

Ensuring inclusive, transparent and accountable national REDD+ systems: the role of freedom of information



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UN-REDD PROGRAMME



The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation.



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The UN-REDD Programme works closely with UNDP's Democratic Governance Group, whose work includes support to access to information and anti-corruption. The former stems from the fact that implementation of the rights to freedom of expression and to access information are prerequisites for ensuring the voice and participation necessary for a democratic society. Access to information and communication build on these internationally recognized rights and together encompass core principles of democratic governance such as participation, transparency and accountability. The latter derives from the fact that corruption undermines human development and democracy. It reduces access to public services by diverting public resources for private gain, and strikes at the heart of democracy by corroding the rule of law, democratic institutions and public trust in leaders. For the poor, women and minorities, corruption means even less access to social goods, jobs, justice or any fair and equal opportunity.

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Executive Summary

The central role of access to information in REDD+

This report examines how the right of freedom of information – i.e. the right of every individual to have access to information held by public bodies, subject only to narrow exceptions – has been or can be used in the context of REDD+ countries activities. REDD+ is proposed under the United Nations Framework Convention on Climate Change (UNFCCC) to mitigate climate change by providing positive incentives to developing countries to reduce emissions from deforestation and forest degradation and conserve, manage and enhance forest carbon stocks.

“Access to”, “Freedom of”: a note on terminology

The phrases “access to information”, “freedom of information”, the “right to know”, and the “right to [official] information” denote the same concept: that information held by governments is in principle freely and openly accessible by all, subject only to narrow exceptions. Usage of these terms depends on context, culture and language. For example, more recent rights-based approaches in East Asia prefer the “right to know”, while more traditional approaches in North America and the United Kingdom use the term “freedom of information”. In line with UNDP’s recent publications*, this report will use the phrases “freedom of information” and “access to information” interchangeably.

*UNDP, Fast Facts on E-Governance and Access to Information, 2012.

Put simply, freedom of information (or “access to information”, see text box) means that individuals have a right to access any information held by the government, subject to exceptions necessary to protect vital public interests – for example, national security. Governments should make information available on request, but they should also ensure that information that is of public interest is made available proactively, without individuals needing to lodge requests.

The right to freedom of information is protected under international human rights, environmental and anti-corruption law. In the last decade there has been a sharp increase in the number of countries that have adopted freedom of information legislation, accompanied by an increase in international standard-setting in the area of freedom of information. Good practice lessons have emerged.

The success of REDD+ will depend on a number of factors. These include both technical aspects such as the ability to produce measurable, reportable and verifiable forest carbon estimates, and governance aspects such as reducing corruption risks, the free, prior and informed consent and full and effective participation of the populations directly affected by national REDD+ policies and measures, and the

traceability of and accountability for payments made and received to ultimately achieve reductions in deforestation and forest degradation. **Access to information is crucial for the success of REDD+ both as a prerequisite for full and effective engagement of stakeholders and as a foundation for transparency and accountability.** In addition to their obligations under international law, REDD+ countries are expected to meet higher standards of transparency and participatory decision-making processes, including through the provisions of the Cancun Agreements that require that REDD+ participating countries develop information systems on REDD+ safeguards.

What information?

Information needs and demands differ according to the audience. Indeed, the packaging of the information to meet the provisions of the UNFCCC Cancun Agreements on REDD+ safeguards, which call for providing information on how safeguards are addressed and respected, will be different from the format and frequency at which information is needed for national and local stakeholders to act upon it so that openness, integrity, accountability and participation are enhanced.

Information needs may also differ in different phases of REDD+. The table below provides a non- exhaustive list of what information is particularly relevant in different phases of REDD+ to promote participation, transparency and accountability in REDD+.

Type of information	Readiness phase (phase 1)	Implementation and performance payments (phases 2 and 3) ¹
How REDD+ works and how it will affect local and indigenous communities	✓	✓
What funding is received for REDD+ and how it is being utilized	✓ Detailed budget data and other information showing (REDD+ readiness) grants made by the international community	✓ Detailed budget data and other information showing REDD+ performance payments made by the international community
Which government agencies, non-governmental organizations (NGOs) or representatives of the private sector are legitimate intermediaries or interlocutors	✓	✓
How are decisions made, including : <ul style="list-style-type: none"> ■ how land-use planning decisions related to REDD+ are made, paying specific attention to the availability of information on land tenure, i.e. which companies, communities or individuals have formal or informal land rights in forest areas² ■ how decisions about REDD+ benefit-sharing are made ■ how REDD+ demonstration projects are selected ■ how to access decision-making processes on REDD+ ■ how, when and what types of benefits may be expected to reach the country 	✓	✓
What are the environmental and social impacts of REDD+ activities	✓ (Predicted)	✓ (Assessed ex-post)
How the right to free, prior and informed consent is being implemented	✓	✓
How funds or benefits flow from the national to the local level – including the amounts, frequencies and beneficiaries	✓, if any	✓
What are the methods, data and assumptions that underlie results-based estimates		✓
How safeguards are addressed and respected	✓	✓
What are REDD+ related legal rights, such as carbon rights when/if they are developed, and what the modalities are for exercising them		✓

1 Since REDD+ as part of a UNFCCC compliance mechanism is still not operational, no country to date has received payments under REDD+

2 In many countries this type of information can be extremely hard to access, and voluntary guidelines on this have recently been issued by FAO. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome 2012: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

The vast majority of this information needs to be published proactively by information- holders, i.e. without the need for information-seekers to lodge a formal request. Indeed many local stakeholders, including indigenous peoples, are less likely to use request-driven mechanisms. Information also needs to be provided regularly, as simple one-off workshops are likely to be insufficient to gain true engagement, transparency or consent.



How can REDD+ information be effectively delivered and shared?

Various international agencies, including the United Nations Development Programme as well as the human rights bodies of the United Nations and regional organizations such as the African Union, have published good practice recommendations in the area of access to information. These boil down to a small number of basic principles, including:

- Effective freedom of information **legislation** is a crucial ingredient in any access to information scheme.
- **Openness as the norm:** government should be open and information held by the government should in principle be accessible to the public, subject only to very narrow exceptions.
- **Proactive disclosure:** governments are under an obligation to publish information held by them proactively when the information is of public interest.
- **Ease of access and low or no fees:** Procedures to access information should be easy, with low bureaucratic hurdles, and fees should be waived for those who cannot afford them, or where the information is of public interest.
- **Dedicated public information officers** to assist in the implementation of the law have proven effective. Their role is to process requests for information, ensure that proactive publication takes place, provide assistance to applicants, guard internal procedures, promote training, undertake public reporting etc.

- The introduction of freedom of information laws should be accompanied by **campaigns to inform the citizenry of their newly-gained rights** as well as to educate public bodies on their new obligations to publish and share information.
- **Strong supervisory mechanism:** Experience in many countries has shown that the establishment of a sufficiently resourced freedom of information commission can make a real difference in successful implementation of a law.
- **Capacity development:** Freedom of information laws provide an indispensable framework for the fulfillment of transparency, but their introduction needs to be accompanied by measures to strengthen the institutional capacity of public bodies to manage and deliver information; to challenge and change attitudes to secrecy of governmental information; and to undertake awareness-raising with civil society and the population at large of their rights.
- There is some evidence to suggest that lasting gains are made only when freedom of information laws are accompanied by **liberalizing the flow of information in other respects as well, i.e. by encouraging media freedom.**



The report examines the transparency and access to information context in 44 out of the 46 UN-REDD Programme partner countries, with additional in-depth information in ten of these countries to examine transparency and access to information in environment, forest, REDD+ or other relevant initiatives related to natural resources. Drawing from experiences in Cameroon, Colombia, Democratic Republic of the Congo, Ecuador, Guatemala, Indonesia, Kenya, Mexico, Peru and the Philippines, these case studies highlight a number of lessons.

First, although nearly half of the 44 UN-REDD Programme partner countries have some form of freedom of information law, most of these laws have been enacted relatively recently, and their

implementation ranges from good to practically non-existent. Weaknesses exist at all levels: within public bodies (not just those dealing with forestry information), where weaknesses range from a prevailing culture of secrecy to a basic lack of capacity with regard to information processing; within civil society, who make insufficient use of the opportunities open to them; within affected communities, which are insufficiently aware or informed of their rights; and within the international community, which has insufficiently scrutinized and promoted the speedy implementation of international commitments made on access to information.

Most REDD+ countries, however, are on a forward trajectory for freedom of information. Even in those countries where the right of freedom of information laws is poorly implemented, civil society representatives tend to describe the situation as 'improving' rather than deteriorating. Nevertheless, even in those REDD+ countries that have reasonably well-functioning freedom of information regimes, **the use of freedom of information regimes in REDD+ processes or in the forestry sector is generally low.**

Second, a number of the countries examined have **developed plans for online systems for information on safeguards**. Some are developing REDD+ **registries** to list and document REDD+ related projects, and in that case ensure a vetting process by the government, that can be a basis for transparency platforms. However, none of the countries examined here have linked their plans for information systems to their freedom of information frameworks.



Finally, lessons can also be learned from other international initiatives that have also shown to be important drivers for transparency. These include the Extractive Industries Transparency Initiative (EITI), which has brought together government, civil society and private industry and which has introduced stringent transparency requirements for payments made to governments to oil, gas and mining industries, the Open Government Partnership, the European Union Forest Law Enforcement, Governance and Trade (FLEGT) and treaties such as the Aarhus Convention.

Recommendations and conclusions

REDD+ raises the bar for countries to achieve of transparency and participatory decision-making, presenting fresh challenges for the implementation of the right to information. To deliver information, freedom of information components should be built within national REDD+ systems.

General recommendations include:

- **Countries should apply existing freedom of information laws to REDD+, pass such laws if they do not exist, and/or build freedom of information into REDD+:** REDD+ countries that have freedom of information laws should ensure that they are effectively implemented and used for delivery of REDD+ information, while countries where no freedom of information law yet exists should build mechanisms for access to information within their REDD+ systems, including in the systems of information on safeguards. This should not however deter from undertaking broader freedom of information reform.
- As REDD+ related information is likely to reside across different government departments, local and regional public bodies, **cross-sectoral efforts** will be needed to provide easy access to information and avoid fragmentation of information.
- Mechanisms to provide information should be **proactive, rather than by request, and provided in accessible format and language tailored to different stakeholder groups**, with particular attention to the information needs and constraints of indigenous peoples and women.
- Campaigns should be organized to inform the citizenry of their rights –existing or newly-gained- as well as to educate public bodies on their new obligations to publish and share information.
- Efforts should be made to build and strengthen existing processes, such as adherence to international agreements or transparency mechanisms.

- Ultimately, the measure of the effectiveness of plans, policies and measures to enact the right to information for REDD+ will lie in careful evaluation as to whether, how, by whom and to what purposes the information provided has been used. In these evaluations, the **specific needs of indigenous peoples and women, and ways that they access and utilize information**, will need to be assessed.

These recommendations will require national efforts to evaluate and address capacity gaps to share and use information among government bodies, civil society organizations, and affected communities.

Specific recommendations include:

To REDD+ national institutions³:

- Ensure the regular availability of up-to-date REDD+ relevant information, making use of existing freedom of information laws and mechanisms when these exist
- Engage in national consultation processes to determine what information is needed, when, and at which frequency, taking into account new information and communication technologies
- Strengthen institutional capacity to deliver REDD+ relevant information at the local, national and regional levels
- Ensure that REDD+ relevant databases are developed, up to date and publicly accessible
- Provide training and awareness-raising to the public service on how to implement freedom of information, along with budget support for relevant agencies to carry out this work
- Ensure that good practices principles on freedom of information are incorporated into the national REDD+ safeguards information system required by the UNFCCC Cancun Agreements on REDD+
- Apply the lessons learned from national experiences, when they exist, brought about by participating in the EITI, FLEGT or others.

To legislators and parliamentarians in REDD+ participating countries:

- Examine linkages of REDD+ with other mechanisms, such as the Aarhus Convention or regional equivalents currently under development, the Open Government Partnership and the experiences of other countries and stakeholders
- Support the full implementation for REDD+ of legislations related to right of access to information, in line with international standards and good practices.

To all implementers of REDD+ activities (government agencies, NGOs, private sector and/or local and indigenous communities):

- Share relevant information at the appropriate frequency, formats and language.

3 The term “national REDD+ institutions” is used to denote the fact that in some countries the REDD+ process is currently governed by a multi-stakeholder platform or committee, and should therefore not be understood as designating only a governmental entity.

To civil society organizations and affected communities:

- Raise awareness of the rights of affected communities to access government information through freedom of information processes
- Advocate for implementation of the rights of access to information and free, prior and informed consent
- Advocate for, and monitor that accurate and verifiable REDD+ information is regularly made available
- Provide guidance on what information is required, when and where, in their national contexts
- Provide training to local stakeholders to understand their information rights in the REDD+ context.

To bilateral and multilateral donors:

- Support national implementation of commitments relating to the right of access to information applied to REDD+ and free, prior and informed consent
- Include access to information requirements in REDD+ bilateral and multilateral agreements and promote monitoring of implementation
- Provide technical support in the drafting and implementation of access to information laws
- Provide support to strengthen the capacity of public bodies at all levels to handle information related to REDD+, disclose REDD+ relevant information proactively and comply with access requests
- Include and promote access to information in their REDD+ related initiatives and spending, including independent evaluations and timely publication of related documents
- Support capacity strengthening for all stakeholders mentioned above.

Given the relatively early stage of development of most REDD+ activities, freedom of information mechanisms can start being built into national REDD+ systems. In particular, when complying with the UNFCCC-requested systems to provide information on safeguards for REDD+, countries should learn from good practices in actively providing timely, relevant and usable information.

To deliver this information, REDD+ mechanisms should have a freedom of information component built into them, relying either on existing general freedom of information laws or utilizing REDD+ specific access to information legislation, guidelines or codes.

Because of the breadth and depth of information to be shared, the variety of stakeholders at the national and local levels who have relevant information to share and specific transparency requirements, REDD+ presents new challenges but also new opportunities to achieve an effective access to information.



Commonly used acronyms

ATI:	Access to Information
CITES:	Convention on the International Trade of Endangered Species
COP:	Conference of the Parties
DRC:	Democratic Republic of the Congo
EITI:	Extractive Industries Transparency Initiative
EU:	European Union
FAO:	Food and Agriculture Organization of the United Nations
FLEGT:	Forest Law Enforcement, Governance and Trade
FOI:	Freedom of Information
ICCPR:	International Covenant on Civil and Political Rights
ICT:	Information and Communication Technologies
FIAI:	Federal Institute for Access to Information (Mexico, Spanish acronym)
IMF:	International Monetary Fund
NGO(s):	Non- Governmental Organization(s)
OECD:	Organization for Economic Co-operation and Development
OPG:	Open Government Partnership
REDD+:	Reducing Emissions from Deforestation and forest Degradation in developing countries
R-PIN:	Readiness Project Idea Note
R-PP:	Readiness Preparation Proposal
RTI:	Right to Information
SIS:	Safeguards Information System
UNDP:	United Nations Development Programme
UNEP:	United Nations Environment Programme
UNFCCC:	United Nations Framework Convention on Climate Change
UN-REDD:	United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation in developing countries
VPA:	Voluntary Partnership Agreement



I. Introduction

Background

The forestry sector accounts for 15-20% of greenhouse gas emissions worldwide. In fact, these emissions account for more than the entire global transport sector and derive mainly from deforestation and forest degradation.⁴ The need to address these challenges by establishing an international finance mechanism as part of a post-2012 global climate change framework was first reflected in the Bali Action Plan and United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) 13 Decision⁵, and was recently agreed upon at COP16 in Cancun in December 2010. REDD+ is proposed under the United UNFCCC to mitigate climate change by providing positive incentives to developing countries to reduce emissions from deforestation and forest degradation and conserve, manage and enhance forest carbon stocks.⁶

Text Box 1: "Access to", "Freedom of": a note on terminology

The phrases "access to information", "freedom of information", the "right to know", and the "right to [official] information" denote the same concept: that information held by governments is in principle freely and openly accessible by all, subject only to narrow exceptions. Usage of these terms depends on context, culture and language. For example, more recent rights-based approaches in East Asia prefer the "right to know", while more traditional approaches in North America and the United Kingdom use the term "freedom of information". In line with UNDP's recent publications*, this report will use the phrases "freedom of information" and "access to information" interchangeably.

*UNDP, Fast Facts on E-Governance and Access to Information, 2012.

The theory behind REDD+ is simple: by creating a financial value for the carbon stored in trees, forests can be made more valuable financially standing than they would be cut down, and developing countries will be incentivised to protect, better manage and wisely use their forest resources.

The success of REDD+ will depend on a number of factors. These include both technical aspects -- such as the ability to produce measurable, reportable and verifiable forest carbon estimates --, and governance aspects such as reducing corruption risks, the free, prior and informed consent of indigenous peoples, the full and effective participation of the populations directly affected by national REDD+ policies and measures, the fair and equitable participation in decision making and sharing of benefits, and the traceability of and accountability for payments made and received to ultimately achieve reductions in deforestation and forest degradation.

The success of REDD+ will depend on both technical and governance aspects.

4 IPCC 2007

5 UNFCCC 2/CP.13

6 REDD+ stands for Reducing Emissions from Deforestation and forest Degradation, plus the role of conservation, the sustainable management of forests and the enhancement of forest carbon stocks. See www.un-redd.org for more.

Access to information in REDD+ is both a prerequisite for full and effective engagement of stakeholders and a foundation for transparency and accountability.

In particular, transparent and accountable governance systems that foster trust and participation will be crucial for REDD+. Access to information will be key to achieve these, as it is both as a prerequisite for full and effective engagement of stakeholders and as a foundation for transparency and accountability. In addition, access to usable information is needed for participatory management,⁷ which has been shown an effective way to manage forests to meet both conservation and development goals; it is necessary to prevent and expose corruption risks and practices and access recourse mechanisms; and it brings governance benefits, as a prerequisite for ensuring the voice and participation necessary for a democratic society.⁸ Access to information overall has been shown to advance equity and access to basic social services and protection, and is an overall important contributor to promoting respect for human rights (see Text Box 2).⁹

Text Box 2 : How the right of information advances other human rights

Guaranteeing the right of access to information can play an important role in advancing the rights of communities, including the rights of marginalized groups such as indigenous peoples and women. Freedom of information reinforces the rights to consultation and participation, and the provision of information is one of the defining pillars of the right to free, prior, and informed consent. It has also been shown to advance social and economic rights, by fostering more equity and better access to basic social services and protection. The effective use of freedom of information laws in the context of REDD+ could also ensure that REDD+ is underpinned by a 'rights-based' approach.

What information?

Guidance on the kind of environmental information that needs to be disclosed is provided by the Aarhus Convention¹⁰ (Convention on access to information, public participation in decision-making and access to justice in environmental matters), which is further detailed in section II. The Aarhus Convention requires the continuous collection and keeping up to date of, among others, information on the state of the environment; factors or plans which might affect the environment; and information concerning human health and living conditions. Specifically, it requires the following to be made available proactively:

- Facts and analyses of facts relevant to environmental policy proposals;
- Explanatory material on environmental activities;

7 For example, when forest-dependent communities and indigenous peoples are empowered through the necessary mechanisms to participate and engage, their traditional knowledge (including biophysical information and knowledge related to the local environment) can be better used to inform the design, management and monitoring of REDD+ phases. The same is the case for a women, another key stakeholder group who can provide specific knowledge about the forest, skills and usage necessary for a sustainable and effective REDD+ mechanism.

8 UNDP Practice note on Access to Information, available at http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-information-practice-note/A2I_PN_English.pdf

9 See for example Sepúlveda and Nyst, The human rights- based framework for social protection, <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>

10 Available at <http://www.unece.org/env/pp/treatytext.html>

- Information on the performance of public functions or the provision of public services relating to the environment by public bodies;
- Information which enables consumers to make informed environmental choices;
- Legislation and policy documents, including on strategies, policies, programs and action plans relating to the environment, progress reports on their implementation
- International treaties, conventions and agreements as well as other significant international documents on environmental issues.¹¹

REDD+ Information needs and demands differ according to the audience. Indeed, the packaging of the information to meet the provisions of the UNFCCC Cancun Agreements on REDD+ safeguards, which call for providing information on how safeguards are addressed and respected, will be different from the format and frequency at which information is needed for national and local stakeholders to act upon it so that openness, integrity, accountability and participation are enhanced.

Information needs may also differ in different phases of REDD+ : Table 1 below proposes a non- exhaustive list of what information is particularly relevant in different phases of REDD+ to promote participation, transparency and accountability.



11 Aarhus Convention, Article 5.5, 5.7

Table 1 : Type of information needed in REDD+ in different phases

Type of information	Readiness phase (phase 1)	Implementation and performance payments (phases 2 and 3) ¹²
How REDD+ works and how it will affect local and indigenous communities	✓	✓
What funding is received for REDD+ and how it is being utilized	✓ Detailed budget data and other information showing (REDD+ readiness) grants made by the international community	✓ Detailed budget data and other information showing REDD+ performance payments made by the international community
Which government agencies, non-governmental organizations (NGOs) or representatives of the private sector are legitimate intermediaries or interlocutors	✓	✓
How are decisions made, including : <ul style="list-style-type: none"> ■ how land-use planning decisions related to REDD+ are made, paying specific attention to the availability of information on land tenure, i.e. which companies, communities or individuals have formal or informal land rights in forest areas¹³ ■ how decisions about REDD+ benefit-sharing are made ■ how REDD+ demonstration projects are selected ■ how to access decision-making processes on REDD+ ■ how, when and what types of benefits may be expected to reach the country 	✓	✓
What are the environmental and social impacts of REDD+ activities	✓ (Predicted)	✓ (Assessed ex-post)
How the right to free, prior and informed consent is being implemented	✓	✓
How funds or benefits flow from the national to the local level – including the amounts, frequencies and beneficiaries	✓ (if any)	✓
What are the methods, data and assumptions that underlie results-based estimates		✓
How safeguards are addressed and respected	✓	✓
What are REDD+ related legal rights, such as carbon rights when/if they are developed, and what the modalities are for exercising them		✓

12 As a reminder, since REDD+ as part of a UNFCCC compliance mechanism is still not operational, no country to date has received payments under REDD+

13 In many countries this type of information can be extremely hard to access, and voluntary guidelines on this have recently been issued by FAO. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome 2012: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

As will be detailed below, the vast majority of this information will need to be published proactively by information- holders (see Text Box 3), i.e. without the need for information-seekers to lodge a formal request. Indeed many local stakeholders, including indigenous peoples, are less likely to use request-driven mechanisms. Information also needs to be provided regularly, because, for example, simple one-off workshops are likely to be insufficient to gain true engagement, transparency or consent.

Effective freedom of information legislation is a crucial ingredient in any access to information scheme, it uses.

Methodology

This study first posits the status of access to information as a human right.

Effective freedom of information legislation is a crucial ingredient in any access to information scheme. Indeed, in the REDD+ context, a “good” freedom of information law can for example support communities to understand and claim the benefits they are entitled to in regard to forest carbon, to exercise their rights and to access the recourse mechanisms at their disposal. Overall, a law also helps civil society hold governments to account more effectively. Therefore the study focuses on the existence and implementation of freedom of information laws, particularly in the context of access to environmental information, and identify how this can help achieve the information delivery goals necessary for REDD+. It then goes on to examine how this has and can be implemented to promote transparency and accountability and curb corruption risks.

Based on an analysis in ten UN-REDD partner countries at different stages of their REDD+ readiness and freedom of information paths, the study makes strategic and policy recommendations for key stakeholders to apply the right to information to REDD+ and thus contribute to the development of transparent, inclusive and accountable REDD+ systems.

Text Box 3 : Information holders and information seekers

One of the particularity of REDD+ is its participatory nature, and the grassroots nature of stakeholders involved in implementating REDD+ activities. Therefore, while government agencies - or multi-stakeholder REDD+ teams governing the REDD+ process - will likely set up clearing-house for REDD+ information, a number of private and non-governmental stakeholders (will) have information and need to share it. This will be of particular relevance to the monitoring of social and environmental impacts of REDD+ activities at the local level, which will generate useful data and knowledge for systems of information on REDD+ safeguards. The commitment of not only different government agencies but also NGOs, the private sector, and local and indigenous communities, to share all relevant information at the appropriate frequency, formats and language under a framework and clear guidance elaborated by the national REDD+ institutions will be key.



II. A rights-based approach to freedom of information

The principle that individuals should, as a matter of right, have access to information held by the government is well established in international law. Governments do not hold information for themselves; rather, they hold it on behalf of the public. This means that individuals should be able to access that information – and while some of the information may be withheld for reasons of security or to protect another overriding public interest, this should be an exception and these exceptions should be narrowly defined in law.

The rationale for the right to freedom of information is manifold: as well as being of importance in its own regard, the right to information is also vital to the functioning of democracy – without information, people cannot make informed choices or participate in decision making processes in any meaningful way. The right to information is also a gateway to the enjoyment of other rights, including economic and social rights and the right to development. Finally, the right to information is vital in ensuring accountability of governments and other powerful actors in society.

The following paragraphs survey international law on the right of access to information. Most of the treaty provisions that are cited here are either binding on all or on a majority of the REDD+ countries, while various other provisions are binding on all states as a matter of customary international law. This results in a strong overall obligation under international law for REDD+ countries to implement the right of access to information.

Governments do not hold information for themselves; rather, they hold it on behalf of the public.

The right to information is established under general principles of international human rights law, as part of the right to freedom of expression; under international environmental law, as part of the right to access information relevant to the environment; and under international anti-corruption treaties as part of the set of checks and balances necessary to ensure transparency in public affairs.

The right to information under international human rights law

The right to access information is part and parcel of the right to freedom of expression under international human rights law.

Article 19 of both the UN Declaration on Human Rights and the International Covenant

on Civil and Political Rights (ICCPR) states that the right to freedom of expression includes not only freedom to ‘impart information and ideas of all kinds’, but also freedom to ‘seek’ and ‘receive’ them ‘regardless of frontiers’ and in whatever medium.¹⁴

All REDD+ participating countries except for Bhutan, Malaysia and Myanmar have ratified the ICCPR and are legally bound to implement this provision. The UN Human Rights Committee, the body established to supervise implementation of the ICCPR, has declared in 2011 that

“Article 19 ... embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment [all branches of the State (executive, legislative

14 International Covenant on Civil and Political Rights, New York, 16 December 1966, entry into force 23 March 1976. The most recent REDD+ country to ratify the ICCPR was Pakistan, in 2010. Costa Rica was among the earliest States to ratify the ICCPR, in 1968.

The right to information is firmly established under general principles of international human rights law, international environmental law, the body of Indigenous rights, and international anti-corruption treaties.

and judicial) and other public or governmental authorities, at whatever level – national, regional or local]. The designation of such bodies may also include other entities when such entities are carrying out public functions.¹⁵

These recommendations by the Human Rights Committee mirror similar previous statements and recommendations by the **UN Special Rapporteur on Freedom of Expression** since 1997.¹⁶ In his reports, the UN Special Rapporteur typically notes the importance of freedom of information not only to democracy and freedom, but also to the right to participate and to realisation of the right to development.¹⁷

Regional human rights treaties such as the **African Charter on Human and Peoples Rights and the Inter-American Convention on Human Rights**, ratified by all African and Latin American REDD+ countries, also recognise the right of access to information. The African Declaration of Principles on Freedom of Expression, adopted by the African Commission on Human and Peoples' Rights, states:

“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law ... everyone has the right to access information held by public bodies [and] by private bodies which is necessary for the exercise or protection of any right”¹⁸

The **Inter-American Commission on Human Rights** has adopted a similar statement of principles, declaring that “Access to information held by the state is a fundamental right of every individual.”¹⁹

In 2006, in a case brought by a group of NGOs who sought data on a deforestation project, the Inter-American Court of Human Rights found that Article 13 of the Inter-American Convention on Human Rights,²⁰ ratified by all REDD countries in the Americas, requires States to make available to the public environmental information as well as other information that is of public interest. The Court held:

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- 15 Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, General comment No. 34: Article 19: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011, par. xx
 - 16 Since 1997, the UN Special Rapporteur on Freedom of Opinion and Expression has addressed the issue of freedom of information in each of his annual reports since 1997, and the UN Human Rights Commission (to which the Special Rapporteur reports) acknowledged the importance of the right of access to information.
 - 17 The UN Special Rapporteur on freedom of information has taken the theme of access to information forward in his own reports as well as in joint declarations and recommendations issued with his counterparts at the Organisation of American States (OAS), the Organisation for Security and Cooperation in Europe (OSCE) and (recently) the African Commission on Human and Peoples Rights. In a 2004 Joint Declaration, the UN, OSCE and OAS special rapporteurs stated that “[t]he right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts)...”
 - 18 Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia: Principle IV.
 - 19 Declaration of Principles on Freedom of Expression, Inter-American Commission on Human Rights, 108th Regular Session, 19 October 2000: Principle 4.
 - 20 American Convention on Human Rights, “Pact of San José,” adopted 22 November 1969, entry into force 18 July 1978.

*"[Article 13] protects the right of the individual to receive [State-held] information and the positive obligation of the State to provide it ... The information should be provided without the need to prove direct interest or personal involvement in order to obtain it ... The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it."*²¹

In making this finding, the Court referred to the extent to which the principle of access to information had already become embedded in other strands of international law, notably environmental law and anti-corruption law, as well as to political declarations that had been made by the Organisation of American States recognising the importance of the right to information.

Human rights law recognises freedom of information as a self-standing right, but also as instrumental in the realisation of other human rights. For example, the UN Human Rights Committee has stated that "[u]nder article 27 [of the International Covenant on Civil and Political Rights, which protects minority rights], a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities."²² Similarly, where information is needed to protect the right to private life, States are under a duty to provide that; or when they hold private information, give individuals the opportunity to access it.²³

The New Delhi Declaration of Principles of International Law relating to Sustainable Development (2002) includes the principle of public participation and access of information and justice:

"Public participation in the context of sustainable development required a right to access

to appropriate, comprehensible and timely information held by governments (...)". It is based on **social laws** and the State should ensure that all persons have effective access to relevant information held by public and private actors regarding sustainable development issues.



The right to information under international environmental law

The right of access to information is firmly established under international environmental law. **Principle 10 of the Rio Declaration** is one of the earliest and remains perhaps the best known outcome of this, stating that:

"[E]ach individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities,

21 *Marcel Claude Reyes et al. v. Chile*, IACtHR, 19 September 2006, Series C No. 151, par. 77.

22 Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, General comment No. 34: Article 19: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011.

23 Cf. General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17): 04/08/1988

and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²⁴

The principle that the public have a right of access to environmental information was further codified in the 1998 Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters - referred to as the **Aarhus Convention** after the Danish city where it was signed. Article 4 of this Convention states:

“Each party shall ensure that ... public authorities, in response to a request for environmental information, make such information available to the public ...”

This Convention requires States to adopt broad definitions of the concepts of “environmental information” as well as of “public authority”, ensuring that a broad range of information is subject to the Convention – in principle. The Aarhus Convention also requires States to set up an independent supervisory mechanism with a power to

review refusals to disclose information. The Aarhus Convention has currently been ratified mainly by European and some Central Asian countries, but is open to ratification by all United Nations Member States subject to the agreement of current member states.²⁵

In the more than ten years since the Aarhus Convention has been operational, a considerable body of best practice on access to environmental information has been built up. National implementation reports have been submitted by all States Parties to the Convention and are available online, through the *Aarhus Clearinghouse*.²⁶ Furthermore, the Aarhus Convention Compliance Committee, set up by the first meeting of the States Parties in 2002, has set baselines on the types of information that need to be provided to the public, and the manner in which the information

needs to be provided. The Committee’s decisions, like the State Parties’ implementing reports, have been collected and are available online.²⁷

In Latin America, a process has already started to draft a regional convention mirroring the Aarhus Convention. Led by Chile and the Economic Commission for Latin America, Argentina, Chile, Costa Rica, Dominican Republic, Jamaica, Mexico, Panama, Paraguay, Peru, and Uruguay have all signed up to a Declaration to launch this process.

Since the proclamation of Rio Principle 10 and the adoption and ratification by dozens of States of the Aarhus Convention, access to information has become a mainstay of international environmental law. It is accepted that transparency is

24 Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, UN Doc A/CONF.151/26 (Vol. I), Chapter I, Annex I, Rio de Janeiro, June 1992

25 Aarhus Convention, Article 19.

26 See <http://aarhusclearinghouse.unece.org/>

27 http://rac.org.ua/fileadmin/user_upload/publications/ACCC_Case_Law_Electronic_Advanced_Version.pdf

an absolute necessity in good governance of the environment, both with regard to the domestic and the international levels. Thus, the Johannesburg Declaration on Sustainable Development requires States to “[e]nsure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development...”;²⁸ and follow-up agreements to the UN Framework Convention on Climate Change (UNFCCC) have stipulated the requirements of transparency and access to information in different contexts.

The agreements reached at the **Cancun and Durban meetings of the UNFCCC Conference of Parties** impose further transparency and information sharing obligations on States opting to undertake REDD+ activities, as well as a requirement to fully involve all stakeholders. Under the Cancun agreements, States are required, under a set of seven safeguards, to “[ensure] the full and effective participation of relevant stakeholders [including] indigenous peoples and local communities” in the development of national action plans and strategies,²⁹ and to provide for “transparent and effective national forest governance structures”³⁰, both of which make a case for transparency and information. States are also required to develop safeguard information system (SIS) to provide information on how the Cancun safeguards are addressed and respected .

In Durban, this was further developed through an agreement on guidance for safeguard information systems, requiring States to provide “transparent and consistent information that is accessible by all stakeholders and updated on a regular basis”.³¹ Decision 12/CP.17 of the UNFCCC Durban Outcome³² also states that a SIS should provide information on how all Cancun safeguards are addressed and respected. SIS should be country-driven, implemented at a national level, and built on existing systems, as appropriate. It was also agreed that reporting of summary information on how safeguards are being addressed and respected would take place periodically in National Communications to the UNFCCC. Parties to the UNFCCC further agreed that as the SIS are developed relevant international obligations and agreements should be recognized and gender considerations respected.”³³

The right to information and indigenous peoples’ rights

Freedom of information is instrumental in the realisation of the rights of all key stakeholders, including indigenous peoples’ and women’s rights. The importance of freedom of information for the rights of indigenous peoples’ is recognised in global and regional human rights treaties, ratified by REDD+ States, as well as in the **UN Declaration on the Rights of Indigenous Peoples**.³⁴

In particular, freedom of information is a crucial component of the principle of free, prior and informed consent, an emerging principle of customary international law in relation to the rights of indigenous peoples. The principle of free, prior and informed consent has been defined as “the collective right of indigenous peoples to participate in decision making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities and be founded upon

28 A/CONF.199/20.

29 FCCC/CP/2010/7/Add.1, Decision 1/CP.16, par. 72

30 FCCC/CP/2010/7/Add.1, Decision 1/CP.16, Appendix I, par. 2

31 FCCC/CP/2011/9/Add.2, Decision 12/CP.17.

32 Durban decision 12/CP.17: <http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf#page=16>

33 There is the potential for future UNFCCC decisions to provide more detailed guidance related to transparency, consistency, comprehensiveness and effectiveness in the presentation of the summary of information on safeguards as well as on the timing and frequency of the presentation of the summary of information on safeguards.

34 UNGA Resolution A/RES/61/295, 2 October 2007

an understanding of the full range of issues implicated by the activity or decision in question.”³⁵ Several international and regional human rights bodies have recognised that States are under a duty to obtain the free, prior and informed consent of indigenous peoples who will be potentially affected by actions taken by the State. The UN Human Rights Council,³⁶ the UN Special Rapporteur on the Rights of Indigenous Peoples,³⁷ the UN Expert Mechanism on the Rights of Indigenous Peoples,³⁸ the Inter-American Court³⁹ and the African Commission on Human and Peoples’ Rights⁴⁰ have all recognised the principle of free, prior and informed consent as binding on States.

Articles 19 and 32 of the UN Declaration on the Rights of Indigenous Peoples are particularly relevant.⁴¹ Article 19 states:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

And Article 32 provides (in paragraph 2):

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

The right to information under anti-corruption laws

International anti-corruption treaties adopted in the last fifteen years all recognise that the right of access to information is a prerequisite in the fight against corruption.

The **UN Convention against Corruption**, ratified by nearly all REDD+ countries,⁴² mentions the need for transparency and access to information throughout: in Articles 5 and 10 regarding the need for transparency in general; in Article 7 in relation to civil servants and funding for electoral candidates; in Article 9 concerning transparency in relation to public procurement and finances; in Article 12 on corporate transparency; and in Article 13 on public participation. Article 10 requires transparency and public reporting, including by “[a]dopting procedures or regulations allowing members

35 As most recently formulated in the Draft UN-REDD Programme Guidelines on Free, Prior and Informed Consent, as issued for consultation December 2011. See also, amongst many others, UN Permanent Forum on Indigenous Issues, Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent, U.N. Doc. E/C.19/2005/3 (Feb. 17, 2005)

36 See e.g., HRC, Outcome of the universal periodic review: New Zealand, A/HRC/DEC/12/106 (Oct. 9, 2009)

37 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, UN Doc A/HRC/12/34, 15 July 2009

38 Progress report on the study on indigenous peoples and the right to participate in decision-making, A/HRC/EMRIP/2010/2, 17 May 2010

39 *Saramaka People v. Suriname*, Inter-Am. Ct. H.R., Ser. C No. 172, 28 November 2007: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

40 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009: <http://www.achpr.org/communications/decisions/276.03/>

41 UNGA Resolution A/RES/61/295, 2 October 2007

42 All but Sudan, South Sudan, Suriname, Myanmar, Cote d’Ivoire and Bhutan have ratified the Convention – and of these, Sudan, Cote d’Ivoire and Myanmar have signed the Convention, signifying their intent to ratify at a later date.

of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public..." Article 13 requires States to promote public participation, including "by measures such as ... [e]nsuring that the public has effective access to information."

Within the African Union, a similar convention was adopted in 2003: the **Convention on Preventing and Combating Corruption**. Article 9 requires States to "adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences."⁴³ Under Article 12, States are required to "[c]reate an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs..." This convention has been signed or ratified by all African REDD+ countries except the Central African Republic. Sub regional agreements, such as the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption⁴⁴, although it has not yet entered into force for lack of ratification⁴⁵, calls on states to establish and consolidate, among others, the right to information as a preventive measure against corruption.

International anti-corruption treaties adopted in the last fifteen years all recognise the right of access to information as a prerequisite in the fight against corruption.



Finally, **the Inter-American Convention against Corruption**, ratified by all REDD+ countries in the Americas, requires States to ensure that there is a public register detailing "the income, assets and liabilities of persons who perform public functions"; to establish "[m]echanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption"; and to put in place public procurement systems that "assure ... openness".⁴⁶ A review is currently underway to establish how States have implemented the Convention in their domestic legal systems, including through freedom of information laws.⁴⁷

43 Available at: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf. As of October 2007, the Convention had been ratified by 24 countries. It came into force in August 2006.

44 http://www.afrimap.org/english/images/treaty/ECOWAS_Protocol_on_Corruption.pdf

45 http://archive.transparency.org/global_priorities/international_conventions/conventions_instruments/ecowas_protocol

46 Inter-American Convention Against Corruption, Adopted at the third plenary session, held on March 29, 1996: Article 3, Preventative Measures.

47 See http://www.oas.org/juridico/english/legis_access_cs.htm.



III. Access to information laws: principles and best practice

The overview provided in the previous chapter demonstrates that the right of access to information is firmly established in international law. As a result, REDD+ participating countries are under an international law obligation to implement the right of access to information. One firmly established and widely acknowledged way to do this is by introducing dedicated legislation, and follow-up measures including training the civil service.

Good practice in Freedom of information laws

Over the last fifteen years, various intergovernmental bodies and specialist NGOs have published freedom of information principles, model laws and other guidance detailing best practice in drafting freedom of information laws.⁴⁸ Although differing in detail, they are based on similar concepts and ideas. The following section draws out the basic principles that underlie all of them, and identify good practice examples drawn from legislation as well as model laws that have been published.

Text box 4 highlights guiding principles of freedom of information laws:⁴⁹

Text Box 4 : Guiding Principles of Freedom of Information Laws

Open government

The principle of open government is fundamental to the realisation of freedom of information. Freedom of information requires that governments accept that they must govern in a culture of openness and participation, on behalf of and including the public at large and communities directly affected by their actions. This is a culture-shift for many civil servants accustomed to governing in virtual secrecy and without involving the public – but it is a shift that must be made;

Maximum disclosure

In recognition of the fact that they hold information on behalf of the public, freedom of information laws should require that the government provides access to the widest possible range of information;

Obligation to publish

Governments should proactively – so without being asked for it – publish information that is of public interest in a wide range of areas.. In particular with the advent of the internet, States should seek to proactively publish information on issues such as budgets and information that affects the environment. Over time, more and more information should be published proactively; when States hold information electronically, there is no good reason (other than subject to narrow exceptions, as stated below) not also to provide public access to that information over the internet.

48 See, among many others, UNDP Practical Guidance Note on Right to Information, 2004: <http://www.undp.org/oslocentre/docs04/RighttoInformation.pdf>; the Model Inter-American Law on Access to Information, OEA/Ser.G CP/CAJP-2840/10 Corr.1, 29 April 2010: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf; Draft Model Law for African States on Access to Information, African Commission on Human and Peoples Rights, 2011: http://www.achpr.org/files/instruments/access-information/achpr_instr_draft_model_law_access_to_information_2011_eng.pdf; ARTICLE 19: A Model Freedom of Information Law, London, 2001: <http://www.article19.org/data/files/pdfs/standards/modelfreedomofinformationlaw.pdf>; ARTICLE 19, Freedom of Information Principles, 1999: <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>.

49 Drawn from the sources mentioned in footnote 38.

Narrow regime of exceptions

The right of access to information may be limited to protect certain overriding public interests. Freedom of information legislation may therefore establish certain exceptions to the right of access. However, such exceptions need to be very narrowly drawn so as not to undermine the freedom of information regime itself. For example, information may not be refused when its release would be embarrassing to the government; however, it may be refused if the government can show that its release would do real and irreparable harm to national security.

Low fees and ease of access

Freedom of information laws need also to provide the procedure by which individuals may make access requests. These procedures should be drafted so as to facilitate access and make this as easy as possible. Thus, there should be no overly burdensome bureaucratic hurdles to pass, and if fees are payable these should not be set at such a level as to deter access. These procedures should also set clear time limits within which information needs to be provided.

Review / appeal of refusal of access

A refusal by a public body or civil servant should not be the end of the matter. Individuals should have the possibility of having an access request reviewed, both through administrative review but also by access to an ombudsman or a court with a power to overturn a refusal. Again, procedures for this should be of a low threshold (there should be no need, for example, to hire a lawyer, the cost of which is beyond the reach of most) and easy to use.

Strong supervisory mechanism

Newly enacted freedom of information laws require a sea shift in governmental attitudes and are successfully only when accompanied by training efforts and when implementation is actively supervised by a body that has the authority and power to do so. Public officials will need to be persuaded that openness, not secrecy, is the most effective way of government and this will take a sustained effort. Experience in many countries has shown that the establishment of a sufficiently resourced freedom of information commission can make a real difference in successful implementation of a law.

Of the 90 or so freedom of information laws in force around the world, most have been adopted in the last fifteen years. In many of these countries, implementation has taken time, and virtually none have done so from the starting point of a freedom of information law that gave effect to all the principles outlined in the previous section. This has resulted in a freedom of information practice over the last ten years that is somewhat uneven, but from which good practice lessons can nevertheless be learned.

The following paragraphs provide an overview of these lessons. They have been drawn from 'generic' freedom of information laws and apply regardless of the type of information to be made available.

Obligation to publish (proactive disclosure)

Governments should proactively disclose information that is clearly of public interest, which is arguably the case for information related to environmental matters.. As public bodies in many (though not all) countries move to electronic processing of information they hold, the argument for making ever wider categories of information available to the public without waiting for a request gathers more and more strength.

Leading commentators have pointed out that proactive publication of information can “promote a number of efficiencies for the public sector, as well as better service provision, both as reflected tendencies to move to ever more significant forms of e-government. Given the relative ease and low cost of proactive publication over the Internet, it only makes sense that this should be promoted, among other things because it serves as a means to reduce the number of (relatively costly) requests for information.”⁵⁰ The African Commission on Human and Peoples’ Rights made this plain as early as 2002, when it adopted a Declaration stating that, “public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest...”⁵¹

The UN Human Rights Committee has similarly stated that,

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.⁵²

India’s Right to Information Law explicitly precludes using the internet if the target audience is unlikely to be internet users.

In recognition of this argument, India’s Right to Information Law expressly recognises the role of proactive publication in reducing the number of requests for information and requires public bodies to increase proactive publication to this end. The Law requires public bodies to endeavour to provide as much information as possible proactively so as to minimise the need for access requests to be made. Information needs to be disseminated widely and be as accessible as possible, taking into account local languages as well as having the widest possible reach. It should be noted that the latter explicitly precludes using the internet if the target audience is unlikely to be internet users. Instead, other means of information distribution should be used.

50 Toby Mendel, UNESCO, 2010.

51 Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples’ Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia: Principle IV.

52 Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, General comment No. 34: Article 19: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011, par. 19.

Section 4 requires every public body to publish at least the following:

- particulars of their organisation, functions and duties and the powers and duties of employees;
- the procedures followed in decision-making processes;
- any norms which it has adopted to undertake its functions and its rules, regulations, instructions and manuals;
- the categories of documents it holds and which are in electronic form;
- public consultation arrangements relating to the formulation or implementation of policy;
- a description of all councils, committees and other bodies, and whether their meetings or minutes are open;
- a directory of all employees and their wages;
- agency budgets and plans, as well as, proposed expenditures and reports on disbursements;
- information about the execution of subsidy programmes and the beneficiaries;
- particulars of the recipients of concessions, permits or other authorisations;
- facilities for citizens to obtain information (including reading rooms);
- the contact details of all information officers; and
- relevant facts when formulating policies or announcing decisions which affect the public, and reasons for those decisions.

Good practice examples of proactive publication requirements in other countries abound. In Bulgaria, public bodies are required to publish information where this may prevent a threat to life, health, security or property, or where publication is in the “overall public interest”.⁵³

Some countries publish proactively any information once it has been requested. This is the case in Mexico, where all information provided in response to a request is available electronically.⁵⁴ In the United States, any information which has been released pursuant to a request and which is likely to be the subject of another request must be made available electronically, along with an index of such records.⁵⁵ This ensures that important and frequently requested information regularly becomes available.

Some countries, such as Mexico, publish proactively and electronically any information once it has been requested.

For guidance on the kind of environmental information that needs to be disclosed proactively, it is worth looking at the Aarhus Convention. This requires the continuous collection and keeping up to date of, among others, information on the state of the environment; factors or plans which might affect the environment; and information concerning human health and

living conditions. Not only does the Convention requires specific items (listed in section 1) to be made available proactively; it also requires that all of this information is “progressively” put on-line.⁵⁶

53 Article 14, Access to Public Information Act (APIA), 7 July 2000: http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/

54 Federal Transparency and Access to Public Government Information Law, 2002, and related regulations: <http://www.ifai.org.mx/publicaciones/taia.pdf>

55 Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

56 Aarhus Convention, Article 5.3

Ease of access – low threshold procedures

Ease of access is crucial to the success of a freedom of information scheme. Requesters should not be faced with endless bureaucracy when trying to obtain information, and fees should not be such as to deter access by all but the rich. It should be clear to whom or which authority a request should be addressed; the procedure for lodging a request should be simple and straightforward; and information should be provided within a reasonable time limit.

The UN Human Rights Committee has recommended:

[Freedom of information] procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.⁵⁷

It should be clear to whom or which authority a request should be addressed; the procedure for lodging a request should be simple and straightforward; and information should be provided within a reasonable time limit.

Time limits

The time within which a public body must respond to an access request should be neither so long as to render the information, once provided, out of date, nor so short that it becomes unrealistic for a public body to comply. A recent study of fourteen freedom of information regimes across the world found that time limits range from seven to 30 days.⁵⁸ Good practice would require that the public body responds as soon as possible within the time limit – so once information is located, it should be provided. Deadlines may be extended when locating information is difficult.

Text Box 5 : When Seemingly Small Procedural Details Make a Large Difference

Even seemingly minor procedural features of laws can promote success. For example, in Kyrgyzstan, application forms must be available at the post office and requests are logged on a central register containing the name of the official receiving the request, the date and details of how the request has been processed and finally dealt with. This encourages officials to process requests diligently. In India, assistance must be provided to applicants in making the request as well as in helping access information once it has been disclosed.

In some countries certain requests must be responded to as a matter of urgency. In both India and in Azerbaijan, a request for information needed to protect life or liberty must be provided within 24 hours; in the United States, a ten day limit applies where there is a compelling need to inform the public about government activity.⁵⁹

57 Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, General comment No. 34: Article 19: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011, par. 19.

58 Toby Mendel, UNESCO, 2010

59 Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

Fees

While public bodies may charge a reasonable fee for processing requests – there is a cost involved – these should be kept low so as not to deter requests. Fees should be waived where there is hardship or it would be unjust to charge one. There is an undeniable tension between promoting openness and averting imposing costs particularly on local public bodies. There is a cost in searching for information; preparing or reviewing it; and reproducing or providing access to the information.

Some countries, such as Mexico, Jamaica and Peru, restrict fees to the cost of reproducing the information. Many countries also provide for fee waivers for the poor; South Africa has established a specific income threshold. In India, Japan and Sweden, a central body sets a schedule of fees. This avoids a patchwork of fee structures at different public bodies and limits inflationary fee pressures.

Form and language

In countries where many languages are used or where there is a high rate of illiteracy, information should be made available in relevant local languages and officials should make a reasonable effort to assist in the making of information requests. This can contribute to a more fair and equitable system, where the poor and marginalized populations, often including women, have equal opportunities to access information. India can be seen as an example of good practice in this regard: requests can be made in English, Hindi or the local official language. In South Africa, the law requires that information is made available in the language preferred by the requester – unless the record requested does not exist in that language. If a request cannot be made in writing, for example because of illiteracy, the information officer is required to assist the applicant. Furthermore, information officers are also required to assist the ‘sensorily disabled’.⁶⁰ “Form and language” also means that information should not always be provided in the form of written documents: consideration should be given to providing information orally, or even over the phone (although the authenticity of the information would not be guaranteed).

Narrow regime of exceptions

A good freedom of information regime needs to clearly state the limits to the kinds of information that can be disclosed. There should be no broadly worded exceptions, or exceptions that are vague and open to abuse. Achieving this can be difficult: while no-one would expect governments to release information that would harm nuclear safety, for example, at the same time a government should not try to suppress information that would disclose poor practice in the management of nuclear safety plants. While the former would be potentially dangerous to the State, the latter would only be potentially embarrassing to (parts of) the government. A good freedom of information law therefore needs to be very specific about what information may be refused.



⁶⁰ RTI Act, Sections 5-7

Normally, the exceptions regime consists of several provisions listing the interest for the protection of which information disclosure may be withheld – such as the protection of disorder or the prevention of crime, or the protection of national security. Crucially, they should make it clear that only information that is actually harmful to each of these interests may be withheld. It would not be legitimate for an access request to be refused merely because the information requested ‘relates to’ the prevention of crime; for information to be legitimately refused, it should be actually harmful to the prevention of crime.

Mexican and Peruvian law provides for an override in relation to information disclosing human rights violations.

A good freedom of information law explicitly narrows the scope of exceptions. For example, the South African and Ugandan freedom of information laws do not apply the privacy exception to matters relating to the official role of public officials. Thailand and Jamaica provide for release of background documents otherwise covered by cabinet or internal deliberations exceptions. Most freedom of information laws also provide for the partial release of information when only some of the information or documents requested is confidential.

A number of laws (including India, South Africa, Thailand Uganda and Japan) stipulate a general “public interest overrides”. This means that information must be released where the public interest in doing so is overriding – even when the disclosure will cause some harm to another protected interest. Such an override has also been recommended in the Organisation of American States’ “Model Law” on access to information. In some of these countries, this override is limited to information that would disclose a breach of the law or a serious risk to public safety. Mexican and Peruvian law provides for an override in relation to information disclosing human rights violations.

Active implementation and promotion

Because in many countries, freedom of information laws have been only recently introduced effective promotion around their implementation is crucial. Training should be provided for public officials who have previously worked under the assumption that the information they hold is not open to the public. Equally, promotional activities should be aimed at the public at large as well as civil society, to educate them on their newly-gained rights.

The need for promotion of FOI laws – dedicated public information officers

Many of the newer freedom of information laws have promotion and awareness raising written into them. They provide for the appointment of dedicated officials within public bodies – information officers – to assist in the implementation of the law. These officials process requests for information, ensure that proactive publication takes place, provide assistance to applicants, guard internal procedures, promote training, undertake public reporting and so on. In Uganda and South Africa, the head of the respective public body serves this function, although deputies may be appointed to carry out the day-to-day functions. The Indian law provides for the appointment of as many dedicated officials as may be necessary.

Dedicating public information officers and producing a citizen’s guide to access information are also good practices.

Production of a citizens’ guide to access to information and other promotional materials

Laws in several countries also require the production of a guide to explain to the public their access to information rights and how to lodge requests. These guides contain information on the purpose of the law, the rights

of individuals to request information, the contact details of information officers, how to make a request for information, how such a request should be processed, what assistance is available, applicable fees and remedies for failures to apply the law, including available appeals. In India and in South Africa, this guide needs to be made available in local as well as in official languages.⁶¹ This guide should be updated every two years and be disseminated widely, to local public bodies as well as through the internet.

Text Box 7 : The Indian Right to information Act

Record keeping is important and some laws require specific standards to be adhered to. In Mexico, Azerbaijan and the United Kingdom, central bodies are required to set standards regarding record management and ensure that public bodies respect them. This can ensure strong, uniform standards on record keeping across the civil service – and good record keeping is a prerequisite in freedom of information (if the information that is requested cannot be found, it cannot be disclosed).

The South African Human Rights Commission has a number of other tasks in relation to the act. Public bodies report to it on their performance, and the Commission reports to Parliament annually. In addition, the Commission produces educational and promotional materials on the right to information, monitors implementation, assists individuals in making requests and provides recommendations for the improvement of freedom of information mechanisms generally.⁶²

Reporting on implementation

Often, reporting on implementation is allocated to a central body with all public bodies being under an obligation to report regularly to it. The nature of the information required to be reported typically covers the number of requests received, granted and refused; the provisions of the law relied upon to refuse requests; appeals lodged and their outcome; the time taken to process requests; fees charged and measures taken to implement the law. This same oversight body also often has a general mandate to promote implementation of the law which may include monitoring implementation, providing training, developing forms and other implementation tools, giving advice to applicants and/or public bodies, and making recommendations for reform. In many countries, including Mexico, a strong and proactive oversight body has been identified as one of the main factors in the success of a freedom of information regime.

How Access to Information laws have helped curb corruption

Freedom of information is generally thought to be an indispensable tool in the fight against corruption. International organisations including the OECD, World Bank, IMF and UNDP have all promoted the introduction of freedom of information laws as a means of combating corruption. Experience in many countries has shown how corruption can be curbed through effective use of freedom of information laws. For example, in Thailand, parents have been able to use newly gained right of access to information to fight corruption in schools;⁶³ in Azerbaijan, the Centre for Development and Democratization of Institutions has used the right to information to expose corruption at the ministry of education;⁶⁴ while in India, freedom of information has been used to combat corruption in local government – for example, in the delivery of services to the poor (see Text Box 6).

61 Section 10

62 Section 83

63 As reported in *Access to Information, a Key to Democracy*, Carter Center 2002: <http://www.cartercenter.org/documents/1272.pdf>

64 As described in <http://www.freedominfo.org/regions/europe/albania/>

Text Box 7 : The Indian Right to information Act

The Indian Right to Information Act is often cited as a good example of how freedom of information laws can help curb or at least contain corruption.⁶⁵ An often-cited example is by the Mazdoor Kisan Shakti Sangthan (MKSS), a right to information movement in the state of Rajasthan. MKSS obtains information about alleged payments made to labourers or to purchase materials and crosschecks this information at public hearings. These hearings allow workers to testify personally, thereby helping overcome illiteracy and similar problems, and are held in villages, thus directly involving the target audience.⁶⁶ In 2007 and 2009, the Chief Information Commissioner launched follow-up projects,⁶⁷ combining use of the Right to Information Act with attempts to simplify service delivery in public bodies. A public information and engagement campaign was started to raise awareness among the general public of their information rights, as well as a “RTI Advisory and Information Cell”. Through this effort individuals were able to obtain information without having to pay a bribe, as was the previous practice, and the project uncovered serious corruption in benefit payments.

Part of the ‘learning’ that was identified at the end of the Rajasthan project was that the integrated approach and engagement of the local public had been important, as had the role of the media. But major shortcomings were identified within public bodies; some information officers, particularly at local levels, were described as engaging in “[p]hysical harassment, abuse, mental torture, intimidation and victimisation of requesters. Civil society was found to lack sufficient awareness of the right to information.⁶⁸

Whilst there is little doubt that freedom of information laws can shine a light on corrupt practices, few studies have examined the causal effect of the introduction of freedom of information laws and any subsequent decrease in corruption. This is partly because corruption is a complex phenomenon and is hard to measure,⁶⁹ but also partly because freedom of information laws are not introduced in a vacuum. Other factors play a part. There is some evidence to suggest that lasting gains are made only when freedom of information laws are accompanied by liberalising the flow of information in other respects as well – by encouraging media freedom. This is backed up by anecdotal evidence, for example from the field of community broadcasting.⁷⁰ UNESCO’s 2010 World Press Freedom Day report cites the example of Senegalese community radio station, Walfajiri.

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- 65 Although it is also acknowledged that implementation has been patchy and there is serious room for improvement: see for example A Roberts, *A great and revolutionary law? The first four years of India’s Right to Information Act, 2010*: <http://www.right2info.org/resources/publications/india-four-years-of-rti-laws>
- 66 As described in *The Right to Know is the Right to Live: Profile of a Remarkable Peoples’ Movement in India that Links Information to Livelihood, 2004*: <http://www.freedominfo.org/2004/06/the-right-to-know-is-the-right-to-live/>.
- 67 “Combating Corruption in Rajasthan State, India, by Applying RTI Act as a Tool”; 2007; and “Reforming the Processes in the Rural Development Department through Policy and Civic Engagement, based on RTI Act, 2005, in Rajasthan, India”; 2009.
- 68 As described in *Model Framework for Replication: Usages of RTI in Rural Rajasthan, India, Enhancing Transparency and Reforming the Processes*, Centre for Consumer Action, Research & Training, 2010: <http://www.right2info.org/resources/publications/publications/rti-toolkit-india>
- 69 One of the leading indices, Transparency International’s Corruption Perceptions Index, measures the perception of corruption rather than corruption itself. When anti-corruption measures are introduced, this can actually have the effect of increasing the perception of corruption by shining a light on corrupt practices. If no-one is aware of corrupt activities in the country, concern and therefore perception levels may be low. However, as freedom of information laws shine a light on corrupt activities the perception of corruption may well increase – because there is greater awareness of it – despite the fact that the total amount of corrupt activity may have decreased (there is a further unknown in that the total amount of corruption pre-freedom of information laws is unknown). See “A user’s Guide to measuring Corruption”, UNDP, <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/a-users-guide-to-measuring-corruption.html>
- 70 Community broadcasting is broadcasting by and for specific communities, in their own languages, addressing issues that concern them directly. Such broadcasters can cover a city or a rural area, and the issues they address are specific to their area of coverage. They are often not for profit and (should) benefit from lower licence fees and other advantages.

Lasting gains are made only when freedom of information laws are accompanied by liberalising the flow of information in other respects – such as by encouraging media freedom.

The key to Walfajiri's success is its concentration on providing information in the Wolof language to the disadvantaged urban poor ... One particular weekly programme titled "Face the Citizenry" has enabled local communities to raise issues such as unemployment, poor housing conditions, flooding and lack of sanitation directly with public officials who are asked to respond by revealing what they are doing to tackle such issues. Some local research has shown that increasing media focus on delivering the people's Right to Information has resulted in more demands in the same area for social justice. The government of Senegal has also reacted in creating the National Agency for the Employment of Youths specifically to tackle the issues raised by media programmes such as Walfajiri and "Face the Citizenry".⁷¹

Similar programmes exist in other countries and can provide a genuine opportunity for people to address their local officials directly on issues of alleged corruption or mismanagement of local funds.⁷²

The introduction of a freedom of information laws alone is therefore not the answer: such laws need to be introduced in concert with other measures. Recent UNDP research into the introduction and implementation of freedom of information laws in the Americas warns against presenting freedom of information laws as the panacea. The study's conclusion states:

"[T]he right of public information does not guarantee accountability. Usually, there are pending important issues such as the definition of responsible actors and responsibilities, or the specification of incentives and penalties, both fundamental elements of government accountability.

[A] state that is opened to transparency through access to information has fewer possibilities of corruption, but nothing else. Acknowledging the citizen right to access public information does not guarantee honest public officers. This can only be accomplished through integrated policies to improve democratic governance. Building a system of access to information ... requires institutional adjustments and procedural adaptations. [I]t is very important to take on the challenge of institutionalizing access to public information ...

Only when all institutions, procedures, authorities and regulations are properly aligned, it will be possible to consolidate democratic governance, with transparency and accountability.⁷³

A recent study of the potential for freedom of information laws to help combat corruption in Cambodia arrived at the same conclusion. Referring to the culture of secrecy in Cambodian institutions and linking this with the low educational level of much of the population, coupled with fear, suspicion, distrust, and general disinterest towards public institutions, the report warned that the mere introduction of a freedom of information law would not enhance transparency or reduce corruption. Instead, the report concludes that "a law must be accompanied by increased public outreach by governmental institutions, as well as a total commitment to an ongoing

71 UNESCO 2010

72 For example, the program "Face to Face", on TV Menada in Macedonia.

73 Access to public information in Central America and Mexico: Assessment and recommendations, UNDP, September 2011

development of the education sector, which will make for a more aware, perceptive, and engaged citizenry, and which will help them utilize the benefits of a freedom of information Law to their fullest extent.”⁷⁴

In other words, an integrated approach is needed. The Extractive Industries Transparency Initiative (EITI) provides an interesting example of how such an integrated approach can work, particularly as regards stakeholder involvement.⁷⁵ The EITI is a global multi-stakeholder initiative that seeks to increase transparency over payments by companies from the oil and mining industries to governments and government-linked entities, as well as transparency over revenues by those host country governments. It has developed a set of rules which all participating countries follow.

Text box 8 : The EITI Nigeria and Liberia examples

A January 2012 case study of the EITI experience in Nigeria illustrates how a concerted effort can be effective. Nigeria is a top ten oil producer in the world, but has not seen any democratic scrutiny until the very late 1990s. As a result, corruption thrived, particularly in the oil sector. In an effort to turn this around, the Nigerian EITI (NEITI) was established in 2004. A national stakeholders group was set up which commissioned an independent audit of the entire oil value chain for the period 1999-2004 to verify that all payments were correct and settled. Billions were found to be missing and the audit identified several weaknesses related to the management of oil revenues, as well as oil and gas sector governance more broadly. In 2007, Nigeria introduced the Nigeria Extractive Industries Transparency Initiative Act, requiring the reporting of all payments by extractives companies and revenues received. These figures are then verified by independent auditors. The Act also established the NEITI National Stakeholder Working Group as a permanent body, with its Secretariat within the Presidential Administration. This has resulted in enhanced transparency in revenues and sustainability of the mechanism. Importantly, NEITI also heads the Nigerian Inter-Agency Task Team on corruption which includes all Nigerian anti-corruption agencies.⁷⁶

Liberia has introduced a law to enshrine the EITI in the governance of its extractive industries sector. Liberia joined EITI in 2006 and decided to include the forestry sector. Its model is similar to Nigeria’s with a multi-stakeholder group set up by statute and with Presidential backing. Under the Liberian EITI Act, payments by individual companies and operating contracts and licenses are published and reviewed.⁷⁷ It is a criminal offence to refuse to report. This has reportedly reassured citizens and companies that all the extractive companies operating in Liberia are on an open and level playing field, and that there is a forum where stakeholders can voice their concerns.⁷⁸ As part of the initiative, a database has been set up with details of all contracts and permits,⁷⁹ and audited payment data are required to be published periodically.⁸⁰

74 Prof. R. Leos, *Access to Information in Southeast Asia and Cambodia*, 2009: <http://www.cchrcambodia.org/admin/media/report/report/english/2009-01-08-%20Access%20to%20Information%20in%20Southeast%20Asia%20and%20Cambodia-%20EN.pdf>. A 2012 Report by the Cambodian Centre for Human Rights arrives at the same conclusion: CCHR, *Freedom of Information in Cambodia: A right to know or a culture of secrecy?*, 2012: http://www.cchrcambodia.org/admin/media/report/report/english/2012_05_04_CCHR_Report_Freedom_of_Information_in_Cambodia_%20A_right_to_know_or_a_culture_of_secretcy_ENG.pdf

75 See <http://eiti.org/eiti/history> for more information about the initiative and its history.

76 EITI Case Study, Nigeria, January 2012: <http://eiti.org/files/Case%20Study%20-%20EITI%20in%20Nigeria.pdf>

77 LEITI Act, 2009: <http://www.leiti.org.lr/doc/act.pdf>

78 EITI Case study, Liberia: <http://eiti.org/files/EITI%20Case%20Study%20-%20Liberia.pdf>

79 See <http://www.leiti.org.lr/2content.php?main=65&related=65&pg=mp>

80 LEITI Act, Section 7.2

Text box 8 depicts the Nigeria and Liberia experience with the EITI, two countries that have codified the EITI into law. It should be noted that neither Nigeria nor Liberia enacted a generic or full freedom of information law at the beginning of their EITI processes, but instead chose to enact transparency laws only with regard to extractive industries revenues. When the pace of legislative reform in a given country makes the passing of an all encompassing Access to Information law a long-term process, targeted laws or decrees on access to information for REDD+ could be an option to consider.

Factors that promote openness

While there is ample anecdotal evidence of factors in addition to freedom of information legislation that tend to promote openness, few if any studies have been conducted. One of the leading authorities in the field has identified the following factors, drawing on several global surveys:

- **Corruption and scandals.** Often, crises brought about because of a lack of transparency have led to the adoption of freedom of information laws. Anti-corruption campaigns have been highly successful in transitional countries attempting to change their cultures. In long established democracies such as Ireland, Japan and the UK, laws were finally adopted as a result of sustained campaigns by civil society and political scandals relating to the health and the environment. Many central and eastern European countries adopted freedom of information laws following as a response to the Chernobyl disaster.
- **International pressure.** The international community has been influential in promoting access. International bodies such as the Commonwealth and the Organization of American States have drafted guidelines or model legislation and the Council of Europe has developed the first international treaty on access. The World Bank, the International Monetary Fund and others have pressed countries to adopt laws to reduce corruption and to make financial systems more accountable.
- **Modernization and the Information Society.** The expansion of the Internet has increased demand for information, and inside governments, the modernisation of record systems and the move towards e-government has created an internal constituency that is promoting the dissemination of information as a goal in itself.⁸¹

For a freedom of information law to be successful (with 'success' being defined as bringing about greater transparency in public affairs) other factors come into play. At a very basic level, these include a strong civil society able to demand and process information, and State structures able to deliver it. The latter must not be taken for granted: a lack of civil service capacity can be at the basis of the poor functioning of a freedom of information law.

Further factors include the political will to implement the cultural change necessary for freedom of information to work; a sufficiently strong and independent oversight agency with powers to force disclosure when necessary; public demand for information and transparency; a functioning legal and regulatory system (including an independent judiciary); and, last but not least, a well-drafted freedom of information law.

The overall attitude of the civil service is a very important factor, as well as their awareness of the disclosure obligations they are under. Examples of poor practice exist in many countries. For example, several studies of the implementation of India's Right to Know Act have pinpointed particular problems in the implementation of the proactive publication requirements under the Act – precisely the elements that are so important in the

81 D. Banisar, Global Freedom of Information Survey, 2006, p. 18

REDD+ context – and blame this in part on civil service attitudes.⁸² One study found that as many as 43% of local information officers were simply unaware that they were required proactively to disclose information.⁸³ This points to insufficient education and awareness raising activities as a significant factor in implementation.



82 As synthesized A Roberts, A great and revolutionary law? The first four years of India's Right to Information Act, 2010: <http://www.right2info.org/resources/publications/india-four-years-of-rti-laws>

83 Cited in A. Roberts, A great and revolutionary law? The first four years of India's Right to Information Act, 2010: <http://www.right2info.org/resources/publications/india-four-years-of-rti-laws>



IV. Freedom of information laws and practices in selected REDD+ participating countries

As of July 2012, ‘full’⁸⁴ freedom of information laws were in force in seventeen REDD+ countries: Bangladesh, Bolivia, Chile, Colombia, Ecuador, Ethiopia, Guatemala, Honduras, Indonesia, Mongolia, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru and Uganda. With the exception of Colombia,⁸⁵ all have adopted their freedom of information laws in the last ten years, with the latest being Nigeria. Nine of the seventeen have enacted freedom of information laws in the last five years, meaning that implementation is difficult to assess.

Several further countries have sector specific access to information laws. For example, Argentina lacks a federal law on access to information but has laws that regulate access to environmental information. Cameroon also has an access to environmental information law, and several other countries have recognised the right of access to information in their national constitutions but without adopting implementing legislation.

Of the countries that do not currently have access to information laws, a number have drafts or proposals going through parliament, or have committed to introducing freedom of information laws.

A number of REDD+ countries are member of the Open Government Partnership (OGP)⁸⁶ or a member or candidate member of the Extractive Industries Transparency Initiative (EITI). Both the EITI and the OGP are recently established multi-stakeholder fora with the aim of improving transparency in government; the former in relation to extractive industries, and the latter more generally in relation to public affairs. As part of joining EITI or OGP States make commitments to improve transparency and access to information, and membership is therefore a good further indicator of a State’s intentions in this regard – as well as a driver for implementation of the right to information.

As of July 2012, ‘full’ freedom of information laws were in force in seventeen REDD+ countries – and almost all have been adopted in the last ten years.

84 Meaning laws that cover government-held or controlled information generally, not specific to any sector.

85 An older Colombian freedom of information law is reportedly among the oldest in the world: the 1888 Code of Political and Municipal Organization allowed individuals to request documents held in government agencies and archives, unless release of these documents was specifically forbidden by another law. Colombia’s current law dates from 1985 and is under review.

86 The Open Government Partnership describes itself as a “multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a steering committee of governments and civil society organizations. To become a member of OGP, participating countries must embrace a high-level Open Government Declaration; deliver a country action plan developed with public consultation; and commit to independent reporting on their progress going forward” (see <http://www.opengovpartnership.org/>).

Table 2 below provides an overview.

Table 2: Overview of the status of FOI laws in REDD+ participating countries

Country	freedom of information law or access to environmental information	OGP member	EITI member
Argentina	Law on access to environmental information		
Bangladesh	freedom of information law, 2008		
Benin			
Bhutan			
Bolivia	freedom of information law, 2005		
Cambodia			
Cameroon	Law on access to environmental information, 1996		candidate
Central African Republic			member
Chile	freedom of information law, 2008	member	
Colombia	freedom of information law, 1985 (under revision)	member	
Congo			candidate
Costa Rica		joining	
Cote d'Ivoire			candidate
DRC			candidate
Ecuador	freedom of information law, 2004		
Ethiopia	freedom of information law, 2008		
Gabon			candidate
Ghana	freedom of information bill pending	joining	member
Guatemala	freedom of information law, 2008	member	candidate
Guyana			
Honduras	freedom of information law, 2006	member	
Indonesia	freedom of information law, 2008	member	candidate
Kenya		joining	
Malaysia			
Mexico	freedom of information law, 2002 (federal; there are also state laws)	member	
Mongolia	freedom of information law, 2011	joining	member
Myanmar			
Nepal	freedom of information law, 2007		
Nigeria	freedom of information law, 2011		member
Pakistan	freedom of information law, 2002		
Panama	freedom of information law, 2002	joining	
Papua New Guinea			
Paraguay			

Country	freedom of information law or access to environmental information	OGP member	EITI member
Peru	freedom of information law, 2003	member	member
Solomon Islands			candidate
South Sudan			
Sri Lanka			
Sudan			
Suriname			
Tanzania		joining	candidate
the Philippines	freedom of information bill pending	member	
Uganda	freedom of information law, 2005		
Viet Nam			
Zambia			candidate

The following paragraphs provide an overview of access to information laws in ten REDD+ countries. While brief summaries for all UN-REDD partner countries will be released in a separate report, the ten case studies presented below were selected because they have relevant freedom of information practice or activities, although in different stages, and thus depict a useful landscape.

The selection includes countries in various stages of REDD+ “readiness”; some with freedom of information laws as well as some with no (planned) freedom of information laws. Where laws exist, a brief overview is provided. The laws have been given a technical rating using the RTI Rating Tool,⁸⁷ and strengths and weaknesses in implementation are highlighted. The selection also surveys broader information sharing practices, particularly as regards access to environmental information and emerging REDD+ information sharing practices, based on publicly available data.

87 As developed by the Center for Law and Democracy and Access Info: <http://www.rti-rating.org/>.

Cameroon

General context on access to information

Cameroon's Constitution does not protect the right to information and the country does not have a freedom of information law.

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Access to climate change information for Cameroon is limited. In 2005, Cameroon reported in its Initial Communication to UNFCCC on the necessity of establishing good systems to collect, analyse and disseminate information, and to enhance the exchange of information at every level – local, national and international.⁸⁸ In December 2009, and with the help of the UNDP sponsored African Adaptation Programme, the establishment of a national observatory on climate change was announced.⁸⁹ This has been reported to have a regional remit to conduct research as well as provide information on climate change,⁹⁰ this has not resulted in wider public access to information on climate change. The ministry of the environment thematic website on climate change does not have any data.⁹¹

However, Cameroon's 1996 Framework Law on Environmental Management has specific provisions on access to environmental information. Article 9(e) of the Law states an overall right of access to environmental information. Article 6 of the Law requires public and private institutions to inform local populations on environmental problems; and Article 7 states a right of access to information on "the negative effects of harmful activities on man's health and the environment as well as on the measures taken to prevent or compensate for these effects".⁹² Its 1993 Forestry Policy also makes access to information promises.

According to a 2009 study of these laws for REDD+ conducted by the International Union for Conservation of Nature and Natural Resources,⁹³ implementation has been lacking. The study reports that "administrative bottlenecks, cost and corruption render access to environmental information very difficult or almost impossible for local and poor populations. The pilot REDD+ project is a good example. From the initial stage of the pilot REDD+ project, very few local people have been involved, and the process has been run mostly by international organizations and NGOs."

Global Witness, an NGO that has recently conducted an assessment of transparency in Cameroon's forestry sector, has expressed similar criticism. It criticises Cameroon for not translating the law or the 1993 policy into local languages or summarising it to reach an audience beyond lawyers. Moreover, while each department of the Ministry of Forests and Wildlife has to produce an annual report which is submitted to the minister, it found that these reports are not made public.

88 Initial National Communication, 31 January 2005, <http://unfccc.int/resource/docs/natc/cmrnc1f.pdf> p. 63.

89 See <http://www.minep.gov.cm/index.php/fr/le-ministere/le-ministre/68-creation-de-lobservatoire-national-des-changements-climatiques>.

90 As reported on the UNDP-AAP website: <http://www.undp-aap.org/countries/cameroon?language=en>.

91 <http://www.minep.gov.cm/index.php/fr/dossiers-thematiques/changements-climatiques>.

92 Loi n° 96/12 portant Loi-Cadre Relative a la Gestion de l'environnement, 5 August 1996:<http://www.droit-afrique.com/images/textes/Cameroun/Cameroun%20-%20Loi%20Environnement.pdf>

93 Costenbader, John (Ed.) 2009. Legal Frameworks for REDD. Design and Implementation at the National Level. IUCN, Gland, Switzerland. http://cmsdata.iucn.org/downloads/eplp_77.pdf

Other problems in implementation are reported to include uncertainty concerning the confidentiality of documents – in doubt, officials err on the side of non-disclosure; archiving failures, which have rendered some documents impossible to locate; and a lack of mechanisms to disseminate information to grassroots communities.⁹⁴

Cameroon's R-PIN, from 2008, admits that there is a gap between statutory requirements and reality on the ground, blaming major shortcomings in capacity.⁹⁵ "Transparency in the distribution of forest revenues, their use and impact in the fight against poverty" as regards affected communities is listed as one of the main challenges.⁹⁶ The updating of MINFOFs Computerized System for the Management of



Forestry Information and its liaison with the system of forestry tax recovery is proposed as a crucial part of improving transparency, and Cameroon explicitly requested assistance with the establishment of a transparent system of stakeholder engagement. Cameroon's August 2012 draft R-PP pledges to follow up on this by creating a comprehensive database. A timetable is set leading up to 2015, but the draft R-PP flags up that major investment of resources will be required to deliver the necessary information.⁹⁷ It promises that "[a] suitable tool will be developed for this purpose"⁹⁸ but existing legal provisions on access to information are not mentioned.

A positive development may be the signing and ratification of a Voluntary Partnership Agreement with the European Union⁹⁹ requiring Cameroon to make available information on a range of forestry related categories of information. Another potentially positive development is Cameroon's candidacy in the Extractive Industries Transparency Initiative. The EITI Board declared Cameroon to be "close to compliant" with the EITI rules in October 2010,¹⁰⁰ and given until August 2013 to demonstrate full compliance. However, as of early 2012, most of the information that should have been published under the EU agreement was not, including land title lists; location maps of valid logging titles; and annual volumes of logs exported.¹⁰¹

94 As reported in *Transparency in the forest sector in Cameroon*, Centre for the Environment and Development, August 2011, available through <http://www.foresttransparency.info/cameroon/2011/lessons-learnt/>

95 Cameroon R-PIN, 2008, p. 7

96 *Ibid.*, p. 8

97 Readiness Preparation Proposal (R-PP), Cameroon, August 2012: <http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2012/Cameroon%20draft%20R-PP%20-%20August%206%2C%202012.pdf>

98 *Ibid.*, p. 92

99 Voluntary Partnership Agreement between the European Union and the Republic of Cameroon on forest law enforcement, governance and trade in timber and derived products to the European Union, Official Journal L92/4, 6 April 2011. Annex VII

100 Cameroon, Gabon, Kyrgyzstan and Nigeria designated as EITI Candidate countries that are "close to compliance", EITI Secretariat: <http://eiti.org/news-events/cameroon-gabon-kyrgyzstan-and-nigeria-designated-eiti-candidate-countries-are-close-comp#>.

101 As reported in *Transparency in the forest sector in Cameroon*, Centre for the Environment and Development, August 2011, Annex available through <http://www.foresttransparency.info/cameroon/2011/lessons-learnt/>

Colombia

General context on access to information

Freedom of information has a long history in Colombia. It was first recognised in 19th century legislation, the Policy and Municipal Organization Code, making Colombia the country with the second longest established tradition of freedom of information in the world. Under this Code, citizens could access documents held by public bodies unless specifically forbidden by law.¹⁰²

Colombia's current Law on Disclosure of Official Acts and Documents establishes a right of access to documents held by public agencies, unless the information is protected under the Constitution, another law, or cannot be disclosed for national defence or security considerations.¹⁰³ Information requests must be responded to in 10 days, and refusals may be appealed to an Administrative Tribunal. Further access rights are granted under Colombia's Law on Archives.¹⁰⁴

The Global RTI Rating Project scores the law 85 out of a possible 150 points, relying to a large extent on the strength of the country's judiciary. It criticises the law's limited scope (it does not apply to the legislature and judiciary), that it can be 'circumvented' by other legislation to classify information, and the lack of a public interest override.

In 2006, it was reported that the law was in relative disuse and that there were "longstanding problems with implementation and enforcement."¹⁰⁵

The right to information is also constitutionally recognised. Article 74 of Colombia's Constitution states: "Every person has a right to access to public documents except in cases established by law." There is significant Constitutional Court jurisprudence further establishing the right as an essential part of democracy.¹⁰⁶



Colombia is a member of the Open Government Partnership and has pledged to overhaul its freedom of information law. It pledges in particular to enhance proactive publication, emphasising "the State's duty to make this information actively visible without the need for prior requests, based on the principle of proactive information

102 As reported in D. Banisar, Global Freedom of Information Survey, 2006: http://freedominfo.matrixdev.net/wp-content/uploads/documents/global_survey2006.pdf

103 Ley 57 de 1985, 5 June

104 Ley 594 de julio 14 de 2000. Por medio de la cual se dicta la Ley General de Archivos y se dictan otras disposiciones

105 D. Banisar, Global Freedom of Information Survey

106 See Sentencia C-641/02, Sentencia T-216/04. <http://www.cajpe.org.pe/rij/bases/juris-nac/t216.pdf>, Sentencia T-053/96, <http://www.cajpe.org.pe/rij/bases/juris-nac/c-038.pdf>, as reported in D. Banisar, Global Freedom of Information Survey

dissemination. Once this is approved, the Government and civil society will work on the implementation of the law, identifying the responsible entities.”¹⁰⁷ A one year time frame is given for realisation of this commitment. It also pledges to step up transparency in the fight against corruption and increase civil society participation in decision making. By July 2012, new access to information legislation had been introduced in parliament.¹⁰⁸

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Colombia's 2010 Communication to the United Nations Framework Convention on Climate Change¹⁰⁹ states that the most important actors in providing access to information have been the media - radio, press, TV and Internet portals. The main government website on climate change (www.cambioclimatico.gov.co) is run by the Ministry of the Environment's Institute for Hydrology, Meteorology and Environmental Studies (Instituto de Hidrología, Meteorología y Estudios Ambientales). This is set up to provide general information on climate change and includes various sections detailing national policies and steps taken to mitigate climate change, adaptation, vulnerability as well as national education and political strategies. Unfortunately, as of January 2013 a number of these sections were empty, which seems a missed opportunity in providing information given the recorded visitor numbers for the site (200,000 are claimed since July 2011). The generic websites of the Ministry and the Institute carried some further, limited material, while the ministry's Environmental Information System¹¹⁰ provided information on issues such as deforestation and biodiversity. This site fulfils a clear public need, with more than 370,000 visits recorded since January 2011.

Colombia's REDD+ team flagged up adequate and early access to information as a “key topic”,¹¹¹ recognising the need for full consultation and information flows to affected communities. Its Readiness factsheet highlights information sharing and consultation with affected communities as key areas of activity,¹¹² and its R-PP from October 2011 details a thorough information sharing strategy using the internet as well as “intercultural communication tools that allow the content and materials to be adapted to different mediums (video, radio, music, written communication)”.¹¹³ It also envisages online access to its REDD+ registry.¹¹⁴ Colombia has been invited in 2012 to submit a National UN-REDD programme in 2013.

107 Action Plan of the Government Of Colombia, Open Government Partnership: http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/action%20plan%20Colombia%20OGP_1.pdf

108 As reported in N. Torres, Access to Information in Colombia: 124 Years Later, 27 July 2012: <http://www.freedominfo.org/2012/07/access-to-information-in-colombia-124-years-later/>

109 7 December 2010, doc. No COL/COM/4 E: <http://unfccc.int/resource/docs/natc/colnc2exsume.pdf>.

110 <https://www.siac.gov.co/portal/default.aspx>

111 As presented to PB7, 13-14 October 2011.

112 March and June 2012 Progress Fact Sheets, available through <https://www.forestcarbonpartnership.org/fcp/node/63>

113 REDD+ Readiness Preparation Proposal (R-PP), 29 September 2011, p. 61: https://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2011/Colombia_R-PP_Revised-%20English-%20September%2029%2C%202011.pdf

114 http://www.siac.gov.co/documentos/DOC_Portal/DOC_Bosques/SISTEMA%20WEB%20INSERTO.pdf

Democratic Republic of the Congo

General context on access to information

The Constitution of the Democratic Republic of Congo (DRC) protects the right to information in Article 24.¹¹⁵ This has not been implemented. A draft freedom of information law is reportedly under discussion, having been tabled in parliament in 2010, but it has not been made available publicly.¹¹⁶ DRC's forestry law does not provide for a clear right of access to information either, and appear to have been little disseminated or understood by forest-dependent communities.

The relatively new Law on fundamental principles related to the protection of the environment does recognise a right of information and consultation, but only as a general principle: it sets no procedures for implementation and is therefore likely to remain unimplemented.¹¹⁷ Similarly, while the right to free, informed and prior consent is recognised in both the Forestry Law and the Law on fundamental principles related to the protection of the

environment, it is not implemented. Global Witness' Forest Transparency Programme reports that "it is not yet seen in practice and communities are not aware of it due to the lack of implementing texts".¹¹⁸ The lack of information on forestry matters is such that not even annual reports are regularly produced and civil society does not ask for them.¹¹⁹ While transparency efforts have been made through the legal review on timber concessions, they could be significantly improved (see Text Box 9).

So far, international pressure has resulted in only limited progress. While DRC has ratified a memorandum of understanding on the fight against the illicit trade in CITES species, this has not been translated into community languages, and communities and even local forest authorities are unaware of it.¹²⁰ The

illiteracy rate is also high in the rural areas, especially among women. Negotiations for a Voluntary Partnership Agreement with the European Union have reportedly stalled and suffer from a lack of civil society inclusion.¹²¹ DRC is not a member of the Open Government Partnership, but it is a candidate member of the Extractive



115 Constitution de la République Démocratique du Congo, 18 February 2006

116 As reported by Global Witness: <http://www.foresttransparency.info/drc/2011/themes/16/88/>

117 Article 9, Loi n°11/009 portant Principes Fondamentaux relatifs à la Protection de l'Environnement: <http://www.glin.gov/download.action?fulltextId=307220&documentId=250421&searchDetails.searchAll=true&summaryLang=fr&search=&glinID=250421&searchDetails.queryString=juris%3Aequals%28%22en+Congo%2C+The+Democratic+Republic+Of+The%22%29&fromSearch=true&searchDetails.queryType=BOOLEAN&searchDetails.showSummary=true>

118 <http://www.foresttransparency.info/drc/2011/themes/16/95/>

119 <http://www.foresttransparency.info/drc/2011/themes/16/107/>

120 <http://www.foresttransparency.info/drc/2011/themes/16/91/>

121 <http://www.foresttransparency.info/drc/2011/themes/16/91/>

Industries Transparency Initiative and produced its first report in 2010.¹²² It has until March 2013 to become EITI compliant.¹²³ Congo's EITI is applicable only to oil, gas and mining industries, but lessons learned may be relevant to forestry.

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

DRC's Second Communication to the UN FCCC, from November 2009,¹²⁴ bemoaned a broad lack of public engagement and access to information on environmental issues, including a lack of public access to climate change information. The Report mentions that some information has been provided through a small number of media outlets (a newspaper, published by an NGO, two programmes on the national broadcaster as well as a radio programme in development) but this is clearly not enough to fulfil the obligation to provide relevant and up to date access to information to the public.¹²⁵ No other initiatives to provide public access to climate change information have been publicised.

DRC's "Readiness Plan for REDD+"¹²⁶ 2010-2012 makes some mention of improving transparency, for example in the context of managing a national data record on REDD+,¹²⁷ but has to date favoured consultations and workshops over a more formalised freedom of information structure. The REDD+ Readiness Plan does not indicate concrete steps towards realising greater structural transparency in practice. While the World Bank has indicated that workshops and consultation processes are reaching the affected communities,¹²⁸ when they stop there will be no structures in place to deliver information. DRC is at the early stages of receiving "targeted support" on anti-corruption as well as on women's participation in REDD+ under the UN-REDD "Support to National Actions" programme.

DRC's REDD+ effort do provide an interesting example of utilising the internet. The national REDD+ Registry for REDD+ projects, formally established by a decree in 2012, will serve as a database of all REDD+ finance and activities ongoing in the country, including those projects targeting carbon transactions in the voluntary market. In addition, DRC will provide access to its National Forest Monitoring system,¹²⁹ which is linked to the national REDD+ Registry and can receive input from stakeholders as well as provide information¹³⁰. Finally, the Moabi site (www.rdc.moabi.org), an independent platform, run "by civil society for civil society", seeks to be a place where different interests from governments, companies, civil society members and concerned individuals can find, add, download, and discuss information related to the DRC REDD+ process, particularly spatial data. These initiatives are still under design, which makes their effective contribution to transparency and accountability in REDD+ difficult to assess, but they show a glimpse of the potential of harnessing the power of the web to provide REDD+ information into the public arena. Being web-based, they of course are only usable by those with

122 Democratic Republic of Congo 2009 EITI Report: <http://eiti.org/report/democratic-republic-congo/2009>

123 See <http://eiti.org/DR Congo>

124 Kinshasa, 28 November 2009, Doc. No. COD/COM/3 E

125 See page 31

126 Available online at http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=5404&Itemid=53

127 At p. 67 of the above

128 Democratic Republic Of Congo Readiness Preparation Proposal Assessment Note, 8 March 2011: http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2011/FCPF%20DRC%20R-PP%20Assessment%20Note%20_PCN_%2003-24-11%20-%20FINAL%20-%20FOR%20PUBLICATION.pdf

129 At <http://www.rdc-snsf.org/?lang=en>

130 The system is based on PRODES (<http://www.dpi.inpe.br/prodesdigital/prodes.php>) and was developed, through UN-REDD support, in cooperation with Brazil's National Institute for Space Research (INPE). Similar systems have been launched in Papua New Guinea and Paraguay.

good internet access in a country where most stakeholders have no access to it not electricity, so complementary systems of information, such as reports and the use of popular media, are needed to access a larger national audience.

Text Box 9 : Courage and Weaknesses in the Legal Review of Timber Concessions in DRC

With the aim of bringing transparency and accountability to the logging sector in the Democratic Republic of the Congo, which has been the subject of national and international criticisms, the government undertook in 2005-2009 a legal review of 156 logging titles against criteria set out in a Presidential Decree. This legal review, which was financed by the World Bank and led by an Interministerial Committee, was a bold and innovative initiative by the Government to increase public information, transparency and accountability in a sector that presents numerous corruption risks and generates the interest of powerful actors.

However the review process has been criticized by international and national NGOs for being limited in scope and for an evaluation process marked by a high degree of secrecy. In addition, new forest management regulations introduced over the past years are still not being implemented.

Nevertheless, this exercise should be recognized for its willingness to increase transparency and monitoring in a sector prone to corruption, hence indicating a path towards better governance that could inspire other countries with similar contexts. The strengths and the weaknesses of the process undertaken in DRC indeed provide lessons on ways to improve the design, evaluation and monitoring of such initiative. For example, to promote full transparency and accountability, the capacity to follow-up and implement decisions resulting from the review, and civil society participation and involvement in such a process are crucial elements to strengthen the process and ensure its credibility.

Ecuador

General context on access to information

Ecuador's Constitution recognises the right of access to "information generated in public institutions or in private institutions that handle State funds or perform public duties".¹³¹ This has been implemented through the Law on Transparency and Access to Information, adopted in 2004, which gives a right of access to information in any format from public bodies and organizations that provide state services or are publicly owned. Requests must be responded to in ten days, and access may be refused on grounds of confidentiality, national security, national defence including military plans, intelligence, or that the information is protected under other legislation. It is reported that this includes commercial or financial information as well as information given in confidence; protected commercial, banking industrial or technical secrets, information related to the administration of justice; information on state decision making, if it would cause harm; and information given to the Tax Administration.¹³² If access is refused, complaints can be made to the ombudsman or to the courts, with a further direct appeal to the Constitutional Court.



The Law requires that public bodies publish information about their structures and legal basis, internal regulations, goals and objectives, directories of personnel, monthly remunerations, services, contracts including a list of those who have failed to fulfil previous ones, budgets, results of audits, procurements, credits, and travel allowances of officials. Public bodies should designate an official to handle information requests and create document registries. They are also required to conduct awareness raising programs, and universities and other educational bodies are required to include the right to information in their curricula.

The Global RTI Rating Project scores the Ecuadorian law 75 out of a possible 150. It praises the law's broad scope but criticises the lack of an independent administrative appeals body, as well as vague access procedures. The lack of a public interest override, the fact that other laws can impose other restrictions and the absence of harm tests for military or intelligence secrets are also criticised.

¹³¹ Republic of Ecuador Constitution of 2008, Article 18(2). This is further implemented through Article 91 which states that "The petition for access to public information shall be aimed at guaranteeing access to this information, when this information has been denied expressly or tacitly or when the information provided is incomplete or not trustworthy. It can be filed even if the denial to provide information is based on the secret, reserved, confidential nature of the information or any other classification. The reserved nature of the information must be stated prior to the petition by a competent authority and in accordance with the law."

¹³² As reported in D. Banisar, Global Freedom of Information Survey, 2006

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Ecuador's Second Communication under the UN FCCC, from April 2012,¹³³ does not report specifically on steps taken to provide access to climate change information. It refers in general terms to the country's Forest Information System, which includes the National Forest Inventory, and reports that this will be used as the basis for a national monitoring system on deforestation. The Ministry of the Interior website provides the country's national climate change strategy, presented in October 2012,¹³⁴ while the website of Ecuador's National Institute of Meteorology and Hydrology provides more general information on climate change.¹³⁵ Policy is driven through the Inter-Institutional committee on Climate Change.¹³⁶

Global Witness, which has researched transparency in Ecuador's forestry sector, remarks that despite the existence of the freedom of information law, "it is still a challenge to move towards daily practice with tools that promote more open public institutions", citing a lack of political will, organisational culture, technological infrastructure, budgetary resources and reinforced penalties, and the fact that citizens' demands for public information have not increased. "The law has not been translated into other indigenous languages", the report highlights, "nor has it been summarised to make it easier to understand. Although the law has facilitated public access to information, it is difficult to analyse its impact on the forest sector. There is no way of knowing what type of information citizens have requested on forest issues and no way of evaluating the compliance of the public institutions in providing that information."¹³⁷

The Ecuadorian NGO Grupo FARO (Foundation for the Advance of Reforms and Opportunities) tested implementation of the law by making eight information requests to different public institutions, between September 2011 and January 2012. Only one reply was received with complete information and on time. But Grupo Faro is also critical of its peers in civil society, in one report stating that "civil society organisations working in forest issues fail to make use of the legal framework tools with due frequency. A lack of citizen demand for forestry information makes it unlikely that the forestry authority will publish such data in an expedient fashion."¹³⁸

Ecuador's Law on Environmental Management and the Forest Law also include some transparency requirements. The Ministry of Environment is required to compile information on environmental issues, including a register of the forestry industry, and make this information public. However, it is reported that information on the forest sector remains poor and is spread across several public institutions.

While the Ecuadorian Constitution guarantees the right to free prior informed consultation,¹³⁹ this has not been implemented.¹⁴⁰ Global Witness comments that, "The FPIC process only relies on the presence of some leaders, without this necessarily meaning that the rest of the community is informed. In addition, it is not clear how to proceed in the case of disagreements or to what extent the views expressed by indigenous peoples are considered."

133 1 January 2011, Doc. No. ECU/COM/2 E

134 See <http://www.ambiente.gob.ec/se-develo-la-estrategia-nacional-de-cambio-climatico/>; and more generally <http://web.ambiente.gob.ec/?q=node/727>.

135 <http://www.inamhi.gob.ec/index.php/clima/cambio-climatico>.

136 <http://web.ambiente.gob.ec/?q=node/987>.

137 Making the Forest Sector Transparent: Annual Transparency Report 2010, Ecuador, October 2011 Country Specific Report: Ecuador; <http://www.foresttransparency.info/ecuador/2011/themes/16/88/>

138 Ibid.

139 Article 57

140 Zambrano S, 2010 - see <http://www.grupofaro.org/publicaciones.php?id=80>

Ecuador's 2011 Forest Governance Model is however cited as a positive example. It recognises transparency as a key element of effective forest governance. The Ministry of Environment is also setting up a new System of Administration and Forest Monitoring,¹⁴¹ including a National System of Forest Information which provides a national database of actors connected with forest activity. This will produce online reports of forest activities, including administrative processes, forest management and monitoring, and commercialisation of timber and forest products in the country, including imports and exports of forest products. Global Witness remarks that “[a]n important point to consider would be whether the Ministry tracks illegal trade and contrasts it with the information from the SAF, and whether all this information is available to the public and is easily accessible.”

Ecuador's National UN-REDD Programme¹⁴² plans to establish an online national registration system and provide a database of all relevant projects. For each REDD+ project, the system would give documentation showing that consent has been properly given. This would be “crucial to ensure the existence of evidence proving that all community members have knowledge of the project and that the decision has been made according to established norms and procedures”.¹⁴³

Ecuador is also engaged on a participatory governance assessment supported by the UN-REDD Programme¹⁴⁴. In addition, Ecuador's national interpretation of the REDD+ Social and Environmental Standards¹⁴⁵ has criteria, which will be monitored, on maintaining the principle of free prior and informed consent (FPIC) for indigenous peoples and local communities; on providing information about the requirements of FPIC; and various criteria of transparency on the management of funds and distribution of benefits.

141 <http://www.ambiente.gob.ec/?q=node/595>

142 Available online in English at http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6275&Itemid=53

143 PNC ONU-REDD+ Ecuador; versión final, 2011, p.57:http://www.ambiente.gob.ec/sites/default/files/users/alhumeau/2011-10-28%20PNC%20ONUREDD%20Ecuador_VF.pdf

144 There has been no decision to date on transparency or access to information. See report from the first informal meeting on this process here : http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6330&Itemid=53

145 Available here : <http://www.redd-standards.org/files/pdf/ecuador/NationalInterpretationMatrix.pdf>

Guatemala

General context on access to information

Guatemala's Constitution only recognises a right of access to archived information.¹⁴⁶ A full access to information law was adopted in 2008, through the Law on Access to Public Information.¹⁴⁷ This provides that individuals may have access to information except confidential or reserved information, a list of which is enumerated in Article 20. Article 21 mentions explicitly that “[i]n no case may information relative to the investigation of violations of fundamental human rights or crimes against humanity be classified as confidential or reserved.”

Article 23 sets a high threshold for any public body that intends to refuse access, stating that public bodies that refuse access must demonstrate, “(1) that the information legitimately fits one of the definitions for exceptions foreseen in this Law; (2) that disclosure of the information may effectively threaten the interests protected by law; (3) that the harm that may be produced upon disclosure of the information is greater than the public interest to have knowledge of the information.” Requests must be responded to within ten days,¹⁴⁸ and refusals may be appealed to a higher authority within the public body. There is further recourse to the courts if necessary.¹⁴⁹ The Human Rights Ombudsman is the designated oversight body, and all public bodies must provide annual reports to it regarding their performance on freedom of information.¹⁵⁰

Public bodies are required to publish a range of information proactively. Operational plans, including budgets, must be published monthly, as must all “information on the contracts for all goods and services used by obliged subjects, identifying the amounts, unitary prices, costs, corresponding sectors of the budget, suppliers’ characteristics, the details of the adjudication processes and the content of the contracts” and a “list of works in execution, executed or partially executed with public funds, or with resources stemming from loans granted to any State entity, indicating exact location, total cost, source of financing, term of execution, beneficiaries, executing corporation or entity, name of the officer responsible and contents of the corresponding contract”.¹⁵¹

Public bodies are also required to institute a “culture of transparency”, mainly by providing training to their employees. The right to information is included on school curricula at all levels.¹⁵²

The Global RTI Rating Project scores the law 96 out of 150 and commends it for its exceptions scheme and promotional requirements. It criticises the possibility of secrecy classification through other laws.

In 2011, Guatemala was accepted as a candidate member of the Extractive Industries Transparency Initiative. It has until 28 August 2013 to complete EITI Validation and it has pledged to set up a multi-stakeholder group to work on preparing implementation of the EITI.

146 Article 31, Constitución Política de la República de Guatemala, 1985, Reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993 : http://www.wipo.int/wipolex/en/text.jsp?file_id=194691

147 Law of Access to Public Information, Initiatives 3755 and 3768, 23 June 2008

148 Article 39

149 Article 58

150 Article 46

151 Article 8

152 Chapter II, “Culture of Transparency”

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

The Guatemalan Ministry of the Environment maintains a website that provides access to several categories of information relevant to climate change, including greenhouse gas inventories, reduction, mitigation and adaptation strategies as well as a study on biodiversity.¹⁵³ In all, the website only carries 35 documents, however, which is probably somewhat limited – particularly given that Guatemala has been judged as among the ten countries in the world most vulnerable to climate change.¹⁵⁴ No other initiatives to provide public access to climate change information have been publicised, and Guatemala is yet to publish its Second Communication to UNFCCC detailing steps it has taken to implement Article 6 of the Convention, on public access to climate change information.¹⁵⁵

Global Witness's Forest Transparency Initiative is critical of the unavailability of the freedom of information law and environmental laws generally in indigenous languages. Its finds serious shortcomings in implementation of the laws, including that 34% of the indigenous population – who themselves constitute 40% of the total population – do not speak Spanish; that local municipalities fail to implement the law; that public information units are insufficiently funded; and that there is no awareness among civil society or local populations of their information rights.¹⁵⁶ Other policy documents that are not available in local languages include the National Forest Policy, and the Forest Law of 1996 and associated regulations issued in 2005. Only some of the regulations have been summarised for a lay audience.



Guatemala's forestry laws do not contain specific information regarding to access to information, partly because the country's freedom of information law is sufficiently broad in scope to cover the sector. It is reported that some access requests for forestry information have been made under the freedom of information law, although the outcome is not clear. Global Witness reports that "there is a process of strengthening forest information in Guatemala between the relevant public institutions and the FAO (as well as ITTO), and a website¹⁵⁷ was created to centralise forest information, which is still being developed. One possible suggestion which might be useful would be for the public information units of the National Institute of Forests (INAB) and the National Council for Protected Areas (CONAP) to consistently comply with aspects of the Law of Access to Public Information, such as the compulsory production of an annual report detailing all the freedom of information requests received and replied to and not replied to, to the Office of the Human Rights Ombudsman, which is required to publish an annual transparency report. Neither INAB nor CONAP were consistent with this requirement over the last two

153 http://www.marn.gob.gt/sub/portal_cambio_climatico/index.html

154 As estimated by Alertnet in 2010: <http://reliefweb.int/report/guatemala/climate-change-issues-gaining-momentum-guatemala>.

155 <http://www.ghana.gov.gh/index.php/component/content/article/96-top-headlines/10938-mest-to-develop-national-climate-change-policy-framework>.

156 <http://www.foresttransparency.info/guatemala/2011/themes/16/88/>

157 <http://www.sifgua.org.gt>

years (although they have complied with this requirement for 2011, they failed to comply for the years of 2009 and 2010), which demonstrates that there are difficulties in consistent compliance with the law so far as the forest sector is concerned.”¹⁵⁸

While “a number of laws” are reported to recognise the principle of free informed prior consent, implementation in practice has not been regulated.¹⁵⁹ There is a database detailing all the logging consultations carried out with local communities,¹⁶⁰ and local communities can request more information from their regional office of the Ministry of Environment and Natural Resources. But detailed information of the environmental impacts is not available online. Consultation on environmental impact process is discretionary, and a study carried out by the Institute of Agriculture, Natural Resources and Environment points to lacking civil society involvement.¹⁶¹ Global Witness reports that officials find the process burdensome and “time consuming”.¹⁶²

Global Witness reports that the National Institute of Forests and the National Council of Protected Areas failed to publish annual reports and operating plans and budgets, as they are required to.¹⁶³

There are signs of progress. Guatemala’s R-PP, from March 2012, signals intent to establish a comprehensive REDD+ information system. Information sharing activities and outreach are planned to take place in a manner and language relevant to the target community.¹⁶⁴ Guatemala’s R-PP does also refer to the Law on Access to Public Information, but without mentioning how the current problems in implementation will be addressed. It places great stock in websites under development, including the National Transparency Web Platform, aka “project OpenWolf”.¹⁶⁵ The R-PP proposes to rely on similar sites for its safeguard information system reporting requirements.¹⁶⁶

Guatemala is a member of the Open Government Partnership. Its Action Plan¹⁶⁷ recognises that there is corruption in the natural resources sector, and pledges to improve transparency and participatory government. It pledges to simplify administrative processes and reduce opportunities for bribery, and to improve transparency in public procurement. Guatemala has established the “Secretaría de Control y Transparencia”, set up in February 2012 under the Vice-President’s Office, to coordinate its efforts in this regard. This will focus on three priority areas: a) Fighting Corruption, b) Promotion of Transparency and c) Public Information and Electronic Government. New legislation is proposed to strengthen transparency and integrity of public finances.¹⁶⁸

158 <http://www.foresttransparency.info/guatemala/2011/themes/16/92/>

159 <http://www.foresttransparency.info/guatemala/2011/themes/16/95/>

160 <http://www.marn.gob.gt/aplicaciones/consultapub/Default.aspx>

161 <http://www.infreedomofinformation.org.gt/article.aspx?id=239>

162 <http://www.foresttransparency.info/guatemala/2011/themes/16/99/>

163 <http://www.foresttransparency.info/guatemala/2011/themes/16/107/>

164 Guatemala R-PP (March 2012), p. 24-25 (Basic outreach on forests and climate): <http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2012/Guatemala%20Final%20RPP-March2nd%20version-ENGLISH-March%2014%2C%202012.pdf>

165 Guatemala R-PP, p. 144

166 *Ibid.*

167 Open Government Partnership Action Plan Guatemala, 9 April 2012 (in Spanish and English): http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/Guatemala%20OPG%20Action%20Plan%20%2009.04.12.pdf

168 Iniciativa 4461 “Ley de Fortalecimiento de la Institucionalidad para la Transparencia y Calidad del Gasto Público”, and Iniciativa 4462 “Ley de Fortalecimiento de la Transparencia y de la Calidad del Gasto Público”

Indonesia

General context on access to information

Indonesia's Constitution recognises the right "to obtain information for the purpose of the development of his/her self and social environment, and ... the right to seek, obtain, possess, store, process and convey information by employing all available types of channels."¹⁶⁹

The constitutional right has been implemented through Indonesia's Public Information Disclosure Act, which entered into force in 2010.¹⁷⁰ This covers all information "produced, stored, managed, sent and/or received by a Public Agency"¹⁷¹ and extends to State bodies as well as "non-governmental organizations part or all of whose funds originate from the state budget and/or the regional budget, the contribution from the people and/or from overseas sources."¹⁷² Requests must be responded to in ten days, and may be refused if disclosure would be detrimental to law enforcement, defence and security, the economy or confidentiality. The UCL Constitution Unit has criticised that this leaves officials excessive discretion.¹⁷³

The Law requires every public body to publish a range of information including "all of the existing policies, along with their supporting documents; project working plans, including the estimated annual expense of the Public Agency; agreement made by the Public Agency and a third party".¹⁷⁴

The Global RTI Rating Project rates the law as 99 out of a possible 150 and remarks that it is mid-implementation. It finds that "the biggest weakness in this law is the fact that the Information Commissioner's decisions are not legally enforceable", as well as that information can be classified by other laws.

Implementation is haphazard. A report by the Centre for Law and Democracy and the Indonesian Centre for Environmental Law found that officials refused to disclose information and either appeared unaware of the law or simply ignored it;¹⁷⁵ while a parallel study of three public bodies (the Ministry of Education, Ministry of Health and the Republic of Indonesia National Police) found that public officials cited confidentiality as a reason for refusal to disclose when there was none. The same was reported when the NGO, Article 19, conducted a baseline study of respect for freedom of information at provincial level.¹⁷⁶ It has been suggested that better guidance and training to local officials would ameliorate this problem, as well as local awareness-raising among civil society to stimulate more use of the law. The University College of London's Constitution Unit remarks that "[t]he evidence available so far, certainly suggests that if public information legislation is to assist in developing a default position of disclosure and openness, greater vigilance and proper application of the rules are required."¹⁷⁷

169 1945 Constitution of the Republic of Indonesia, as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002

170 Act Number 14 Year 2008, Public Information Disclosure Act, Ratified in Jakarta on 30th of April 2008: <http://ccrinepal.org/files/documents/legislations/12.pdf>. There are addition access to information provisions in the Law on the Press (UU 40/1999: PERS) and the Law on Human Rights (UU39-1999).

171 Article 1, Definitions

172 Ibid

173 [http://www.ucl.ac.uk/constitution-unit/research/freedom of information/countries/indonesia](http://www.ucl.ac.uk/constitution-unit/research/freedom%20of%20information/countries/indonesia)

174 Article 9

175 <http://www.law-democracy.org/live/projects/rti-in-indonesia/>

176 Fulfilling the right to information - Baseline Assessment on Access to Information in East Nusa Tenggara, Indonesia, ARTICLE 19, November 2010: <http://www.article19.org/data/files/pdfs/publications/fulfilling-the-right-to-information.pdf>.

177 [http://www.ucl.ac.uk/constitution-unit/research/freedom of information/countries/indonesia](http://www.ucl.ac.uk/constitution-unit/research/freedom%20of%20information/countries/indonesia)

Another weakness in implementation has been the interpretation of the provisions on exceptions. Recent research showed that officials often seemed to follow a ‘gut feeling’ of secrecy and would apply formal exceptions found in earlier legislation which no longer applies; that the understanding of the exceptions regime under the Disclosure Act varied wildly between different agencies; and that earlier laws that mandate secrecy can be difficult to reconcile with the new Disclosure Act.¹⁷⁸

Other Indonesian civil society representatives express similar concerns, singling out the lack of enforceability of the Information Commissioner’s decisions. But they also note that the country remains on a forward trajectory: levels of transparency are improving, just not as quickly as had been hoped for.

Indonesia gained candidate status at the Extractive Industries Transparency Initiative in 2010, and its first report is due late 2012. It is then on track to become a full member by mid-2013.¹⁷⁹ The government has reported that it, “commits to disclose all taxes, royalties and fees it has received from the oil, gas and mining sectors. Companies operating in these sectors will publish what they have paid to the government. These figures will be reconciled by an independent reconciler, in a process overseen by representatives from government, industry and civil society organizations.”¹⁸⁰ Experience gained under this process may help improve transparency around REDD+ processes.

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Indonesia’s National Agency on Meteorology, Climatology and Geophysics is the agency responsible for collecting and disseminating climate change-related information¹⁸¹ and was reported, in Indonesia’s Second Communication to UNFCCC in 2010,¹⁸² to have started to develop a web-based climate information system. Under the heading “climate change information”, this currently only provides an overview of the results of a study concerning climate change on the island of Bali.¹⁸³ The main entity responsible for climate change policy is the National Council on Climate Change, whose website provides access to various policies and reports, including on REDD-related projects.¹⁸⁴ There is no information on whether this or other initiatives reach the target audiences for climate change information – including rural populations.

A Voluntary Partnership Agreement with the European Union was finalised on 4 May 2011 but has not yet been signed or ratified. Like other VPAs, this is reported to impose various transparency requirements¹⁸⁵ and could give further impetus to the implementation of Indonesia’s Freedom of Information Act.

There have been very critical assessments of FCPF’s and FIP’s consultation and stakeholder engagement efforts in Indonesia.¹⁸⁶ Indonesia’s National UN-REDD Programme does not mention transparency or freedom of information as a separate focus point, but highlights the importance of a fair, equitable and transparency REDD+ mechanism. Strengthened multi-stakeholder participation and consensus at national level has further been among the main

178 Interpretation of Exceptions to the Right to Information: Experiences In Indonesia and Elsewhere, Centre for Law and Democracy and Indonesian Center for Environmental Law, March 2012: <http://www.law-democracy.org/wp-content/uploads/2010/07/Interpretation-of-Exceptions-To-the-Right-To-Information-Experiences-in-Indonesia-and-Elsewhere.pdf>

179 See <http://eiti.org/indonesia>

180 As reported in Indonesia’s Open Government Partnership Action Plan

181 Badan Meteorologi Klimatologi dan Geofisika http://www.bmkg.go.id/BMKG_Pusat/Depan.bmkg

182 1 November 2010, Doc. IDN/COM/2 E

183 http://www.bmkg.go.id/BMKG_Pusat/Klimatologi/Informasi_Perubahan_Iklim.bmkg

184 <http://dnpi.go.id/portal/id/>

185 FLEGT Voluntary Partnership Agreement Between Indonesia and the European Union, Briefing Note, May 2011: http://www.euflegt.efi.int/files/attachments/euflegt/briefing_note_indonesia_en_.pdf

186 See, for example, Hullabaloo around FCPF and FIP activities in Indonesia, Bank Information Center REDD Alert, October 2011: <http://www.bicusa.org/en/Article.12550.aspx>

objectives for the Programme.¹⁸⁷The Indonesia UN-REDD Programme implemented extensive multi-stakeholder consultations for the first draft National REDD+ Strategy during July-November 2010 and promoted a transparent and open drafting process of the National REDD+ Strategy through the publication of the first drafts of the Strategy online and encouraging inputs from all interested stakeholders, nationally and internationally. Indonesia's Letter of Intent with Norway mentions transparency in the context of funding as well as more generally, Indonesia committing to "ensure transparency in all aspects of disbursements and operations" as well as to be "fully transparent regarding financing, actions and results" in its cooperation with Norway¹⁸⁸.

Indonesia's efforts to assess governance challenges through a "Participatory Governance Assessment" (PGA) supported by the UN-REDD Programme, however, show encouraging signs. The PGA, whose results have been pledged to be used by the REDD+ Task force, includes an assessment of laws and policies related to tenure to evaluate, among others:

"Ensuring the availability of all data or information related to the systematic process of spatial and forestry planning for the sake of easy access, appointing specific officer responsible for managing inputs from public,

the obligation of the designated institution or unit to document each written and non written inputs, obligation to provide transparent response to every received inputs, obligation to provide explanation on the final decision made,

the obligation to granting of access to the public either proactively on request basis and sanction to those parties who intentionally hamper public access to information "¹⁸⁹

or

"The obligating to ensure the availability of all information in relation to systematic forest management for easy accessibility e.g. all permits issued including company in possession of permits as well as company which receives sub-contract, all tender documents, payment is made by the company "¹⁹⁰

In addition, as part of its Open Government Partnership commitments, Indonesia has made pledges related to forestry or relevant to REDD+ by December 2013, such as:

- To digitalize information related to primary and secondary forests on a single portal. Those data and information will be synchronized with licenses data attached to the land area;
- To promote transparency, accountability and public participation in the area of environment, natural resources, and spatial data management, by:
 - Publication of revenue information of the government (central & region) from the extractive industry (oil & gas, coal)
 - Establishment of multi-stakeholders forum for spatial plan development. (Track III, by July 2012)
 - Publication of spatial plan document. (Track III, by December 2012)¹⁹¹

Furthermore, Indonesia's OGP Action Plan pledges to promote transparency and accountability of public services at the Land Administration Office, which is of high relevance to REDD+ and has been identified as at high risk of corruption.¹⁹²

187 Indonesia UN-REDD+ National Joint Programme 2009-2011

188 As of May 2010, accessible at http://www.norway.or.id/PageFiles/404362/Letter_of_Intent_Norway_Indonesia_26_May_2010.pdf.

189 Indicator number 5, PGA Tool Indonesia, http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8174&Itemid=53

190 Ibid, indicator 13

191 See <http://www.opengovpartnership.org/countries/indonesia>

192 Ibid

General context on access to information

Article 35 of Kenya's Constitution provides that "[e]very citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom ... The State shall publish and publicise any important information affecting the nation".¹⁹³ There has been some litigation around this provision, which has affirmed that citizens (but not non-nationals) may rely directly on it to request access to information from public bodies, even in the absence of implementing legislation (there is no Freedom of Information Law).¹⁹⁴ This affirms the principle that, subject to narrow exceptions, all information held by Kenya's public bodies is publicly accessible.

World Bank research reports that in practice, access to information is restricted, including as follows:

1. Section 3 of the Official Secrets Act criminalises the possession of unauthorized government information and the unauthorised provisioning of government information
2. Section 52 of the Penal Code allows the government to prohibit the publication of any document
3. Section 131 of the Evidence Act allows ministers to withhold information during the course of court proceedings if they believe publication would be "prejudicial to the public service"
4. Under Section 18 of the National Assembly (Powers and Privileges) Act, the President may prohibit any public officer from providing any information to Parliament¹⁹⁵

Kenya has also indicated that it is joining the Open Government Partnership and has pledged to enact freedom of information legislation. The government has stated that "is in the process of drafting a freedom of information law. The draft bill meets most of the criteria for an effective Access to Information (ATI) law, scoring 114 out of a maximum 150 on the Right to Information (RTI) Legislation Rating Methodology, which—if passed in its current form—will place Kenya 10th globally for most progressive ATI law."¹⁹⁶ The draft FOI Bill is currently under consultation.¹⁹⁷

Progress has also been booked around Kenya's open data project, driven partly by Kenya's desire to become a regional leader in ICT, and the setting up of Kenya's Open Government and Open Data Working Group. The Open Data Project¹⁹⁸ seeks to make government data freely available through a single web portal. Through this, the aim is to make key government data freely available to the public. The 2009 census, national and regional expenditure, and information on key public services are among the first datasets to have been released.¹⁹⁹

193 Constitution of Kenya, Rev. 2010

194 As reported on FreedomInfo.org: <http://www.freedominfo.org/2012/03/kenyan-court-limits-access-right-to-citizens/>

195 As reported by the World Bank's Public Accountability Mechanisms website: <https://www.agidata.org/pam/ProfileIndicator.aspx?c=104&i=9949>

196 See <http://www.opengovpartnership.org/countries/kenya>.

197 Freedom of Information Bill, 2012: <http://cickenya.org/sites/default/files/bills/Freedom%20of%20Information%20Bill%20Revised%2010%20th%20Jan%2C2012%20%281%29.pdf>

198 <https://opendata.go.ke/>

199 As reported on <https://opendata.go.ke/page/about>

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Kenya's main government agency responsible for providing information on climate change is the ministry of the environment. Its website lists the national climate change policy, from 2010.²⁰⁰ This cites poor access to information on climate change issues as one of the main compounding problems in formulating and implementing the strategy. A number of channels are identified to disseminate information more effectively, including through the media and infotainment programming, and the policy states that "key priority areas will be improving national coordination of information through enhancing packaging and expediting timely dissemination"²⁰¹. Kenya's National Climate Change Action Plan, presented in November 2012, highlights the provision of climate change information to rural communities as among the priorities.²⁰² A National Climate Change Secretariat has been established with the assistance of UNDP's Africa Action Plan Programme as the lead agency. There is, however, as yet no information available on the implementation on any of these programmes or whether the information is reaching target groups in the population. According to the UN FCCC clearing house, as January 2013 Kenya had not yet submitted its Second National Communication reporting on the implementation of Article 6, on public access to climate change information.

Kenya's forestry laws include some transparency requirements, as well as an overall obligation to engage in consultation.²⁰³ For example, the accounts of the Forest Management and Conservation Fund must be published; and consultation engaged in before forest land is exchanged for private land or before the adoption of a management plan.²⁰⁴ The Kenya Forest Service website has been designated as the central point of access. At present this carries only a limited set of information,²⁰⁵ although Kenya's REDD+ RPP has reportedly been drafted in thorough consultation with affected communities and mentions "[t]ransparency, accountability and public participation" as "building blocks".²⁰⁶

In its most recent REDD+ update report, Kenya indicates that "[o]ptions for implementation including those for tracking and information systems for bringing transparency in R-PP implementation and conflict resolution and grievance management mechanisms [are] to be tested...up to 2013 and beyond 2013."²⁰⁷ Its R-PP proposes a web-based "information clearinghouse" for all REDD+ knowledge and data.²⁰⁸

Kenya is also at the early stages of receiving "targeted support" on anti-corruption under the UN-REDD "Support to National Actions" programme, which seeks to assess the priority REDD+ corruption risks and mitigation measures, and develop a capacity strengthening plan for Kenya's forest Services, the Ethics and Anti-Corruption Commission, and civil society partners.

200 <http://www.environment.go.ke/wp-content/documents/complete%20nccrs%20executive%20brief.pdf>.

201 At p. 20.

202 See http://cdkn.org/wp-content/uploads/2012/12/Kenya-Climate-Change-Action-Plan_Executive-Summary.pdf, p. 11.

203 The Forests Act, 2005, Act no. 7 of 2005

204 Sections 21, 29 and 35

205 See http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=114&Itemid=137. Only a few documents can be found on the website. The revised RPP document on the website has been uploaded in a corrupted format. The only REDD+ newsletter that has been published is two years out of date.

206 As described in Kenya's RPP, August 2010, p. 15

207 Kenya REDD Readiness Progress Fact Sheet, June 2012, p. 2: http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/Kenya%20FCPF%20Readiness%20Progress%20Sheet_June%202012.pdf.

208 Kenya, revised R-PP, August 2010, p. 29: <https://www.forestcarbonpartnership.org/fcp/node/70>

Mexico

General context on access to information

Mexico's constitution recognises the right to information under Article 6.²⁰⁹ Mexico's federal freedom of information law, the Law on Transparency and Access to Public Government Information of 2002, is often held up as an example of a 'good' freedom of information law accompanied by strong implementation practice. In addition to the federal law, access to information laws are in force in all of the States.

Mexico's Law applies to all government bodies and regulates the right to privacy and data protection as well as the right of access to information. It provides that all information held by government bodies is in principle public, subject to narrow exceptions, and requires government agencies to apply a policy of 'maximum disclosure'.²¹⁰ Individuals may make access requests which must be responded to in a timely manner, and if disclosure is refused a simple appeals mechanism allows for an internal appeal first, with access to the courts as a secondary level.²¹¹ The government may not refuse to disclose information that would reveal crimes against humanity or gross human rights violations. If a public authority fails to respond to an access request on time, the request is deemed to be granted. This negates the problem of 'administrative silence' that prevails in many other countries, where public authorities simply do not respond to access requests.



The Law also requires proactive publication of certain key information, including all information concerning their daily functions, budgets, operations, staff, salaries, internal reports, and the awarding of contracts and concessions.²¹²

The Law set up the Federal Institute for Access to Information (IFAI) to oversee implementation and adjudicating on complaints. It is well established and is relatively well funded: in 2003/4, it had a budget of US\$22 million, compared with a budget for the United Kingdom Information Commissioner during the same period of US\$19 million.²¹³

The Global RTI Rating Project scores the Mexican federal law 119 out of a possible 150, commenting that it is emblematic of a promising shift towards greater transparency in the region. However, it criticises as a "significant weaknesses" the fact that while the legislature, judiciary, and autonomous

209 This states that "the State shall guarantee the right to information"

210 Articles 2 and 6

211 Articles 40, 49 and 59

212 Article 7

213 Open Society Justice Initiative (OSJI), 'Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries', New York, 2006, at http://www.soros.org/initiatives/justice/focus/freedom_of_information/articles_publications/publications/transparency_20060928

constitutional bodies fall under the scope of the law, the independent body set up to supervise implementation has no jurisdiction over these bodies. The law is also criticised for its inadequate protection for whistleblowers, and an overly broad exemption for criminal or police investigations.

Access requests can be made online, through the Sistema Integrado de Solicitudes de Información. In Mexico City, users without internet access can make access requests at IFAI offices.

In 2004, the IFAI reported that of 37,732 requests filed, the average time for responding was 10.8 working days, about half the prescribed period, and the average for all requests was 11.4 working days.²¹⁴ Overall, from 2003-2006, the executive branch received a total of 159,639 information requests and responded to 88.9% of them. The IFAI received 7,473 appeals during this same period, and reversed or otherwise modified the agency's response in over 40% of the cases.²¹⁵ But there are signs that practice has deteriorated more recently. Public officials are reported to ignore IFAI decisions with impunity and the current government is criticised for lacking political will to go any further with implementation.²¹⁶

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

The Mexican Institute of National Ecology (Instituto Nacional de Ecología) has set up a website specifically to provide information on access to climate change information.²¹⁷ This website, funded by the United Nations Development Programme, seeks to fulfil Mexico's obligations under Article 6 of the UN Framework Convention on Climate Change. It provides raw data and detailed research as well as information aimed at a broader audience explaining what climate change is and how it is caused. The site fulfils a clear public need: statistics (also published on the site) show a monthly audience, since 2012, of around 200,000. 80% of visits are from Mexico, and most are to download reports and research data. This demonstrates both a clear demand for the information and a good practice example of how such this information can be made available to the public (in a country with a reasonable level of internet penetration²¹⁸). However, it is not known whether the information reaches those likely to be without internet access – the rural and the poor.

Mexico's revised R-PP, from April 2011, does not address access to information, although it does list the "design and implementation of a REDD+ information system" as part of its 'to do' list, scheduled for years two and three of its programme. The focus in this is on capturing the meta data.²¹⁹ Mexico is a member of the Open Government Partnership but its Action Plan pledges little action on freedom of information, generally or on REDD+ specific issues or activities.²²⁰

214 As reported by the UCL Constitution Unit: [http://www.ucl.ac.uk/constitution-unit/research/freedom of information/countries/mexico](http://www.ucl.ac.uk/constitution-unit/research/freedom%20of%20information/countries/mexico)

215 As reported in J. Ackerman, *Mexico's Freedom of Information Law in International Perspective*, *Mexico's Right-to-Know Reforms: Civil Society Perspectives*, ed. Jonathan Fox, Libby Haight, Helena Hofbauer and Tania Sánchez (Mexico City: FUNDAR/Woodrow Wilson International Center for Scholars, 2007), p. 314

216 As reported in Daniela Pastrana, 'Freedom of Information Laws a Model; Not So the Practice', 28 September 2010, Inter Press Service <http://ipsnews.net/news.asp?idnews=52992>

217 http://cambio_climatico.ine.gob.mx/

218 The Oxford Internet Institute puts internet penetration in Mexico at 41-50%: <http://www.oii.ox.ac.uk/vis/?id=4e3c0200>. This is on a par with other countries in the region, but above Southeast Asian countries – and significantly above African countries.

219 Mexico REDD Readiness Progress Fact Sheet, June 2012: http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/Mexico%20FCPF%20REDD%20Readiness%20Progress%20Sheet_June%2013%202012.pdf

220 See <http://www.opengovpartnership.org/countries/mexico>.

General context on access to information

Peru's Constitution recognises the right to information,²²¹ which has been implemented through the 2003 Law on Transparency and Access to Public Information. The Law applies to any information that is publicly funded and used as a base for an administrative decision. Public bodies have to respond to requests within seven working days. Access may be refused if disclosure would be damaging to national security, personal privacy, financial institutions, international negotiations or the prevention of crime. Access may also be refused to internal government communications that contain advice, recommendations or opinions leading to a government decision. Disclosure of information on human rights violations cannot be refused. Refusals may be appealed within the same public body and decided within ten days. There is a further appeal to the courts.²²²

The law also requires government departments to publish information on their organisational structure, activities, regulations, budget, salaries, expenditures, and the activities of high-ranking officials. All information should be published online. The Ministry of Economy and Finance is required to publish detailed information on public finances every four months.

The Global RTI Rating Project scores Peru's Law on Transparency and Access to Public Information 97 out of a possible 150, praising its broad scope and relatively straightforward procedures, whilst criticising the lack of a harm test for some of the exceptions as well as the absence of an independent appeals body.

The Ombudsman has stated that while on paper the law is among the best in the region, implementation is problematic because of the culture of secrecy among public officials and because laws are often interpreted contrary to their objectives. A 2011 report claimed that Peru's public bodies lacked protocols for dealing with information requests and that excessive discretion for public officials coupled with a lack of whistleblower protection resulted in unnecessary refusals, particularly when the information requested was thought to be politically controversial.²²³

Peru is a member of the Open Government Partnership. Its Action Plan elaborates in detail on the access to information regime in the country and makes several commitments for improvement in the period 2012-2014.²²⁴ Peru is also a full member of the Extractive Industries Transparency Initiative, having received its validation in February 2012. Peru's EITI cover the country's oil, gas and mining sectors, and the first two audits of payment reports, produced by Ernst and Young, are available through government ministry websites. Peru's EITI, like that of other countries, is supervised through a multi-stakeholder group set up by law meaning that it has strong government backing.

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

The Peruvian Ministry for the Environment has established a dedicated website through which climate change information is provided.²²⁵ The site includes general information on climate change as well as information on climate change mitigation, adaptation and management of climate change. Established with support from UNDP,

221 Article 2(5), Constitution of Peru: http://www.congreso.gob.pe/_ingles/CONSTITUTION_29_08_08.pdf

222 Under Law N° 27444 or under Law N° 26301 for the constitutional right of habeas data.

223 <http://www.cainfo.org.uy/images/LIBRO%20-%20Venciendo%20la%20Cultura%20del%20Secreto.pdf>

224 Under Chapter III

225 <http://cambioclimatico.minam.gob.pe/#>

the site has been online since October 2010 and is a central part of the government's awareness raising strategy on climate change. There is no data on site usage or whether it reaches its target audience.

Transparency and openness of information in the forestry sector in Peru has been tested by Global Witness as part of its Forest Transparency Project. While it acknowledges that Peru has some of the formal indicators of transparency (for example, by having a freedom of information law), Global Witness's assessment remarks that by and large, implementation is lacking.²²⁶ A range of items is not published while it should be (such as work agendas, institutional memoranda and registers of sanctions); otherwise, information is dispersed over several institutions. Overall, Global Witness found that "implementation is still weak, which makes it difficult for citizens to access decision-making." This is evidenced also in the few access requests that have been lodged under the law, specifically asking for forestry information: the information requested was not "provided in a timely fashion", particularly when large files were requested on management plans, or concerning management reports.²²⁷

The free trade agreement between the USA and Peru, concluded in 2009, includes an Annex on Forest Sector Governance requiring Peru to "[increase] public participation and improve transparency in forest resource planning and management decision-making"²²⁸ as well as develop an anti-corruption plan to deal with officials "charged with the administration and control of forest resources".²²⁹ A Voluntary Partnership Agreement between the EU and Peru on ensuring legal timber trade and strengthening forest governance is under consideration and is likely to also contain requirements on transparency. This may spur better implementation of access to forestry information rights.²³⁰

The new Forest Law includes specific provisions to promote transparency.²³¹ Article 2 recognises the principle of free, prior and informed consultation, while Article 142 requires SINAFOR to make available several categories of forestry information including management plans and reports. While some information is to remain confidential, environmental impact information may not be classified. The Law also requires an anti-corruption plan to be developed in consultation with stakeholders and appoints a unit responsible for transparency and liaising with civil society.²³²

Another new Law has recently been adopted on prior consultation of indigenous peoples. Article 3 requires public authorities to provide "sufficient information... in the language of the indigenous population that is being consulted, using the proper methodology to guarantee a real dialogue."²³³ Global Witness points to these developments as "a step forward in encouraging access to information by citizens"²³⁴ and points out that important lessons have been learned in the context of free and informed prior consultation with indigenous people. It has stated that, "[t]his ... process highlighted the need to consider appropriate deadlines that provide timely due information and allow for the active participation of all stakeholders ... For example, indigenous peoples requested that the information stage needed to be preceded by a pre-information stage, with technical

226 <http://www.foresttransparency.info/peru/2011/themes/16/88>

227 *Ibid.*

228 Annex 18.3.4, Section 4(d): http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf

229 Annex 18.3.4, Section 3(a)(2): http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf

230 As report on the official FLEGT website, http://www.euflegt.efi.int/portal/home/vpa_countries/.

231 Law 29763 of 22 July 2011: <http://dgffs.minag.gob.pe/pdf/Ley29763.pdf>. At the end of 2011 this had been adopted and was in the process of being implemented.

232 Article 143.

233 Ley de consulta previa a los pueblos indígenas (law for previous consultation with indigenous populations), August 2011, http://servindi.org/pdf/Peru_LeyConsulta_aprobada.pdf

234 <http://www.foresttransparency.info/peru/2011/themes/16/92/>

support for them to understand the proposal in its entirety. Since the previous processes did not have this pre-stage, the forums and hearings were sharply questioned because of their technical level and because there was not sufficient time for the population to find out about the proposal." Global Witness warns there is an important lesson to be learned: "In the case of REDD+, the government has to date only offered "information" meetings for the indigenous populations, which only last one day, and are not effective in ensuring that these populations understand them correctly.²³⁵

The Peruvian NGO Derecho, Ambiente y Recursos Naturales publishes an annual report on access to forestry information. Its latest report indicates that improvements need to be made in particular as regards implementation

but also that institutional expertise needs to be strengthened.²³⁶ One of the authors of the report stated "increased financial and technical support to the agencies responsible is necessary, as well as a strengthening of state control mechanisms, in particular to establish effective sanctions for institutions that do not comply with the law. Also, citizens as well as civil society organizations need to be aware of their right of access and exercise it. This will contribute to improved citizen and community participation."²³⁷



Peru's R-PP, dating from March 2011, signposts the need to develop a database of relevant REDD+ information and a forest information system including a "database for direct service to users".²³⁸ However, it does not elaborate in detail, nor does it mention using the current

Access to Public Information Law or ongoing discussions for its improvement. A March 2012 progress update to the R-PP reported that the adoption of a new law on public consultations regarding land use changes may bring further progress.

Peru is at the early stages of receiving "targeted support" on anti-corruption under the UN-REDD "Support to National Actions" programme, which seeks to assess the priority corruption risks and mitigation measures, and make recommendations for strengthening transparency and accountability in the national REDD+ processes.

235 <http://www.foresttransparency.info/peru/2011/themes/16/94/>

236 Informe Anual de Transparencia, 2011, Derecho, Ambiente y Recursos Naturales (DAR):<http://www.transparenciaforestal.info/cms/file/287>

237 Desafíos de la transparencia en el sector forestal, Diario la Primera, 28 August 2012 :http://www.diariolaprimeraperu.com/online/columnistas-y-colaboradores/desafios-de-la-transparencia-en-el-sector-forestal_118847.html

238 Peru R-PP, 7 March 2011, pp. 31 and 120: <http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2011/Peru%20R-PP-%20Final%20English%20Translation-March7%20version-March16%2C%202011.pdf>

The Philippines

General context on access to information

The Philippines' Constitution recognises a right of "[a]ccess to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development",²³⁹ and requires that "the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."²⁴⁰ There is, however, no implementing legislation, meaning that in practice few people avail themselves of this constitutional right.

A few Supreme Court decisions elaborate on the constitutional right of access to information as well as the duty of proactive disclosure. In *Legaspi v. Civil Service Commission*²⁴¹ and *Valmonte v. Belmonte*,²⁴² the Supreme Court held that the Constitutional right of freedom of information was enforceable even in the absence of enabling laws and regulations. In *Chavez v. National Housing Authority*,²⁴³ the Supreme Court held that the State must disclose all transactions involving public interest without need of demand, but that the right to information required a demand for disclosure by an interested party. In *Akbayan v. Aquino*,²⁴⁴ it ruled that the Philippine government could not be required to disclose the offers submitted as part of treaty negotiations between the Philippine and Japanese governments, despite the invocation of the constitutionally guaranteed right to information. The Supreme Court invoked the privileged character of diplomatic negotiations.

Limited provisions on access to information are included in other legislation. The Code of Conduct and Ethical Standards For Public Officials and Employees, enacted by Statute,²⁴⁵ requires that public officials respond within 15 working days to requests by the public; that all heads of government offices submit annual performance reports that are made accessible to the public; and that all public documents be made readily available for inspection by the public. Under Section 44 of the Administrative Code,²⁴⁶ all public bodies and government agencies must submit annual reports to the President, and under Section 46, these annual reports are to be open to public inspection. Furthermore, under Section 52, all departments, bureaus, offices or agencies under the Executive Branch are required to keep a logbook which records in chronological order all final official acts, decisions, transactions or contracts pertaining to their office, and keep this open to the public for inspection.

Civil society is aware of the insufficiency of these provisions. The Constitutional provision guaranteeing access to information has been criticised for being "contingent upon personal connections within the government" and anyway unlikely to result in the production of information given deficiencies in record management within many public bodies.²⁴⁷

The Philippines is a member of the Open Government Partnership and its OPG Action Plan refers to the pending Bill as a "crucial" component of its commitments, pledging a "move towards giving citizens greater and freer access to official information in a timely, relevant and meaningful manner, subject to certain limitations such as national

239 Constitution of the Philippines, 1987, Section 7

240 *Ibid.*, Section 28

241 G.R. No. 72119, 29 May 1987

242 G.R. No. 74930, 13 February 1989

243 G.R. No. 164527, 15 August 2007

244 G.R. No. 170516, 16 July 2008

245 Republic Act No. 6713

246 Executive Order No. 292 Instituting the "Administrative Code Of 1987"

247 Anti-Corruption in Natural Resources Management: A Roadmap for the Environment and Rural Development (EnRD) Program, Philippines, Giz Manila, November 2011, p. 38

security, foreign diplomacy and privacy concerns. This ... will entail the review, improvement and rectification of current policies on citizen access to information; setting-up public access mechanisms and infrastructure, including information technology systems; and collaboration with stakeholders in broadening the scope of access to information and improving the compliance of agencies to existing standards ... A Roadmap for the improvement of Public Access to Information will be developed within 2012 in consultation with stakeholders.”²⁴⁸

Transparency and Access to Information in environment, forest, REDD+ or other relevant programmes

Information on the extent to which the Philippines fulfil their obligations under Article 6 UNFCCC to provide public access to climate change information is limited. The Philippines government has not so far submitted its Second Communication. A Climate Change Commission was established in 2009 and a National Framework Strategy on Climate Change elaborated for 2010-2022. Providing access to information is a central part of this for the first five years.²⁴⁹ The website of the National Climate Change Commission, an autonomous agency created within the President’s office with the status of a separate ministry, provides a range of information including policies, legislation and annual reports since 2010.²⁵⁰ There is no data on the extent to which this information reaches its intended audience.

A 2011 report recommended the introduction of freedom of information legislation as an absolute must, indicating that “transparency of information on forest inventories, carbon baselines, success criteria, and project goals, should be a norm in REDD+ implementation.”²⁵¹ At the same time, it was also recommended that the agencies responsible for REDD+ in the Philippines – the Department of Environment and Natural Resources and the Forest Management Bureau – receive support to achieve a realistic inventory of forest resources and a credible baseline of stored carbon. Others agree: the Transparency and Accountability Network regards the enactment of freedom of information legislation as “critical in so many levels ... [this would] give life to the constitutional right of the people to access public information [as well as] help strengthen democratic and political accountability of government.”²⁵² As of July 2012, a proposed freedom of information law was still pending in Parliament but there was no indication as to when this would be discussed and enacted.

The Philippines National REDD+ Strategy does not mention the need for freedom of information legislation, but acknowledges that “[i]nformation should be widely distributed and protocols are needed regarding public access to information”²⁵³. The country is implementing an initial national UN-REDD Programme²⁵⁴ and is at the early stages of receiving “targeted support” on anti-corruption under the UN-REDD “Support to National Actions” programme, which seeks to assess the priority corruption risks and mitigation measures, and make recommendations for strengthening transparency and accountability in the Philippines National REDD+ Strategy.

248 Philippines OGP Action Plan, p. 4

249 As reported in the 2011 “Report on Accomplishments”: <http://climate.gov.ph/index.php/documents/category/40-2011>.

250 See <http://climate.gov.ph/index.php/documents>.

251 Tackling Corruption for Governing REDD in the Philippines, Grizelda Mayo-Anda, Anti-Corruption Resource Centre, May 2011: <http://www.u4.no/publications/tackling-corruption-for-governing-redd-in-the-philippines/>

252 Corruption and Anti-Corruption in the Philippines, A Paper Prepared by Transparency and Accountability Network for GIZ Philippines, March 2011, p. 6

253 Philippines National REDD+ Strategy, p. 48

254 National Programme Document –The Philippines, UNREDD/PB5/2010/7, UN-REDD+ Programme 5th Policy Board Meeting, 4-5 November 2010

Lessons from the case studies

Most REDD+ participating country programmes described above are at the early stages of design and implementation of REDD+ readiness programmes, and in various stages of designing or implementing a freedom of information law. As of mid-2012, just under half of REDD+ countries had freedom of information laws, and implementation varied. At the other end of the spectrum are countries that do not have any access to information laws and where the right to information is unknown and unimplemented. Most REDD+ participating countries fall somewhere between these two extremes.

- Although nearly half of the 44 REDD+ participating countries studied here have some form of freedom of information law, most of these laws have been enacted relatively recently, and their implementation ranges from good to practically non-existent. Some countries have been praised for having efficient and well-established freedom of information laws, along with a civil society that monitors implementation and drives requests and other information flows. Mexico and Chile for example have laws that are reasonably well implemented. Philippines and Kenya for example have no FOI law but some practice and active civil society lobbying; other countries like Uganda have laws that have remained not or little implemented, while some, such as Cameroon and Ghana, have specific FOI provisions in forestry laws/policies.
- **Yet weaknesses in implementation of these laws exist at all levels:** within public bodies (not just those dealing with forestry information), where weaknesses range from a prevailing culture of secrecy to a basic lack of capacity with regard to information processing; within civil society, who make insufficient use of the opportunities open to them; within affected communities, which are insufficiently aware or informed of their rights; and within the international community, which has insufficiently scrutinized and promoted the speedy implementation of international commitments made on access to information.
- In implementing Article 6 of the UNFCCC, most countries have focused on education and public awareness raising programmes. Only a few have focused specifically on implementing access to information programmes, mainly through dedicated web portals.
- Therefore the issues in access to information in the REDD+ and forestry contexts highlighted in the case studies are not particular to that sector. Rather, they are generic, often pervading the entire public administration and most development sectors alike, as they are related to weak capacities and poor governance.
- **Most REDD+ participating countries, however, are on a forward trajectory for freedom of information.** Even in those countries where the right of freedom of information laws is poorly implemented, civil society representatives tend to describe the situation as 'improving' rather than deteriorating.
- A number of the countries studied have undertaken steps, as part of their REDD+ readiness programmes, to ensure that **detailed information on national REDD+ processes reaches all stakeholders** (local and affected communities as well as the wider public) and to engage in meaningful consultation with them. This requires strong efforts and willingness to share information at all levels – national, regional/provincial as well as local. However, a number of NGOs have emphasized that **meaningful consultation and information-sharing go beyond holding occasional workshops**, and instead require sustained involvement with affected communities, including marginalized populations and important stakeholders such as the women, indigenous peoples and the poor, as well as functioning mechanisms to deliver and keep up-to-date REDD+ related information and respect the right of access to information on request.
- The **use of freedom of information regimes in REDD+ processes or in the forestry sector is generally low**, even in those REDD+ countries that have reasonably well-functioning freedom of information regimes. For example, while Ghana's Forestry Commission annually publishes information on the disbursement of rents and revenues, which can be built upon in the national REDD+ system, the information is thus far little used, although efforts are ongoing to remedy this.

- A number of the countries examined have either **developed plans for or are in the early stages of implementing online REDD+ monitoring systems, which can also be used as a platform to provide information related to safeguards**. A number are developing **registries that can be a basis for transparency platforms**, with one country (Ecuador) planning to make available on this platform how or whether consent has been provided. A number are developing REDD+ registries to list and document REDD+ related projects, and in that case ensure a vetting process by the government, that can be a basis for transparency platforms. However, none of the countries examined here have linked their plans for information systems to their freedom of information frameworks. This demonstrates a divide between national teams in charge of REDD+ and the legislative framework that could strengthen and support the provision of information.
- Lessons can also be learned at the national level from a number of international initiatives that have shown to be important drivers for transparency. These include the Extractive Industries Transparency Initiative (EITI), which has brought together government, civil society and private industry and which has introduced stringent transparency requirements for payments made to governments to oil, gas and mining industries; the Open Government Partnership, under which Indonesia has made a pledge to of access to information regarding certain forestry data; and the European Union Forest Law Enforcement, Governance and Trade (FLEGT). National initiatives, such as Kenya's open data project, can also provide useful lessons and good practice examples.



V. Recommendations

REDD+ raises the bar for countries to achieve of transparency and participatory decision-making, presenting fresh challenges for the implementation of the right to information. To deliver information, freedom of information components should be built within national REDD+ systems.

General recommendations:

➤ **Apply existing freedom of information laws to REDD+, pass such laws if they do not exist, and/or build freedom of information into REDD+:**

REDD+ countries that have freedom of information laws should ensure that they are effectively implemented and used for delivery of REDD+ information.

Countries where no freedom of information law yet exists should build mechanisms for access to information within their REDD+ systems, particularly the systems of information on safeguards. This should not however deter from striving to achieve broader freedom of information reform. Legislation should cover all information held by the government, subject only to narrow exceptions that are truly necessary for the prevention of crime, national security or similar overriding public interest. Newly introduced freedom of information laws should however not be limited to forestry-related or similar information, as this is likely to lead to confusion and unjustified refusals.

➤ **Disclose information proactively**

Governments are under an obligation to publish information held by them proactively when the information is of public interest. To enable full engagement of civil society, proactive disclosure will be crucial. Without a functioning proactive disclosure regime, the engagement of local communities will be hampered. Many indigenous populations are unlikely to use request-driven mechanisms, and simple one-off workshops are likely to be insufficient to gain true engagement – or even consent. Proactive disclosure will need to encompass all information relevant to the enjoyment of the rights of affected populations or that can otherwise be classed as “of public interest”. Proactive disclosure is therefore likely to require publication of a large amount of REDD+ information held by public bodies.

➤ **Provide information in an accessible form**

Strong efforts should be made to provide information in accessible form.

For example, consideration should be given to making financial information available in the form of what is sometimes known as ‘citizens budgets’, avoiding complex spread sheets which can be very hard to understand (the ‘raw’ financial data should still be available to those who want it). This model has been tested in DRC and Mozambique outside of the REDD+ context, and can be adapted.

Accessibility also relates to the different languages and dialects spoken in territories as well as literacy levels. In areas of high illiteracy rates, non-print methods of distribution should be considered. In addition, it should be ensured that information is also made available in remote areas, possibly with the collaboration of local authorities and in partnerships with civil society and non-governmental organizations.

Procedures to access information should be easy and fees should be waived for those who cannot afford them, or where the information is of public interest.

Finally, special attention should be given ensuring that access to information is planned with a gender-sensitive perspective, as women often have a marginalized role in decision-making processes despite their active function in the forest sector. In this regard, it is essential to

ensure that women are actively involved in and can influence decision-making processes, and that their gendered roles, contributions and constraints are taken into account when designing and conducting workshops, training, awareness-raising and capacity building activities and consultations, etc. A gender analysis or a stakeholder analysis which includes gender dynamics is a useful tool to analyse the different roles, needs, priorities and opportunities within a given socio-economic and political context. This can also provide baseline data for monitoring and evaluation.

➤ Make it cross-sectoral

REDD+ related information is likely to reside across different government departments as well as local and regional public bodies. Bearing in mind the training and implementation activities that have been shown to be necessary for freedom of information to work, a cross-sectoral approach is likely to work best to ensure that information is easily accessible, rather than fragmented across different institutions.

➤ Create demand for accountability

Campaigns should be organized to inform the citizenry of their rights –existing or newly-gained- as well as to educate public bodies on their new obligations to publish and share information.

If civil society is to fulfil its ‘watchdog’ function, a well-crafted requests-driven regime will be equally important. Civil society will need to be able to hold government to account, at all levels, and efficient and low threshold access procedures are an absolute necessity in this; governments should not solely rely on a ‘government-to-citizen’, downwards, approach to information sharing. Freedom of information, or government transparency, is only achieved when the flow of information is driven by both sides: from the government, through an active policy to publish all information that is of public interest without waiting to be asked for it and ensure that it reaches those who need it; and from civil society and affected populations, through an active use of request-based access procedures. **In simple terms, there needs to be both a ‘push’ and a ‘pull’ for the REDD+ information flow to function.**

In simple terms, there needs to be both a ‘push’ and a ‘pull’ for the REDD+ information flow to function.

Creating demand for information will also help in mitigating the risks of information retention, a corrupt practice observed in some countries where information detained by public officials or other person centralizing the information is only provided in exchange of a personal service or money. Incentives as well as complaints and redress mechanisms may need to be put in place to ensure these risks are addressed.

➤ Build on existing international initiatives and commitments

Most REDD+ countries are not starting from scratch as regards freedom of information. Virtually all of them – including those without freedom of information laws – have stated that transparency is key to the success of REDD+. Most countries have committed to enhancing levels of transparency and information sharing, under REDD+ but also through other international agreements. These commitments represent a strong opportunity to improve access to information in these countries, and the international community should support and closely monitor follow-up.

Within the emerging international REDD+ mechanism under the UNFCCC, there may be specific elements that, if implemented properly, could accelerate information sharing processes. The safeguards information systems that States opting to participate in REDD+ are required to put in place may be one such element. Other 'international' drivers for openness are international partnership agreements, for example with the European Union. Elements of the Extractive Industries Transparency Initiative should also be looked at for inspiration. Although traditionally applied to the oil and mining industries, Liberia has extended its EITI programme to the forestry and agriculture sectors and lessons learned there, particularly as regards verification of payments and the engagement of stakeholders, could be instructive elsewhere.

Other international initiatives that can support greater freedom of information include the Open Government Partnership and formal treaties such as the Aarhus Convention. By joining these initiatives, States not only make firm commitments to improve transparency but they also gain access to a wealth of knowledge and experience by their counterparts.

➤ Measure the effectiveness of access to information plans, disaggregating by gender and cultural/social/economic groups

Ultimately, the measures of the effectiveness of plans, policies and measures to enact the right of information for REDD+ will lie in careful evaluations as to whether, how, by whom and to what purpose the information provided has been used. In these evaluations, **the specific needs of youth, indigenous peoples and women, and ways that they access and utilize information**, will need to be assessed. Gender specific indicators should therefore be created to monitor, evaluate and track progress of the access to REDD+ related information.

➤ Address capacity gaps

As regards the implementation of freedom of information laws, the survey in this report has shown that weaknesses exist at all levels: within public bodies, where weaknesses range from a prevailing culture of secrecy to a basic lack of capacity; within civil society, who make insufficient use of the opportunities open to them; within affected communities, which are insufficiently aware or informed of their rights; and within the international community, which has insufficiently scrutinised the speedy implementation of international commitments made. All of this will need to be remedied.

Specific recommendations

➤ To REDD+ national institutions²⁵⁵:

- **Ensure the regular availability of up-to-date REDD+ relevant information, making use of existing freedom of information laws and mechanisms when these exist.** This includes ensuring that all REDD+ relevant databases are developed, up to date and publicly accessible. Applications and approvals for forestry operations should be listed on publically accessible websites.
- **Strengthen institutional capacity to deliver environmental and REDD+ relevant information at all levels, national, regional and local.**
- **Ensure synergies with country-level approaches to REDD+ safeguards.** This implies considering freedom of information laws as part of the relevant policies, laws and regulations, along with the supporting institutions and processes, to address and respect safeguards at the country level.. These laws and institutions may need to be carefully assessed to determine how well they meet the objectives of transparency and what the gaps are, in light of the existing systems and processes. The synergies also imply that freedom of information principles are incorporated into REDD+ safeguard information systems, required by the UNFCCC, that collect and provide information on how safeguards are being addressed and respected.
- Engage in national consultations to reach a joint understanding with all relevant stakeholders on what information is needed, when, at which frequency, taking into account news information and communication technologies, and, in line with UNFCCC guidance, taking into account the gender-differenced needs, roles and constraints among different stakeholders,.
- Provide training and awareness-raising to the public service on how to implement FOI, along with budget support for relevant agencies to carry out this work. The implementation of freedom of information laws requires a shift in governmental and civil service cultures. Sustained training and promotion at all levels, including local, is crucial in implementing the right of access to information.
- **Apply the lessons learned from country-level experience gained by participating in transparency initiatives.** REDD+ can learn many lessons from the Extractive Industry Transparency Initiative, particularly as regards the engagement of civil society stakeholders, the prominent position of stakeholder forums in national anti-corruption drives and the willingness to have payments independently audited and published. Countries engaged in the FLEGT can also learn from how information disclosure processes have enhanced- or not – access to information for relevant stakeholders.

➤ To legislators and parliamentarians in REDD+ participating countries

- **Consider joining the Aarhus Convention**, under which states commit to the right of access to environmental information, or regional equivalent currently under development²⁵⁶
- **Consider joining international initiatives such as the Open Government Partnership** and draw on the experiences of other countries and stakeholders

255 The term “national REDD+ institutions” is used to denote the fact that in some countries the REDD+ process is currently governed by a multi-stakeholder platform or committee, and should therefore not be understood as designing only a governmental entity.

256 The Aarhus Convention is open to all UN member states, subject to the agreement of current parties. By joining, States commit to implementing the right of access to environmental information and secure access to a wealth of experience by other states in the area of access to and processing of environmental information. A Latin American initiative has started to draft a regional convention mirroring the Aarhus Convention

- **Support the full implementation of legislations related to right of access to information in line with international standards and best practice.** States should ensure that their domestic laws implement the right of access to information, as required under international law. The right of access should apply to all information held by all bodies that perform a public function, including not just forestry but also wider land administration, finance, mining, agriculture and other sectors. Those states that do not yet have legislation guaranteeing the right of access to information should adopt it; those that do should ensure the legislation is fully implemented.
- Parliamentary commissions should include information and transparency, applied to REDD+ or with REDD+ as part of a larger programme, in their work agenda

➤ **To all implementers of REDD+ activities**

- One of the particularities of REDD+ is that large amounts of information will be generated at the local level by entities implementing REDD+ initiatives. The commitment of not only government agencies but also NGOs, the private sector, and or local and indigenous communities, to share all relevant information at the appropriate frequency, formats and language under a framework and guidance elaborated by REDD+ national institutions, will be key.

➤ **To civil society and indigenous peoples organizations**

- Provide guidance on what information is required for REDD+, how, when and where, in their national contexts, based on their experiences, capacities and needs
- Advocate for implementation of the rights of access to information and free, prior and informed consent, and contribute to lessons learned in implanting these rights
- Advocate for, and monitor that accurate and verifiable REDD+ information is regularly made available to all relevant stakeholders, and that it is in an accessible form. Investigative journalism in particular has a role to play in assessing such transparency.
- Raise awareness of the rights of affected communities to access government information through freedom of information processes and provide trainings to local stakeholders to understand their information rights in the REDD+ context.

➤ **To bilateral and multilateral donors**

- Support national implementation of commitments relating to the right of access to information applied to REDD+ and free, prior and informed consent
- Include access to information requirements in REDD+ bilateral and multilateral agreements and promote monitoring of implementation
- Provide technical support in the drafting and implementation of access to information laws.
- Provide support to strengthen the capacity of public bodies at all levels to handle information related to REDD+, disclose REDD+ relevant information proactively and comply with access requests
- Include and promote access to information in their REDD+ related initiatives and spending, including independent evaluations and timely publication of related documents
- Support capacity strengthening for all stakeholders mentioned above.



VI. Conclusion

International human rights, environmental and anti-corruption law requires all REDD+ countries to guarantee the right of access to information.

All REDD+ participating countries can learn lessons from worldwide practice and experience in the right to freedom of information. The building blocks of a well-functioning freedom of information regime include, at a minimum, a well-drafted freedom of information law; an active civil society able to request information and demand fulfilment of their rights; a civil service able to deliver the information required; and a true understanding and acceptance among both the civil service and the public at large of the importance of transparency and access to information.

Given the relatively early stage of development of most REDD+ activities, freedom of information mechanisms can start being built into national REDD+ systems. In particular, when complying with the UNFCCC-requested systems to provide information on safeguards for REDD+, countries should learn from good practices in actively providing timely, relevant and usable information.

To deliver this information, REDD+ mechanisms should have a freedom of information component built into them, relying either on existing general freedom of information laws or utilizing REDD+ specific access to information legislation, guidelines or codes. Ultimately, the measure of the effectiveness of plans, policies and measures to make information accessible lies in evaluating whether, by whom and how it has been used.

Access to information in REDD+ is different from other environmental informational requirements because of the breadth and depth of REDD+ information to be shared, the variety of stakeholders at the national and local levels who need and have information, and specific transparency requirements mandated by the international system. In this sense REDD+ presents new challenges but also new opportunities to achieve an effective access to information that brings about not only transparency but also integrity, engagement and accountability.

Appendix I – International law and standards on freedom of information

As listed on <http://right2info.org>

United Nations

- Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), UN Economic Commission for Europe, 25 June 1998 (in Arabic, Chinese, French, Russian, Spanish)
- ArabicChineseFrenchRussianSpanishConvention against Corruption, General Assembly Resolution 58/4 of 31 October 2003. (in Arabic, Chinese, French, Russian, Spanish)
- General Comment No. 34, UN Human Rights Committee, 21 July 2011, arguably constitutes an authoritative interpretation of the freedoms of opinion and expression guaranteed by Article 19 of the International Covenant on Civil and Political Rights, which is binding on more than 165 countries. See also commentary by Sandra Coliver, Open Society Justice Initiative
- International Covenant on Civil and Political Rights, First Optional Protocol, First Optional Protocol, Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III), 10 December 1948 (Article 9)

Africa

- African Charter on Democracy, Elections and Good Governance, 30 January 2007
- African Charter on Human and Peoples' Rights, OAU Doc..... CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981
- African Charter on Values and Principles of Public Service and Administration, Article 6, African Union, 2011
- African Convention on Preventing and Combating Corruption, African Union, 7 October 2003
- Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, Banjul, The Gambia. Declaration affirms the right to information in Africa.
- Model Law for African Union Member States on Access to Information in Africa (draft) (in French)
- Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol of the ECOWAS Treaty on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, December 2001
- Regulation MSC/REG.1/01/08 on the ECOWAS Conflict Prevention Framework, ECOWAS, 16 January 2008
- Treaty of the Economic Community of West African States, ECOWAS, 24 July 1993

Americas

- American Convention on Human Rights, "Pact of San José", 22 November 22 1969 (Article 13) (in Spanish)
- Inter-American Declaration of Principles on Freedom of Expression, Inter-American Commission on Human

Rights, 108th Regular Session, 19 October 2000 (preamble, Principle 3 and 4)

- Model Inter-American Law on Access to Information (in French, Portuguese, Spanish) and Implementation Guide (in Spanish), June 7, 2011, Organization of American States.
- Resolution on Access to Public Information: Strengthening Democracy, OAS General Assembly, AG/RES. 2514 (XXXIX-O/09), 4 June 2009.
- Inter-American Convention Against Corruption, Adopted at the third plenary session, held on March 29, 1996

Europe

- Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Council of Europe, 4 November 1950 (Article 10) (in French)
- Convention on Access to Official Documents, 27 November 2008 (in French), and Explanatory Report (in French). First multilateral treaty affirming and articulating an enforceable, general right to information that can be exercised by all persons, with no need to demonstrate a particular interest in the information requested.
- Declaration on the Freedom of Expression and Information, Committee of Ministers, 70th Session, 29 April 1982
- Recommendation CM/Rec(2008) 6 of the Committee of Ministers to Member States on Measures to Promote the Respect for Freedom of Expression and Information with Regard to Internet Filters, 26 March 2008
- Recommendation Rec (2002) 2 of the Committee of Ministers on Access to Official Documents, 21 February 2002.
- Recommendation No. R (81) 19 of the Committee of Ministers on the Access to Information Held by Public Authorities, 25 November 1981
- Charter of Fundamental Rights of the European Union OJ C 364, 18 December 2000 (Article 42). Grants a right of access to documents held by European Union institutions to “[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State.”

Declarations of the Special Rapporteurs at the United Nations, Organisation of American States, African Commission on Human and Peoples’ Rights and the Organisation for Security and Cooperation in Europe

- 1999 Joint Declaration by the UN, OSCE & OAS Special Rapporteurs (on freedom of information and expression), 26 November 1999
- 2004 Joint Declaration by the UN, OSCE, OAS & ACHPR Special Rapporteurs (on access to information and on secrecy legislation), 6 December 2004
- 2010 Joint Declaration by the UN, OSCE, OAS & ACHPR Special Rapporteurs on Ten Key Challenges to Freedom of Expression In the Next Decade, 2 February 2010
- 2010 Statement of UN Special Rapporteur on Right to Know: An Entitlement for All, Not a Favour , World Press Freedom Day, 3 May 2010

Appendix II – Useful reading on the right of access to information

General

- Article 19, ADC, Access to Information: An Instrumental Right for Empowerment (2007). Report on access to information as an instrumental right for empowerment including an overview of the right, how it can be used to campaign for social, cultural and economic rights, and 15 case studies spanning 12 countries.
- Article 19, The Public's Right to Know. Principles of Freedom of Information Legislation (1999).
- Article 19, A Model Freedom of Information Law (2001).
- Model Freedom of Information Law CHRI, Commonwealth Model Law (2002).
- Commonwealth Human Rights Initiative (CHRI), Our Rights, Our Information: Empowering People to Demand Rights through Knowledge, Burgman, Gage, Cronin, Mitra and ed. Daruwala, Nayak (2007)
- Designing An Effective Oversight Body, Dunion, Scottish Information Commissioner (2007). Paper delivered at the 5th International Conference of Information Commissioners.
- Implementing Access to Information: A Practical Guide for Operationalising Freedom of Information Laws, Rodrigues, contributed by Daruwala, Mogilishetty, Dutta and Mistry (2006).
- Inter-American Juridical Committee, Principles on the Right of Access to Information (2008)
- Open Society Justice Initiative, Justice Initiative 10 Principles on the Right to Know (in Spanish).
- University College London, Freedom of Information Literature. Selective biography of academic literature, overviews and comparative analysis regarding freedom of information law and practice compiled by the Constitution Unit of the Department of Political Science at University College London. The document is also available on the website of Freedom of Information Advocates Network (freedom of informationAnet), herehereherehere.
- World Bank Institute, Access to Information, Working Paper Series, Proactive Transparency: The future of the right to information? Helen Darbishire. The Paper reviews the development of, and the emerging standards for proactive disclosure.
- UNDP, Right to Information Practical Guidance Note (2004).
- UNDP Bureau for Development Policy Democratic Governance Group, A Guide to Measuring the Impact of Right to Information Programmes (2006).
- UNESCO, Freedom of Information: The Right to Know, UNESCO 2011
- A Guide to Measuring the Impact of Right to Information Programmes Freedom of Information: The Right to Know

Comparative Surveys

- Access to public information in Central America and Mexico, UNDP 2011
- Freedom of Information: A Comparative Legal Survey, T. Mendel, UNESCO 2009
- Freedom of Information Around the World 2006 – A Global Survey of Access to Government Information Laws, D. Banisar, 2006
- Justice Initiative, Transparency and Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries (2006).

- World Bank Institute, Access to Information, Working Paper Series, Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom, Andrew Puddephatt (2009). This paper analyzes civil society's contribution to the adoption of access to information laws in five countries.
- Africa: The Right to Information in the Continent, M. Dimba (2008)
- The Right to Information for Marginalized Groups, the Experience of Proyecto Comunicades in Mexico, Guerrero Amparan, Sepulveda Toledo (2005-2007).
- UNESCO, The Right to Information in Latin America: A Comparative Legal Survey, T. Mendel (2009).
- CUTS International, Model Framework for Replication: Usages of RTI in Rural Rajasthan, India: Enhancing Transparency and Reforming the Processes (2010). The main aim of the Toolkit is to enhance the capability of the citizens to use the RTI Act constructively, which would contribute to reducing the systemic forms of corruption vis-à-vis reforms.

Corruption, Transparency, Good Governance and RTI

- Access Info Europe, Not Available! Aid Transparency Monitoring Report (2009).
- ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Regulating Conflict of Interest: International Experience with Asset Declaration and Disclosure, in ADB/OECD, Messick (2007). Managing Conflict of Interest: Frameworks, Tools, and Instruments for Preventing, Detecting, and Managing Conflict of Interest, page 36 of the publication.
- Technology for Transparency Network, Technology for Transparency, The role of technology and citizen media in promoting transparency, accountability and civic participation. This report examines the objectives, challenges, successes and effects of online technology projects that aim to promote transparency, political accountability and civic engagement in Latin America, Sub-Saharan Africa, Southeast Asia, South Asia, China and Central & Eastern Europe.
- Technologies of Transparency for Accountability: An Examination of Several Experiences From Middle Income & Developing Countries, Analytic Report, Archon Fung, Hollie Russon Gilman, Jennifer Shkabatur (2010). The research examines cases of technology interventions that attempt to increase accountability of public and private organizations through transparency strategies.
- Transparency International, Using the Right to Information as an Anti-Corruption Tool, editors: Kocaoglu, Figari, Darbishire (2006).
- World Bank, Strengthening Bank Group Engagement on Governance and Anti-Corruption (2009).

Training Materials for Information Officers and Civil Servants

- Access to Information Programme (Bulgaria), How to Apply the Access to Public Information Act - Handbook for the administration (2005), Contains basic international standards and principles of access to information legislation, as well as the procedures for providing access stipulated by the Bulgarian law. Practical recommendations and examples of accumulated good practices are addressed to the responsible information officials.
- Article 19, Freedom of Information Training Manual for Public Officials
- Centre for Good Governance, India, A Manual for Public Authorities, Information Officers & Appellate Authorities, (2006).

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- CHRI, Right to Information: Officials Guide..... Focuses on implementation of India's national RTI Act 2005, provides an excellent model for other countries. Designed not only for Public Information Officers, Appellate Authorities and Information Commission staff, but also for ordinary civil servants as a guide to interpreting and understanding the right to information and related laws.
 - Information Freedom, freedom of information Sensitisation Briefing, Introduction to freedom of information for Civil Servants, Information Manager Basic Training.
 - Scottish Government, Training Materials for Scottish Public Authorities on the Implementation of the Freedom of Information Act - Materials are in three parts: (a) a leaflet template to provide general information; (b) an open learning workbook; and (c) a Trainer's Pack including a series of powerpoint presentations and speaking notes. Prepared by law firm of Pinsent Masons.



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