial step, rendered most useful and effective when it involves the communities themselves.

In RTI there is a consensus that proactive disclosure is not only essential but perhaps even the most important element of the legislation. However, defining proactive disclosure is a difficult process which should involve end-users.

In order for a successful implementation of RTI a wide range of bodies, including private bodies, need to be involved.

Q+A: Points raised during the discussion

Even if compliance information makes it feasible for civil society to monitor whether companies adhere to certain standards; in practical terms it is difficult for citizens to take on a monitoring role, even if the information is available. Perhaps the focus should be on extending the obligations of compliance and information disclosure to include not only governments, but also private companies who undertake public functions or whose activities impact on the natural resources of a country.

The role of national courts should be examined with regards to their potential role for obliging governments to produce certain types of information. Indeed, the role of courts is crucial since in some instances, such as the draft convention on the Council of Europe, there is no binding right forcing disclosure; merely the possibility of re-submitting the request.

RTI laws should advocate a balance between forcing and encouraging disclosure. The idea is not to constantly penalize the administration but rather to encourage a culture of openness and convince governments and civil servants that openness is good for them.

Session 2: **Challenges for advocacy and implementation of RTI laws**

Despite fears voiced in the past that RTI would make governments collapse, it has now become clear from numerous examples that this is not the case. Of course the extent to which

governments should process and gather information is still debated given that processing enables access and use of the information by the public; whilst simultaneously carrying significant costs.

When envisaging passing RTI laws there are many other factors which have to be considered, which will have a direct impact on the successful implementation of that law. Especially within the context of developing and transition countries, one has to take into account that the existence of a law will not have the same implications as it would in stable democratic environments in developed countries. Therefore, one has to accept that RTI is neither the start nor the end point. Civil society and political will are key in building a culture of access to information.

Cece Fadope, Africa Programme Officer, Article 19

The recent election and ensuing unrest in Kenya showed us what happens when information is hidden and manipulated. In this instance the role of the media was key to the events which occurred in the country. In Kenya there is as yet no RTI law, which means that the mechanisms for implementation are as yet unclear.

In general African leaders have acknowledged that RTI laws are necessary, but there is a resistance to passing them. We have to ask ourselves whether these laws will be passed to improve the quality of life for the people or whether they will be mainly focused on promoting the policing, power and security aspects.

One could argue that even though African governments have conceded that democracy and development are worthwhile objectives, they have not accepted the changes necessary to put these into practice. This is why they may not see the adoption of Human Rights, such as freedom of information and expression, as critical to the democratisation and development processes. Activists need to convince African leaders that RTI is crucial to development and that it is not a problem but a solution to their problems. The idea is not to coerce them but to sell them the very idea of right to information.

One hopes that both Sierra Leone and Kenya whose presidents have talked about promoting transparency will be true to their word and promote RTI. So far South Africa is the only Sub-Saharan country that has a definitive RTI law and even so, 70% of requests submitted remain unanswered.

Virginie Flores, Secretary, Group of Specialists on Access to Public Documents, Council of Europe

The European Convention on Human Rights indirectly offers a certain degree of protection with regard to environmental matters, as demonstrated by the evolving case-law of the European Court of Human Rights in this area. The Court has established that public authorities must observe certain requirements with regards to information and communication.

Concerning the right to receive and impart information and ideas on environmental matters, the Court has found that there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of

general public interest (*Steel and Morris v. the United Kingdom, judgment of 15 February 2005*). On the other hand, freedom to receive information under Article 10 cannot be construed as imposing on public authorities a general obligation to collect and disseminate information relating to the environment of their own motion (*Guerra and Others v. Italy, judgment of 19 February 1998*).

Concerning access to information, public authorities may be under a specific obligation to secure a right to access to information in relation to environmental issues in certain circumstances. The Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's right to information (*Öneryıldız v. Turkey, judgment of 30 November 2004*). Public authorities must provide information to persons when their rights to life under Article 2 and to respect for private and family life and the home under Article 8 are threatened (*Guerra and Others v. Italy Case*).

Hisham Kassem, Journalist, Former publisher of Al Masry Al-Youm ("The Egyptian Today")

Egypt does not deserve its Transparency International Rating which states that it is in the process of trying to implement access to information. For example, to this day any reporting on the military can easily lead to being court-martialed.

There is a case to be made for certain changes to take place within the country before a RTI law could feasibly be passed and/or make a change:

One argument is that it would be preferable for civil society to strengthen itself before the RTI law is passed, thereby ensuring that implementation would follow the law.

Second, the current inefficiency of the administration means that even obtaining a birth certificate can be a lengthy process. This means that other information request will be funneled into an already slow process. There is a strong case to be made here for improving IT usage within the government's administration.

Finally, one could argue that certain strong business entrepreneurs will never allow information to be accessible on how much they pollute, for example, even if a law comes into place. Therefore, one could argue that the overall power balance and democratization process within the country needs to change.

Advocacy groups in Egypt should currently be focused on preparing a "good" RTI law and not on passing any law at all costs. If civil society is not strong enough to use that law once it exists and if the law contains too many loopholes, then it will not facilitate the changes that one would hope for.

Eva Moraga, Legal Director, Access Info Europe, Spain

Access to information depends on a certain level of efficiency within a public administration. In Spain a culture of secrecy is prominent, whereby civil servants are not used to giving information. The current criminal code also contains 2 chapters that enable sanctioning of

civil servants who disclose information improperly. At present, only 40% of requests are answered.

In order for access to information proceedings to be efficient, one has to move beyond the issue of having a law, to civil servants being able to answer information requests. In order to make this happen, one needs politicians to believe that access to information is a person's right. It is telling that many politicians from the Spanish socialist party didn't even know that the right to access information was within their own manifesto, showing the degree to which this issue lacks priority on the agenda.

RTI is not just dependent on the technical capacity to access information, but more on the political will to communicate information. Holding public meetings in which people can be given information and participate is an important asset, especially in developing countries where people do not have access to the rights or services which normally enable participation.



Priscilla Nyokabi, Policy Research and Advocacy Programme International Commission of Jurists, Kenya

“People do not eat information but without information they will starve to death”

The situation in Kenya has been evolving in terms of both economic and legal amendments, which can facilitate development. However, the laws that allowed the repression and concealment of public information are still in the statute books: Books and Newspapers Act – Criminal Libel – The Penal Code and the Omnibus – Official Secrets Act that criminalizes disclosure and access to information held by Government. This only highlights that the culture of secrecy remains alive within government. RTI should not just be the business of The Ministry of Information and Communication, it applies to all Government departments.

RTI is part of many laws that would contribute to supporting good governance. In general, the web of laws drawing from years of authoritarian regimes is not pro-access to information and in the case of Kenya, over 30 pieces of legislation impede access to information.

A few examples where freedom of information is omitted or overridden:

- The Constituency Development Fund Act of 2003 and amendments in 2007 are thin on transparency and access to information from the public.
- Draft Judicial Services Bill 2007 does not make for provision of access to information even as the new draft Freedom of Information Bill, 2007 seeks to repeal the Official Secrets Act and official secrecy.
- The Constitutional backing for a RTI Law in Kenya is very weak as it does not express but rather implies protection of freedom of expression.

The difficulties faced by the RTI campaign are numerous, including capacity building for key agents including new Members of Parliament and funding both awareness-raising and publicity. There needs to be a broad based coalition for the changes to become effective. One way of making the campaign seem relevant to other actors would be to have updated surveys which illustrate the difficulties of doing business in Kenya without access to information.



Roberto Saba, Executive Director, Asociación por los Derechos Civiles (ADC), Argentina

In Latin America the main focus of the freedom of information discourse has been the role it could have on promoting transparency and weeding out corruption. However, changes in the political environment on the continent means that many governments in power got there through democratic processes and have backing from large sectors of society. This means that one can currently focus on the other benefits which access to information engenders.

The focus should not purely be on access to information, but also on the collection, organisation, production and provision of that information; as well as its instrumental value in producing new legislation. The legal structures which protect governments also have to be in place, otherwise there will be no disclosure. Within the administration there should be protection of civil servants who fear the repercussions of disclosing information. Training of civil servants, lawyers and judges are also crucial elements to a working access to information regime.

Civil society needs to realise that access to information is important and that it is a government's duty to provide that information. They often lack the resources to go through the legal proceedings which would be necessary to extract that information.

One needs to draw links between tangible situations, such as the economic collapse in Argentina and the role which access to information could have during these situations. Indeed after the economic crisis in Argentina several NGOs became interested in the freedom of information problems. It is only if we succeed in drawing links between other development issues and the importance of access to information that the advances will really take place.



Martin Tisné, Programme Director, Tiri, United Kingdom

If there has been some talk of increasing transparency of aid funds from multinational donors this has not been the case with bilateral aid flows, where the focus has traditionally been on quantity of aid. It is hoped that the 2008 Accra aid effectiveness summit will address this issue. The lack of transparency and ensuing accountability is especially true in conflict and post-conflict countries where the government sees return to stability as a priority. It is in this setting that the role of local development networks can come into play.

The key challenges in these situations of post-conflict are:

- The risk of conflict returning, and the necessity and difficulty for communities of accessing information in a volatile environment.
- The small window of opportunity in which aid flows are abundant, usually the first 4 years. Multi-donor trust fund mechanisms could help to spread out the aid money over a longer stretch of time.

More generally, the lack of information coordination in the aid world, where few systematic mechanisms of data collection exist and the specificity of the format the data is collected in, limits its usefulness with other actors.

Often there is a conflict of interest arising from the dual accountability of development projects both to donors and to recipients.

Lastly, even if the countries receiving aid do not have access to information laws, often the donor countries themselves do, and they should therefore apply their own principles to their aid work in other countries. Legislation on foreign aid should include minimum standards which donors should put into practice.

Summary of the key points focused on in Session 2:

Governments should be encouraged to accept that RTI, in helping to realize the Human Right of Freedom of Expression, contributes directly to the development process.

Passing a RTI law should not be the sole focal point in addressing access to information issues. Wider legal and civil contexts are key, as are obtaining the cooperation and training of government administrations.

The potential users of RTI laws represent various interest groups within society who would use this law in different ways. This makes it essential for the law to be user friendly, so that it becomes a tool for self-governance.

Q+A: Points raised during the discussion

When pushing for an RTI law it might be more attainable to work on promoting freedom of information in one sector; given that in many developed countries a RTI law took years to come into place and was the end result of several milestone points. This could be done both through individual sectors by using areas where legislation was already in place for information transparency, such as the environment. Or it could be achieved locally by using community information sharing mechanisms in the absence of a state regime.

However, many participants felt that the law needed to be the ultimate objective and that it would be instrumental for the improvement of the situation. In other words, it was not necessary to wait until the information regime in place was functional to pass the law.

Session 3: **Freedom of Information visibility on the development agenda**

One of the challenges of the freedom of information discourse is how to stimulate public interest in the topic of RTI. In other words, what are the obstacles being faced in putting RTI on the development agenda? The visibility and means of communication surrounding this topic are also of equal importance,

Panelists: **Kulan Amin**, Programme Manager Poverty and Development, Transparency International

As implementation of right to information lags behind and corruption keeps increasing, one has to think about different interest groups, power and incentive structures that could change the status quo. Both national governments and political parties indebted to private business for their campaigns do not have an inherent interest in driving or enforcing the right to information. While actors seek a political mandate, citizens are well positioned to demand detailed information on political commitments, including the commitment on access to information. At the same time, political representatives gain credibility by increasing their commitment to right to information. Increasingly, within development programmes pro-forma efforts are made to ensure that investments are guided by the needs of citizen and to engage them in participatory approaches. Linking the access to information campaign directly to strengthening the accountability of development programmes can reinforce common objectives.

Transparency International's approach to corruption in development is based on the understanding that informed citizen participation in decision-making prevents corruption. This is enshrined in Article 13 of the United Nations Convention against Corruption (UNCAC). By default, in order to participate, citizens need to be informed. At the same time, citizens should have a role in defining which information and evidence informs development visions and policies. This links into the fundamental principle of ownership contained within the Paris Declaration.

Many donors aiming to engage citizens and civil society, do not include them pro-actively in an informed, institutionalized and inclusive manner in the design, implementation and monitoring of development cooperation programmes. Often access to documents that are necessary to participate meaningfully are missing or not available. Providing access to forums and information from development agencies, political representatives and administrations need to be emphasized. Right to information campaigners have scope to be more pro-active in driving this process and using existing frameworks such as Poverty Reduction Strategy Papers, sector consultations, etc. Finally, campaigns on right to information could capitalize more strongly on the need for political representatives to convince citizens of their credibility and obtain specific commitments on access to information legislation and implementation.

Sebastian Bartsch, Policy Analyst – Governance, Development Co-operation Directorate, OECD

The Development Assistance Committee of the OECD (DAC) has a key role in the implementation of the Paris Declaration on Aid Effectiveness (PD), which marks an unprecedented level of consensus and resolve to reform aid and to make it more effective. Its implementation is spurring ambitious reforms in the aid system. Key principles of the paradigm of effective aid that the PD helped establish include partner country ownership; alignment of donor support with partner countries' national development strategies, institutions and procedures; harmonization of donor actions; managing for development results; and the idea that both donors and partner countries are mutually accountable for development results.

Human rights has risen on the DAC's agenda recently, as was reflected in the Committee's approval of a policy paper on human rights, affirming the importance of integrating human rights more systematically into development (DAC Action-oriented Policy Paper on Human Rights and Development, 2007). It was the first time that any specific policy document on this issue came from the DAC.

RTI however is not specifically focused on within the DAC's work. However, there are important implicit links particularly to key aspects of aid effectiveness. While barely mentioned explicitly within the PD, access to information is crucial to the implementation of its commitments. For instance, without access to relevant information partner country actors cannot exercise leadership in developing and implementing their national development strategies. Nor can civil society stakeholders fulfill their roles in the broad consultative processes that are an essential element of the PD's understanding of ownership. Likewise, sharing of information is crucial for harmonization of donor policies and actions on the ground.

Donors' commitment to providing timely, transparent and comprehensive information on aid flows enabling partner country authorities to present comprehensive budget reports to their citizens, is a key element of the PD's concept of mutual accountability. However, the 2006 PD Monitoring Survey revealed that donors are not always attentive to getting information on intended disbursements to the budget authorities in good time and in a usable format. Lack of and/or poor quality of information is often a problem which limits stakeholder access to information and which limits the potential improvement of decision-making.

Shushan Doydoyan, President, Freedom of Information Centre, Armenia

The lessons learnt from the implementation of the freedom of information law in Armenia show that if there is no demand from society to put that law into practice, it remains on paper. In other words, people need to understand how their lives can be improved by using the RTI law. Measures such as informative billboards or municipal information desks are practical ways of allowing implementation to take place; however people may rarely use them or understand why it's important for improving their own lives. Another difficulty is the type of information disclosed, where community budgets and expenditure reports may not mean much to people or seem relevant to their own life.

The education and training of public officials is crucial to a successful application of that law. In Armenia, 50% know how to apply the law and although many want to work in a transparent way they don't know how to do this in practice.

There is a lack of management of the information available which leads to problems facing the collection, preservation and use of that information for development. Another problem is how to ensure a constant flow of information from the government. But the government is not the only sector where information needs to be shared more:

- The media is one of the most secretive sectors in the country
- The NGO community receives funds without the public knowing how efficiently they have been spent
- Political parties are not disposed to sharing their expenditure figures

Nepo Malaluan, Action for Economic Reform, Philippines

Often when one country experiences difficulties in a particular area, this is shared by the experience in other countries. There are certain areas of policy and politics where the information is not necessarily shared with the wider public, these are:

- The budget process
- The regulation of public utilities
- The availability of background used for policy reform such as the politics of privatization
- Bilateral and multilateral agreements
- The infrastructure and development projects, and the financing of these projects

There should be some standard setting for bilateral agencies, so that they can increase their transparency.

Even OECD countries are not immune from corruption. There has to be some alignment in terms of the transparency charter, such as that promoted by the Global Transparency Initiative. It would be useful in order to make this happen concretely to have a fund that would support activism in this area.

It is essential to have the government's support and focus in promoting access to information otherwise policies will not lead anywhere.

Juman Quneis, Media Institute, Birzeit University, Palestinian Authority

The current political situation in Palestine makes this particular context complicated. In practice right to access information means having access to the media. Palestinians often watch international media in the absence of their own.

Press, publication and audiovisual law means that it is easy to ban certain issues and in effect this leads to recurrent censorship. Under the pretext of endangering national unity or of affecting the peace process, the control over the circulation of information is ever present. There is an absence of criticism of the political party and the goals and vision of the Palestinian media remain unclear. The media has a tendency to be revolutionary or tactically orientated.

The Palestinian Authority receives a fair amount of funding from donors annually but there are big problems of accountability and transparency with donors being extremely concerned by their reputation.

Problems are also present within the agenda of each donor which is sometimes removed from meeting the Palestinian people's needs.

Andrei Richter, Director, Moscow Media Law and Policy Institute, Russian Federation

There is a general trend in most post-Soviet countries asserting an individual's right to seek and receive information. However, a variety of omissions or implementation realities mean that the current realities of access to information within these countries are more complex.

For example, some of the countries do not explicitly guarantee the right to seek information to everyone- even if they do entitle people to receive and disseminate it. Some statutes give general principles for information policy rather than precisely formulating the right to information and the procedure for accessing it. For example, Kyrgyzstan formally guarantees freedom of information, but does not list the legitimate exclusions or provide an appeals procedure.

Members of the public say they are unfamiliar with the RTI law, whilst state officials add that they lack the resources to handle requests promptly and efficiently. Statistics show an actual compliance rate of 15-20 per cent for information requests in the post-Soviet states. Consequently, many regard the freedom of information statutes as ineffective.

Often media statutes retain special privileges for journalists to access information. If it is important that these should remain during the transition period until mechanisms for all members of the public to access information are implemented in full measure; this special right places an obligation on the media to provide the public with accurate coverage.

Even if provisions exist within the laws which would punish actions such as the concealment or distortion of information, such provisions are rarely used and the public are either unaware of their rights or unable to exercise them properly. The main issue is the lack of any real liability for withholding information. RTI should include simplified access to public information, a right that should be extended to all persons without exception

Summary of the key points focused on in Session 3:

Access to information should be a key component for achieving aid effectiveness and it should be more widely focused on by donors.

Citizens should participate to the process of deciding what information is important and not simply have information handed down to them by public bodies.

It would be a good idea to showcase examples where RTI has had a tangible impact on the development process. UNESCO may gather these positive case studies in a follow-up publication.

Information is the nexus which should bring communities, civil society and governments together in achieving their development goals.

Q+A: Points raised during the discussion

Improving their own transparency mechanisms should be prominent on the donor agenda when discussing aid effectiveness. It was hoped that donors will examine this issue more carefully at the High Level Forum on aid effectiveness to be held in Accra in September 2008. It was generally agreed that even though donors may be reticent in making their choices public for political reasons, they have to set the lead in promoting transparency which they would wish for from other development actors.

Only when RTI is visible and integrated into development processes, will it hold its own on the development agenda. But until its importance is fully recognized on that agenda, it will not be as visible as one would hope. This highlights the importance of having a certain group of actors, such as development organizations, take the lead in this matter.

Round up of the discussion from Working Group 1:

Ensuring the relevance of the link between RTI and Sustainable development:

A recurring concern over the course of this experts meeting has been to explain why we are currently linking RTI with sustainable development and empowerment; the reason being that RTI has a direct impact on the way that individuals are able to lead better lives. RTI enables individuals to have access to all kinds of information, including general basic information on how to improve their lives. It is of inherent instrumental value that citizens are able to learn more about their own rights- be they political, civil and economic.

If RTI is to be upheld and referred to as fundamental for sustainable development, one needs to break down this link and the resulting benefits more concretely by contextualizing them into practical uses. Many of the same problems are common throughout the world, which means that numerous priorities are shared by different countries. These include:

- Alleviating poverty
- Fighting corruption
- Increasing people's awareness of their rights
- Ensuring a secure environment
- Encouraging civil society participation
- Ensuring viable electoral processes

The recurrence of these concerns enables us to deduce the kinds of information that would be necessary in understanding and addressing these issues.

RTI must translate into access to relevant information that will improve the condition of people's lives. Therefore as well as focusing on passing a RTI laws, one needs to look at all the legal mechanisms which would ensure a timely and useful disclosure of that information. To this end, the accuracy and communication of that information are crucial.

Example of Kenya- How open information disclosure is beneficial to politicians:

Recently a constituency development fund initiative was set up in Kenya. It was allocated by the central government and managed by Members of Parliament (MP) and local governments. Some MPs chose not only to share information about the fund- how to apply, what it could help finance- with their constituents; but they also consulted them as to what they saw as development priorities in their locality. In contrast, some other MPs did not share the

information or simply chose to decide for themselves what they saw as regional priorities for their constituents. The lesson to be learnt for politicians worldwide is that those who were open about the information were re-elected because they were transparent about the information available to them and were seen as representing the interests of their electorate.

What are the barriers and challenges facing sustainable development through access to information?

People living in poverty face systematic barriers to access to information and yet it is the precursor to having a voice and participating in their own development.

The most common barriers include:

- Low levels of education
- Lack of literacy
- Poor transport and communication infrastructures
- The unavailability of information in local languages or overly technical language
- Discrimination in term of gender, income, “caste”, or disability, etc.
- The lack of political will to make the information available

All these barriers are compounded in fragile states which are often in conflict or post-conflict situations.

Although RTI policy, law and administrative procedures are fundamental components of enabling RTI access, other factors are also essential. These include adequate communication infrastructures including access both to the internet and to a plurality of media outlets. However, perhaps the most important factor is the need for a broad cultural change in the way that communication and information is understood. Countries need to undertake a transition from a culture of secrecy to one of openness, which actively consults the public in its decision-making.

However the initiative and responsibility of increased openness does not solely come from governments but should also be heralded by international organizations, who are well placed to lead by example. Such a transition is underway but many governments and international organizations have not fully incorporated the idea that civic participation and empowerment are essential in achieving sustainable development.

Recommendations from Working Group 2

Lessons learned in the implementation of FOI legislation in developing countries

Lesson 1: Freedom of information is a requirement for participation and development.

- 1 Governments and legislators must promote and secure economic and social development. The culture of secrecy within governments and state institutions is a breach of that obligation. In order for governments to meet their development objectives, a freedom of information regime is required.
- 2 Local groups need access to relevant information in order to voice their perspectives in the process of public decision-making; particularly regarding the development process.

- 3 Different kinds of information are required as a precondition for varying types of citizen participation. The Government must provide the public with a full scope of information regarding its work, no matter whether the evaluation is positive or negative.

Lesson 2: Passing a RTI law is fundamental but insufficient. The implementation of the regime is crucial.

1. It is necessary to develop broad public support to access to information (as has been the case with freedom of expression). However, broad public support does not mean that every citizen will or should request information. Rather it is the belief that its very existence is a fundamental human right.
2. There is a need for RTI activists to stress the instrumental value and benefits of access to information for people's empowerment.

Lesson 3: A good access to information regime requires civil society engagement.

1. If civil society is not engaged the law will very probably fail. In order to get civil society engaged, it is necessary to establish the connection between RTI and people's basic everyday needs.
2. In order to implement the RTI regime, there needs to be a strong civil society backing the process of implementation. In order to ensure this support, it is important to involve civil society in the process of law making.
3. There is a challenge in how to sustain civil society interest even when the expectations on the law and its benefits are not fulfilled in the short term.

Lesson 4: Government is responsible for the implementation.

Strong political will and leadership within the government is required for the implementation process to take place correctly. Governments need to understand that transparency and access to information is good it because it improves the development process.

Concretely, governments need to:

- Establish a strong and independent oversight body
- Train officials in RTI procedures
- Identify and support those who make RTI a priority

Lesson 5: Government should provide targeted information for participation.

1. The right to access to information includes the government's duty to proactively provide information that enables people to participate in the decision-making process and development initiatives. There exists information that only the government can produce. This information should be relevant to particular sectors and groups and should be communicated to them.
2. Provision of information should be timely in order to allow effective participation in the implementation of development policies.

Strategies for strengthening RTI advocacy and regimes

1. Ensure political will and capacity building in state institutions and governments.

- a. RTI activists need to change attitudes within government and emphasize that RTI and communication is also good for the government. Including officials and politicians themselves and their perception of the benefits of RTI.
- b. Different public agencies in government should share information and best practices. Free flow of information within the government and among different levels of government is key for good governance and a successful development policy.
- c. Incentive structures need to exist within the information system in order to improve openness.
- d. There should be a strategy to improve the RTI regime as affected by a whole raft of different laws in a particular country.

2. Strengthening partnerships in order to build capacity

- a. It is necessary to broaden the network of supporters of freedom of information in civil society and to identify and build strong links with all relevant actors at the global, regional and the national level including IGOs. More coordination is necessary between international and local groups. RTI language and institutions should become integrated within different networks.
- b. It is equally important to involve the private sector in the development of an access to information regime. Building up support from the business community is key because it is a natural ally which is sometimes removed from the freedom of information movement, especially in developing countries.
- c. It is necessary to strengthen advocacy by documenting our knowledge about the benefits of freedom of information, in order to cement the links between access to information and development.

3. Getting a good law and the recognition of the right at all levels.

- a. A good regulation should go along the lines of universally agreed standards.
- b. Openness needs to become a part of the development process at all levels, including donors. Aid effectiveness cannot be measured if there is no openness and access to information.

- c. NGOs should be more open and transparent.
- d. UNESCO should take the lead in the promotion of RTI as well as coordinating with other international actors for pursuing the same goal, specifically within the UN system.

Closing remarks by **Mogens Schmidt**:

I am very pleased with the outcome of the discussion, which has proved that the connection between right to information and sustainable development is a real and fundamental one. The nexus at which these two components intersect needs to be stressed both to civil society actors and to governments.

UNESCO stands by its mandate, which seeks to ensure the free flow of information and to this end commits to promoting access to information as a means of achieving sustainable social and economic development.

Annexes:

- I) Experts Meeting's Concept Paper
- II) Agenda
- III) Experts' presentations