



ARTICLE 19: Global Right to Information Index

I. Summary

In the past decade, many new right to information (RTI) laws have been adopted across the world. Despite such promising developments, it is often difficult to assess how adequately these laws give full effect to the right to information. Following on from a successful pilot project in Mexico on state-level RTI laws, released in 2010, ARTICLE 19 has been developing a Global RTI Index. The new Index will assist RTI advocates in the evaluation of RTI laws across the globe, and support them in identifying and better understanding their structural strengths and weaknesses. The Index will also enable comparison of RTI laws across countries and examine experiences to see what works best.

ARTICLE 19 calls on the RTI community to comment on the Global RTI Index before 31 October 2010, in order to create a robust tool to strengthen the RTI cause globally.

II. Background

The right to information is a fundamental right and is a necessary condition for the existence of participatory democracy. The right to freedom of information was recognised in law for the first time more than two hundred years ago in Sweden, with the publication of the Freedom of Press Law in 1776. Currently, over 90 countries have adopted RTI laws. While most of these laws are similar in structure, there are considerable variances between them which substantially influence their effectiveness.

In 2009, ARTICLE 19 Mexico partnered with FUNDAR to develop a Mexico RTI Index to evaluate both the national and 32 state-level right to information laws. The Mexico Access to Information Index, launched in April 2010, was a groundbreaking system for testing RTI legislations. The Index established a ranking and an in-depth analysis of the existing RTI legislation in the country based on international standards and previous work by the two groups. The project evaluated each of the laws against a list of over 200 indicators identified by the groups as key to making a strong RTI law.

The project found that 17 of the state laws failed to fully implement the Constitutional RTI provisions, and 23 failed to establish RTI legal frameworks in accordance with international standards and best practices. As a result of the launch, legislative reforms were approved in two of the states with the weakest legal frameworks and many others are in the process of being reviewed.

Based on the Mexico RTI Index pilot and with funding from the William and Flora Hewlett Foundation, ARTICLE 19 is now developing a Global RTI Index which can be used to analyse national laws around the world. The current version of the Global RTI Index is available for comments and, over the next few months, will be finalised and put in effect.

The purpose of the Global RTI Index is to develop and use a series of indicators that will allow accurate measurement of the level of protection for the right to information in countries worldwide. It will also test the level of progressiveness of the legislation on transparency and access to information within each country. In summary, the Global RTI Index will be a measurement tool allowing comparisons to be made between legislation in different countries. Among other things, it will also demonstrate, the state of the right to information worldwide, the degree of development of each piece of individual legislation and its internal coherence, its trends and omissions, and areas such as the adequacy of institutions, the regulation of procedures, and the incorporation of criteria to regulate the administration of access to public information.

At the same time, ARTICLE 19 recognises that the Global RTI Index focuses solely on laws rather than implementation. In our experience, good laws are often hampered by poor implementation due to a lack of resources or political will. And otherwise weak laws can be made more effective due to good practices. Nonetheless, we anticipate that the Global RTI Index will provide important information to advocates and policy makers by allowing them to better understand where the weaknesses are in the laws that can lead to poor implementation and to identify which are good and poor laws as a possible cause for a lack of openness. Knowing this will allow them to better focus on areas either in the RTI law or outside it which will lead to greater openness.

We see the tool as complimenting efforts by other groups such as Transparency International, Global Integrity and other groups which evaluate broader openness within countries as well as the efforts of those RTI groups which are attempting to better evaluate implementation of the national and local laws in many countries.

III. Call for Comments

The Global RTI Index is still a work in process. ARTICLE 19 is calling for the RTI community to evaluate the Index based on their experiences and submit suggestions for improvement.

Areas to Consider

Weighting

Under the Mexico Index, all elements were given an equal weight. Should some progressive elements (for instance a strong commission or the public interest test) be given more weight based on experience that these are particularly helpful in making a strong law? Should negative indicators be used for particularly bad provisions?

Exemptions

Currently, the list of exemptions is not included in the indicators. This is based on the experience of the Mexico pilot, which found that the inclusion of exemptions in an otherwise positive system was confusing.

Categories of affirmative publications

The current list of information under the requirements for affirmative publication is currently limited. Are there additional categories that should be included based on local, national or international experience?

Outside laws

Currently, the indicators include a few complimentary outside laws which in experience have had some benefit on the broader right to information. Should these be included at all? Should other laws be there instead?

Time Frame

ARTICLE 19 calls for suggestions and comments to be made by 31 October 2010 and sent to rti@article19.org.

Following revisions to the Global RTI Index, ARTICLE 19 will run an initial pilot for five to ten countries that ARTICLE 19 has offices or ongoing projects in including the UK, US, Mexico, Uganda, and Bangladesh. The results from the pilot will be released by the end of 2010.

A further evaluation will be conducted in early 2011 based on the results and a revised final Global RTI Index tool will be released shortly after. Following this, a global review based on the index will begin by ARTICLE 19 staff and partner organisations. A full global study based on the Global RTI Index is anticipated to be released by the end of 2011.

IV. Structure of the Index

The Global RTI Index is divided into three principle variables, 14 categories, and over 180 indicators.

The proposed indicators are based on the international human rights standards and principles on transparency and freedom of information, as well as best practices. They also incorporate standards from various documents such as *the Public's Right to Know: Principles on Freedom of Information Legislation*¹, *the Principles of Lima*², *the Declaration of SOCIUS Perú*³, *the Johannesburg Principles on National Security, Freedom of Expression and Access to Information*⁴, *Ten Principles on the Right to Know*⁵, *the Declaration of Chapultepec*⁶, and *the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information*⁷.

¹ <http://www.article19.org/pdfs/standards/righttoknow.pdf>

² <http://www.cidh.org/Relatoria/showarticle.asp?artID=158&IID=1>

³ http://www.britishcouncil.org/az/socius_peru_declaration.pdf

⁴ <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

⁵ http://portal.unesco.org/ci/en/ev.php-URL_ID=29655&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html

⁶ http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm

⁷ http://www.cartercenter.org/news/pr/ati_declaration.html

The indicators are specific with regard to the goals and objectives arising from the variables and are self-explanatory; that is to say, reference to them allows for an understanding of their intrinsic characteristics. The indicators are based on criteria of validity and reliability. They are objective indicators, insofar as they are based on external evidence. Finally, the majority of the indicators are discussed in positive terms which seek to identify elements of progress in access to information legislation. That is, if the indicators are found to be present in transparency legislation they are assigned a value of 1 and if they are not considered in the legislation, they are assigned a value of 0. At the moment, there are no negative indicators.

Many of the indicators contain elements which are considered to be progressive. Progressive elements of the indicators are those which go beyond the those which are in accordance with international human rights law; the principles which have developed the content of the right of access to information; and/or the best national and international practices in this area.

Principle variables

ARTICLE 19 proposes the Global RTI Index to be based on three principal variables – broader concepts that are essential and complementary for ensuring effective protection of the right to freedom of information. Those are:

1. normative provisions;
2. institutional design for implementation of the RTI laws;
3. procedures for accessing information, review processes and mechanisms for dissemination.

Given the importance and the complementary nature of the three principal variables, we assign the same value to each of them. We also give equal weight to the internal variables which constitute and support the three principal variables.

Normative Provisions

Firstly, RTI laws should

- establish the scope and the content of the RTI;
- clearly establish the limits of the RTI, which by its nature should not be considered as an absolute right; and
- provide secondary guarantees to ensure compliance with the right.

Institutional Design for the Implementation of RTI Laws

Secondly, RTI laws should provide an institutional framework conducive to its effective implementation. This includes the creation of the specialised liaison units or information offices, which function as a link between the state and society; the internal review bodies, whose function is to guarantee the accuracy of the classification of information by public authorities; and the regulatory bodies for transparency and access to information, information commissions or ombudsman, which play a fundamental role in the full enforcement of the right of access to information, due to their powers of regulation, supervision and the resolution of disputes, among others.

States have the international obligation to organise the full apparatus of government and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are able to legally ensure the free and full exercise of human rights. Hence, the variable ***Institutional design*** deals with the evaluation of these obligations which are correlative with the right of access to information.

As the states also have an obligation to promote human rights, the variable *Institutional Design* consists of indicators which examine whether RTI laws provide for both regulatory bodies and obligated subjects to have the power and the obligation to promote the right of access to information.

Procedures For Accessing Information, Review Processes and Mechanisms for Dissemination

Finally, RTI laws should provide for transparent and simple procedures that allow individuals to exercise their right to freedom of information and ensure that the state will comply with its obligation to proactively disseminate public information.

Procedures for access to information, in response to a request for information, have several stages. The first stage is the procedure for submitting requests for information. The process that occurs during this first stage may be extended if there are requirements for additional information so that applicants may make clear to the authorities the information they require, or when the authority issues a notification of time extension. The second stage occurs if the applicant was not able to access the information and seeks the review of the denial by internal and external bodies. The third stage consists of the judicial review of the decision taken by administrative bodies. The Global RTI Index will provide criteria for examination of first two stages.

The variables associated with three principle variables are, respectively: **(NP)** Normative Provisions, **(ID)** Institutional Design and **(P)** Procedures for access to information, for filing appeals for review and for the dissemination of public information (publication of obligations of transparency).

PRINCIPAL VARIABLES	INTERNAL VARIABLES
Normative provisions	<ul style="list-style-type: none"> • Recognition of the RTI - constitutional rights, other legislation, principles and objects, provisions on access; • Exemptions
Institutional design	<ul style="list-style-type: none"> • Internal institutions for access to information; • Promotion of the right to freedom of information; • Regulatory bodies for RTI
Procedures for access to information, for filing appeals for review and for the proactive dissemination of public information (obligations of transparency)	<ul style="list-style-type: none"> • Procedures for access to information • Procedures for review • Procedures for the proactive dissemination of public information • Sanctions for violations of RTI obligations

V. Indicators

A. NORMATIVE PROVISIONS

I. Formulation and interpretation of the RTI

1. Obligation to interpret the RTI Law in accordance with the Constitution
2. All information held by public authorities is public
3. All information which public authorities are required to generate in the performance of their functions is public
4. The right to access information belongs to all persons (not just citizens)
5. The principle of maximum disclosure for the interpretation of the RTI law and the resolution of disputes
6. Includes a purposes clause listing objectives including promoting transparency and accountability
7. The RTI law prevails over the classification of information made by other types of legislation
8. RTI law repeals official secrets act and other legislation that conflicts with it
9. RTI law applies to all forms of information regardless of medium
10. RTI Law applies to requests for samples
11. No limitations on reuse of information released under RTI law

II. Other Legislation

1. Express recognition of the right to freedom of information as a fundamental right in the Constitution or by Constitutional/Supreme Court
2. Archive laws provides for unfettered access to information after 15 years;
3. Existence of a comprehensive whistleblower protection;
4. Existence of Data Protection Law

III. Scope of the Law

The RTI law applies to all following bodies

1. Executive Branch
2. Parliament
3. Judiciary
4. All administrative bodies
5. Municipal bodies and authorities
6. Autonomous public bodies/quangos
7. Administrative courts
8. Public broadcaster and state owned media
9. Intelligence agencies
10. Armed Forces
11. Police
12. Public universities and institutions of higher education
13. State owned corporations
14. Corporations and companies partially owned by the state

15. Political parties (directly)
16. Political parties (indirectly)
17. Any private organisation that receives public funds
18. Any private organisation that conducts public functions
19. Any private organisation when information needed to protect another right
20. Monopolies
21. Privatised organisation
22. Regulated public utilities (gas/electricity etc)
23. Health insurance companies
24. Labour unions when they receive public funds

IV. Duties of Bodies

The RTI law imposes the following requirements on the bodies covered by the law:

1. To make the respective information available on the Internet and/or by other means
2. To be proactive in publishing information of public interest
3. To provide facilities for making requests for information
4. To gather and retain all relevant important information used in the decision-making process

V. Exemptions

1. All exemptions are provided for only in the RTI law
2. All exemptions contain a harm test limiting disclosure only when its dissemination would harm a specified legitimate interest
3. All exemptions are subject to a public interest test where information may not be withheld unless the legitimate interest protected is greater than the public interest in disseminating the information
4. No general exemption for cabinet documents
5. No general exemption for information relating to intelligence or security services
6. Information relating to crimes against humanity cannot be restricted
7. Information relating to serious human rights violations cannot be restricted
8. Requirement for providing redaction for documents/information that is withheld
9. Bodies have the obligation to inform applicants of the reasons for withholding information
10. Limit of confidentiality for 15 years

B. INSTITUTIONAL DESIGN

I. Information Office/Officer

Creation of an information office

1. Each body has an information office or officer
2. The director of the information office or officer is a senior official

Functions of the Information Office/Officer

1. To receive and process requests for information submitted to the body

2. To collect, publish and update government public information required to be published by the law
3. To keep updated records of requests for access to information
4. To advise and assist those who require aid in exercising the right of access to information
5. To advise individuals on their right to file an appeal for review, how to file and the time limits for doing so
6. To establish policies and regulations of the body with respect to access to information in accordance with the guidelines, criteria and recommendations
7. To encourage the culture of transparency and openness within the bodies

II. Internal Review Body

Obligated bodies have an Internal Review Body

1. All bodies are required to create an internal review body

Functions of the internal review bodies

1. To review the decisions for withholding of information
2. To confirm, modify or revoke the withholding of information made by administrative units (and information which is lacking)
3. Respond in 20 working days to appeals

III. Requirement for promotion of the importance of the right of access to information

1. To promote the culture of transparency and openness
2. To promote the right to freedom of information among disadvantaged groups
3. To include the right to information in educational programmes

Training activities

1. To ensure that all bodies receive appropriate training on the law

Record keeping

1. To create and maintain updated records and document management systems
2. To ensure that records and information are only disposed of in a manner prescribed and/or approved by the national archivists

Accountability of the obligated subjects to the regulatory bodies and of the regulatory bodies to the legislative body

1. Bodies to make annual public reports on the actions of implementation of access to information legislation.
2. Executive branch to make summary annual report of all bodies activities on RTI
3. Annual public report of the oversight body on RTI
4. Committee in legislature with oversight on RTI
5. Mechanism for including civil society and user community into policies and oversight

IV. Oversight Body

Legal nature

1. Body specialised in transparency and access to information which resolves disputes
2. Ombudsman or other body

Independence of body – the body has:

1. Budgetary autonomy
2. Operational autonomy
3. Decision-making autonomy

Powers

1. Authority for all obligated bodies subject to RTI law
2. Authority to hear and to determine the appeals from persons to withholding of access to information
3. Authority to issue binding decisions
4. The decisions of the authority is final for the bodies (no appeal for public bodies)
5. Authority to monitor and follow up on compliance with its decisions
6. Authority to receive and hear the facts on violations of access to information legislation
7. Has full powers to gather information and demand testimony
8. Authority to evaluate the actions of the obligated bodies
9. Authority to review and order declassification of information
10. Authority to provide general guidelines
11. Authority to verify compliance with the rules on transparency
12. Authority to respond in 30 days

Mechanism for appointment

1. Nomination process for appointment must be open
2. Law sets minimum qualifications for being named as commissioner
3. Appointment must be approved by open vote of legislature
4. The appointment is for a fixed term of at least 5 years with possibility of at least one renewal

Accountability

1. Must report and regularly account to specified legislative committee
2. Removal of commissioner only by legislature when it finds just cause based on criminal violation, serious dereliction of duties, or clear inability to conduct job due to ill health.

Public accountability

1. Obligation to produce an annual report
2. Permanent publication of the decisions on appeals for review
3. Public sessions if collegiate body

C. PROCEDURES

I. Request Procedures

Methods for submitting requests for access to information

1. In person at the agency (oral or written)
2. By mail
3. By telephone (oral)
4. Through a representative (oral or written)
5. Through a legal representative
6. By e-mail or other electronic means
7. Electronic systems

Requirements for requesting information

1. It is not necessary to prove identity for a request
2. It is not necessary to justify the request for the information
3. A clear description of the requested information is sufficient
4. Information can be requested in any form

Regulation of the responses of public authorities to requests for access to information

1. The procedure for access is complete and does not refer to another law
2. Period of response is limited to a maximum of 15 working days
3. If the requested information is not held by the body, the Information Unit shall transfer the request to the appropriate body within no more than two days
4. Bodies have a duty to provide advice and assistance to individuals if their request is unclear or overly broad
5. The body must respect the preference of requestor as to the method by which he/she prefers that access to the information be granted unless compelling reasons exist

Fees

1. No fee for submitting application
2. No fee for filing internal appeal
3. No fee for submitting external appeal
4. No charge for the time taken to consider whether to disclose the information
5. Reproduction fees limited to actual cost of duplication and postage
6. No reproduction fees charged for persons with low income
7. Fees are set by law or a central body is established to determine them

II. Response to Requests

Requirements for filing appeal procedures

1. Appeal can be in writing, by electronic means or by other means
2. Name and address not necessary for filing notifications
3. Grounds can be any disagreement by the appellant

Time limits for appeal for review

1. Applicant has at least 40 working days to file appeals for review

2. Internal review must decide within 20 working days
3. Body has up to 40 working days to provide information which was not available and which the regulatory body required be generated

Legal guarantees for appeal for review

1. Establish the procedure for the resolution of appeals
2. The procedure for challenge is complete and is not referred to another law
3. Presumption in appeal in favour of the requestor

III. Affirmative Publication (List of information to be published without the need for a request for Information)

Internal organisation of the agency or public entity and regulatory section

1. Organic structure
2. Functions by administrative unit
3. Directory of civil servants
4. Catalogue of documents in the records
5. All laws and regulations
6. Concessions, licences, permits or authorisations granted

Information regarding decision-making

1. Aims and objectives of the administrative units in accordance with their operating programmes.
2. Internal regulations
3. All decisions by public body
4. Management indicators used to evaluate performance
5. Logical framework of reference for management indicators
6. Reports generated by the obligated subjects, by legal disposition
7. Services offered
8. Programmes administered
9. Procedures, requirements, and forms
10. Mechanisms for civic participation
11. Location of the liaison unit

Financial information

1. Gross and net monthly remuneration of all civil servants paid by salary or by fee, including all payments, benefits and compensation systems
2. Full detailed budget, as well as reports on its use
3. Results of audits and other reviews
4. All announcements of procurement of goods and services
5. All contracts issued
6. Design, implementation, amounts assigned, and criteria for access to subsidy programmes

Other relevant information

1. Any other information which may be useful or relevant for knowledge of or evaluation of the functions and public policies which are the responsibility of the obligated subject
2. Frequently-asked questions (FAQs) and other guides

3. Log of requests for information and responses

Methods of dissemination

1. Electronic means
2. Reading room
3. Other means of dissemination

Rules for the publication of information

1. Obligation to use language which is clear, accessible and which facilitates comprehension by users
2. Obligation to update the information on regular basis
3. Obligation to publish the date of update for each item
4. Obligation to indicate the administrative unit responsible for generating the information for each item
5. Obligation to indicate the official responsible for generating the information for each item
6. Provision for information to be made available in indigenous languages
7. Organisations shall indicate items which are not applicable to them
8. Provide for specific items for different obligated subjects
9. Complaints procedure for failure to comply with publication of the Obligations of Transparency before the regulatory body
10. System for increasing the requirements for proactive dissemination

IV. Sanctions

1. Existence of administrative sanctions including fines for deliberate violations of law
2. Existence of civil sanctions for deliberate violations of law
3. Existence of criminal sanctions for deliberate destruction of information to stymie request for information
4. Existence of criminal sanctions for public servants who attempt to intimidate requesters of information
5. Existence of sanctions against bodies that for failure to proactively disseminate public information
6. Legal fees available to requestors when oversight body finds that information is being unlawfully withheld
7. Damages available to requestors when oversight body finds that information was unlawfully withheld
8. Sanctions issued directly by oversight body

V. Protections

1. Protection for public servants from any sanction for releasing information which may be restricted by the terms of access to information legislation where they act in good faith
2. Protections for officials from libel/defamation and other actions when they release information in good faith
3. Protections for members of the public from libel/defamation, breach of confidence and other actions if they publish information obtained from a public authority under the RTI law.

Appendix: Mexico's Access to Information Index Pilot and Results

In April 2010, ARTICLE 19 Mexico, in collaboration with the FUNDAR Research and Analysis Center, released the Mexico RTI Index. The Index was designed as an advocacy tool for the promotion of progressive RTI legislations. It was piloted and tested in Mexico, where the federal system has led to the adoption of 32 local RTI laws and a federal transparency law.

The Mexico RTI Index tested: 1) the scope and limits of the fundamental right to information set in the 33 RTI legislations; 2) the institutional strength of the public authorities that are obliged to comply with the laws, the independence and autonomy of the transparency commissions that protect RTI; and 3) the procedures for accessing information, both by proactive disclosure of information and by the submission of information requests. It also tested the appeal procedures of access to information.

The Index was a groundbreaking methodology for testing RTI legislations. The Index established a ranking and an in depth analysis of the existing RTI legislation in the country. The Index provided information confirming that 17 local legislations (out of 33) failed to guarantee the Constitutional right to information, and 23 failed to establish RTI legal frameworks according to international standards and best practices. The best legislation ranked was Mexico City and the worst one was Guerrero (an state that also falls in the last places of human development in the country). The methodology also recognised that a number of laws have adopted provisions which are best practices in the region.

Taking into consideration the best international practices and the international standards, the Mexico RTI Index showed that the average of the 33 transparency laws in Mexico were below 0.6. This means they failed the evaluation considering our parameters. Regarding the legal dispositions that establish the scope and limits for the right to information, the Index showed that the Mexican laws do not consider a wide range of authorities and stake holders that must comply with the access to information legal framework. Regarding the access to information limits set by the transparency laws, the Index showed that the access to information legislations (including the federal transparency law) do not incorporate a three part test for classifying information. The right to information legislations also fail to provide with a solid system of sanctions that correctly vindicate the violations to the right to information.

Regarding the institutional components for the implementation and compliance of transparency laws, ARTICLE 19 and FUNDAR found out that most of the Information Commissions lack the legal authority to effectively protect RTI. Also, the mechanisms for the appointment of the Information Commissioners do not legally guarantee the independence and autonomy of the Information Commissions.

Regarding the procedures in the transparency laws, the Index showed that there is a large window of opportunity to improve the proactive disclosure of public information and the exercise of RTI by vulnerable groups.

The responses from different local actors have been varied. However, in overall, the reception of the Index has been very positive. As a result of the Index launch, legislative reforms were approved and published in two of the states with the weakest legal framework

for access to information. In Sonora, where the electoral and access to information commissions were part of the same body, the state's Constitution was reformed in June in order for this institute to be divided in two separate organs in compliance with the federal constitutional mandate and the best international practices. The Index launch showing the poor results of Sonora's access to information legislation contributed to the approval of the constitutional reform.

In Guerrero, a progressive RTI legislative initiative was promoted with a large number of nongovernmental organisations, academics and other relevant stakeholders. While this initiative took a long time to be approved, the RTI Index showed to be an important element for it to finally be approved in the local lower chamber.

Furthermore, the Access to Information Commissioners of the states of Oaxaca, Querétaro, Yucatán Tabasco, and Puebla have approached ARTICLE 19 and FUNDAR for technical and strategic advice in order for them to dialogue with the local legislators and pursue an improvement in the existent law of transparency.

The Index results allowed us to firmly remind stakeholders that the access to information legal protection is not an finished issue in Mexico, even when the Federal Transparency Law has been recognised as one of the best laws in the world. ARTICLE 19 and FUNDAR's experience has shown that the legal gaps imply serious implementation problems that inhibit the fulfillment of the right to information. These gaps might be overcome by political will, but we believe the access to information legislation should not leave voids for the application of arbitrary criteria that might not remain in time. The Index allowed us to set in the national agenda the need to reform RTI legislations in order to promote a progressive protection of RTI.