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Implementing Right to Information

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Over the last two decades, several developing countries have adopted right to information (RTI) laws, bringing the number of countries with such laws to more than 90. But empirical evidence on how effectively RTIs have worked, whether they have been effectively enforced, and if they have had any impact on improving accountability, is limited. This note examines how RTI laws have worked in different country contexts, drawing from an analysis of their implementation in eight countries spanning different regions, income levels, political forms, and administrative traditions. The experiences of these countries show that implementation has faced challenges across countries, but has been especially difficult in countries where the broader governance environment is weaker on dimensions such as the rule of law, government effectiveness, voice and accountability, civil liberties, and political rights. During the implementation phase, with the erosion of the initial political momentum behind the law, the incentives for officials to comply with the new legislation also tended to erode, resulting in efforts to undermine the law. The evidence suggests that as countries with challenging governance environments and capacity limitations adopt RTI laws, they will need to both devise implementation solutions that can adapt to these limitations and undertake complementary initiatives to strengthen their broader governance environment.

Overview

A number of developing countries—in Eastern Europe, Latin America, Asia, and Africa—have recently adopted RTIs, bringing the total number of countries with such laws to more than 90, up from just 13 in 1990. RTIs, which give citizens¹ the right to have access to information about the functioning of their governments, were seen for much of the 20th century as operationalizing an intrinsic democratic right, a right that had been incorporated into international human rights conventions² and in the constitutions of several countries. But as RTIs have been adopted by more developing countries, they have been cast also as a tool for furthering development objectives and as fundamental to enhancing citizen participation in governance and improving citizens' understanding of public policy by enabling them to assert their claims on service entitlements, scrutinize public officials and public expenditures, and exercise a more direct form of social accountability.

But at the same time, some experts have cautioned that RTI implementation could prove considerably more challenging in countries with weaker governance environments. For instance, Roberts (2006) points out that the efficacy of these laws has yet to be tested in the new adoptee countries that have poorer records on key governance dimensions such as political and civil liberties, rule of law, and accountable governance. Kreimer (2008) points out the “ecology of transparency”—which comprises dedicated oversight and monitoring groups, accountability and media groups that use RTI to uncover information, and media and press laws that encourage free expression and free association—is essential to the effective functioning of RTIs.

This note highlights the findings from an assessment of how RTI laws have actually worked in eight countries spanning different regions, income levels, political forms, and administrative

traditions - Albania, India, Mexico, Moldova, Peru, Romania, Uganda, and the United Kingdom.³ The analysis confirms that the effectiveness of RTI has indeed been more challenging in countries weaker on governance dimensions such as the rule of law, government effectiveness, accountability, civil liberties, and political rights (figure 1). In these countries, it has been difficult to establish implementation institutions and build capacity for RTI, and civil society and citizen groups have also not been very successful in leveraging the law as an instrument to hold governments accountable.

On the other hand, countries that ranked better on these governance dimensions have more effectively established institutions to oversee and promote the law, build capacity, monitor compliance, and provide redress for noncompliance. They are also the countries where civil society and media groups have been more successful in leveraging RTI to extract information to hold governments accountable, suggesting that several of these governance dimensions might be crucial to creating an enabling environment for the effective implementation of the law.

Experiences of the more effective implementers provide useful lessons on institutional design and capacity-building measures for countries adopting RTI. s But as countries with more challenging enabling environments adopt the law, the case study examples also suggest that they need to devise implementation systems more in tune with their capacity and institutional environments. The next section highlights lessons on effective implementation from the more effective implementers, and the subsequent section looks at the challenges that countries with more difficult environments faced.

At the same time, several challenges to implementation have emerged across both better and poorer performing countries. In particular, resistance to implementation from both officials and political actors—manifested in attempts to pass amendments to restrict the scope of the law, refusal of officials to help requesters, and even harassment of information requesters by officials—suggests that the passage of RTIs is a limited step in the direction of accountable governance, and continued vigilance by both independent oversight and civil society organizations (CSO) is necessary. The section on “Challenges” discusses the forms that such resistance to implementation can take and some suggestions on how these could be addressed.

Lessons from Better-Performing Countries

Of the case study complement, implementation was more effective in the three countries stronger in terms of both their internal institutional capacity and their governance environment—the United Kingdom, Mexico, and India. These countries rank higher on key governance indicators as shown in figure 1. The United Kingdom was not included in these graphs because its scores were significantly higher than all the other cases, making comparison within the remaining cases difficult.⁴ These three countries show better scores on the World Governance Indicators (WGI), such as government effectiveness and rule of law dimensions of, which measure characteristics such as quality of the civil service, quality of policy formulation and implementation, the credibility of the government’s commitment to such policies, and the extent to which civil servants are likely to follow and implement the letter of the law. These characteristics might explain better performance on procedural compliance with RTIs and the establishment of implementing institutions.

India, Mexico, Romania, and the United Kingdom set up both independent oversight agencies as well as nodal agencies within the executive branch to promote awareness about the law within the government and among the public; oversee and monitor compliance; and support technological and human resource capacity across government. Independent information commissions set up as grievance redress mechanisms for noncompliance—such as the Federal Institute for Access to Public Information (IFAI) in Mexico, the Central Information Commissions (CIC) in India, and the Information Commissioner’s Offices (ICOs) in the United Kingdom—were important champions of the law. They pushed for compliance through both their adjudicatory and promotional roles.

In Mexico, although the rule of law indicator is weaker than in the other three countries between 2000 and 2010, the high profile of the 2002 Transparency Law and championship by IFAI were critical factors in its effectiveness. IFAI, which is regarded as the gold standard of independent oversight agencies, aggressively promoted access by disseminating information about the law at the state level, persuading governors to pass similar laws, encouraging citizens to make information requests, and disseminating information about the Mexican experience internationally. Its regular publication of data on compliance and other

statistics collected from implementing agencies put pressure on poorly performing agencies.

Relative operational autonomy and significant resources to develop capacity enabled these agencies to act as effective arbiters against noncompliance with the law. For instance, both the Mexican IFAI and the British ICO had a high degree of political support, were provided substantial resources, and were staffed with commissioners with strong technical expertise, some drawn from civil society. IFAI's rulings on several high-profile cases—such as the diversion of public health resources allocated to pro-life organizations and the embezzlement of resources from large government trust funds—also signaled its willingness and ability to take on politically challenging cases and established the seriousness of the new transparency reform (Fox, Jiménez, and Haight 2009). The UK ICO was responsible for improving the compliance of several ministries and agencies.

In India, the CIC also championed implementation, providing progressive rulings on several cases, such as the disclosure of assets by election candidates, although the organizational challenges it faced – for instance, several posts lying vacant – reflected the more generic inefficiencies of India's public sector.

Although Romania did not have an independent oversight agency, the judiciary's role was very important in several landmark judgments that pushed the envelope on transparency in the early years of implementation. More recently, however, pressures on judicial capacity have resulted in a weaker record on adjudication, highlighting the importance of an independent information commission (IPP 2011).

Although much emphasis for RTI implementation is placed on independent information commissions, the examples of these countries show that a nodal agency within the government is also critical, especially in the early years, to steer change-management efforts and build up the requisite capacity. The *Secretaría de la Función Pública* (SFP) in Mexico, the Department of Personnel and Training in India, and the Ministry of Justice in the United Kingdom championed training, capacity building, and monitoring efforts. In Romania, the RTI nodal agency within the government, which was initially the Ministry of Justice, monitored compliance statistics in the early years. However, as the RTI nodal agency became smaller and more marginalized with budget cuts, Romania's monitoring function became weaker, highlighting the long-term challenge of sustaining implementation efforts.

India, Mexico, the United Kingdom, and Romania were also more effective in setting up frontline

capacity for responding to requests, with ministries, departments and agencies (MDAs), and other entities under the law, designating information officials and information response units, as per the law's provisions. However, because these implementing entities were not allocated additional budget, but were expected to find funding for RTI from existing budgets, their relative investment in this function varied, driven by the resources they could dedicate, the commitment of agency leadership to transparency, the specific functions of the MDAs, and the extent of public demand.

In the United Kingdom, where agencies have considerable autonomy in determining their arrangements, smaller departments tended to delegate RTI compliance to their legal teams or corporate services divisions, whereas larger departments and those receiving a high volume of requests set up dedicated teams. In India, departments focused more on formulating policies at the central level put in place leaner implementing structures with fewer information officers, given that most of their programs are implemented at the state and local government levels, while departments such as public works, which are heavily engaged in program implementation, appointed a higher number of information officers. Experiences of the implementing MDAs highlight an important constraint: although MDAs with larger budgets might be able to absorb the additional costs of RTI implementation, this is rarely the case for poorer entities, and RTI implementation plans might need to factor in allocation of necessary resources to these poorer entities.

The record on the use of the law is also stronger in these four countries. The law was extensively used by both private citizens for accessing information of personal interest (such as benefits and entitlements under government programs), and by civil society and media groups to extract information related to mismanagement of public funds, poor performance of agencies, and instances of fraud, collusion, corruption, or nepotism. But as a way of highlighting how RTI works as an instrument of accountability, it is interesting to note that even in these countries, the percentage of population using the law was quite small, in the range of .03–.04 percent of the population, not very far from the levels of use in more developed countries with a longer history of implementation.⁵ Clearly, the significance of RTI lies not in the pervasiveness of its use, but for the kinds of information it can bring to light when leveraged effectively.

As with government effectiveness and rule of law dimensions, the United Kingdom ranks much higher than the other case study countries on voice and accountability, political rights and civil liberties—dimensions that might explain the higher responsiveness of the state to civil society pressures in these countries.⁶ India and Mexico also have strong, mature CSOs and media groups with a historical track record of engaging with the government on tough governance issues, and these groups were also successful in leveraging RTI to expose major corruption scandals. Further, in Mexico and India, RTIs were used not only by larger, metropolitan nongovernmental organizations (NGOs), but also by grassroots groups and NGOs in the service delivery sectors. In Romania as well, during the post-Soviet decades, CSOs have gained voice, leverage and capacity, actively and effectively engaging with the state on several laws and policies.

These findings from the better-performing countries, therefore, suggest the importance of both independent and executive oversight institutions to promote and monitor implementation, politically independent and well-resourced information commissions as well as adequate resources within implementing agencies to enable them to dedicate personnel, conduct training, and build capacity. The limited anecdotal data also point to the important role that other accountability institutions—such as parliamentary committees, courts, audit institutions, and anticorruption agencies—play in ensuring sanctions and follow-up actions when corruption or nonperformance was uncovered through RTI requests.

Peru stands between the groups of better and weaker implementers. It set up implementation institutions and designated a nodal agency within the government, the Office of the President of the Ministerial Cabinet (PCM), which monitors compliance data. There were also active CSOs—in partnership with the ombudsman—advocating for RTI implementation. But there is little evidence of the law having been used in any major victories forcing the release of information or enabling significant gains in accountability. The absence of an independent RTI agency and the resulting limitations in independent oversight might at least partly explain why the law's effectiveness has been limited. The ombudsman, which performs this oversight role, has been a champion of the law, but it has multiple responsibilities, so its resources and attention are fragmented. The record of the judiciary is also discouraging: the courts have not pushed aggressively for compliance, especially in high-profile cases.

Challenges in Countries with Weaker Governance Environments

In Albania, Moldova and Uganda, countries that have weaker scores on both the governance environment and rule of law, implementation was more challenging. In Albania and Moldova, the absence of a nodal agency within the government to oversee RTI and sustain capacity development led to fragmented implementation efforts and hindered capacity building, especially in the face of successive changes in government and the reorganization or elimination of ministries. In Albania, although the People's Advocate attempted to initiate several measures to strengthen RTI implementation, such as promulgating implementation regulations, in the absence of adequate resources and political backing, its efforts were largely unsuccessful. In Uganda, the nodal agency faced resource constraints from the outset and was never truly effective in facilitating implementation.

Adjudication systems for noncompliance in Uganda and Albania were also weaker. In Uganda, where the law provides for direct appeals to the judiciary, judicial record on high-profile cases, such as that of the disclosure of contracts awarded to Tullow Oil, highlighted the lack of technical capacity within the judiciary to interpret the RTI, and likely a lack of independence.⁷ In Albania, the ombudsman, who was charged with providing redress for noncompliance, was a champion of the RTI, but inadequate resources and lack of political support made it a weak adjudicator.

These poorer performing countries also did not set up robust systems for monitoring RTI compliance. As a result, little data are available to help understand the use of RTI compliance levels or the comparative performance of agencies. Interviews suggested that although there are dedicated CSOs that routinely made RTI requests, they largely met with either overt refusals or no response. In Moldova, where a more pronounced compliance culture did lead to routine releases of information in response to requests, CSO and media interviewees suggested that the information was often incomplete or not useful. The limited data collected through CSO monitoring efforts shows a similarly dismal picture on compliance. A challenging overall accountability environment, as reflected, for instance, in lower scores on indicators such as political rights, civil liberties and voice and accountability (figure 1), might explain Moldova's lower level responsiveness to CSO pressures, and hence the limited potential of instruments such as RTIs.

These challenges—which have been called the implementation gap (Global Integrity 2009)⁸—are not unique to RTIs, and are evident in the experience with several governance reforms that are adopted with much promise and fanfare only to become completely ineffective during implementation. This has led to increasing focus within development practice on the importance of designing reforms suitable to country contexts, with the limitations and the constraints of the country’s enabling environment in mind—the “good fit” versus “best practice” approach.

There is a paucity of examples from the limited experience on RTI implementation in developing country contexts on how a good fit approach might be operationalized. On the design of the law itself, some initiatives have been launched—for instance, by the Organization of American States and the African Union—to develop model RTI laws that would be more appropriate for their contexts and account for factors such as the poor state of recordkeeping.⁹

During implementation, experimentation with sequencing and prioritization of different measures might be a useful approach. For instance, in the short term, it might be useful to concentrate intensive efforts on building capacity for information management in those agencies that have high demand for information. Similarly, state-of-the-art advanced technology solutions for requests, such as Mexico’s *Sistema Informatizado de Solicitudes de Informacion*, might be too expensive to implement in poorer countries and in smaller entities, which might focus instead on creating a culture of responsiveness through training and other incentives. Departments that have a higher number of requests relating to government performance—the more “sensitive” requests that officials are particularly cautious about—might need to put more effort into communications, creating incentives that signal the department’s leadership, and other measures to create a more open culture with moderate, incremental investments in technology platforms and a longer-term vision for full migration.

For cost-intensive activities, such as strengthening records management, actions that address the most challenging constraints could be prioritized rather than attempting a full-fledged rollout of advanced systems. Initial immediate actions could include, for instance, harmonizing inconsistent regulatory regimes and putting in place clear roles, responsibilities, and coordination mechanisms as well as implementing minimum standards for records management, such as requiring agencies to create updated lists or registers of

the documents in their possession, and to make these documents available to the public.

Such flexible and context-specific approaches have not been tried and tested, but inevitably will need to be factored into the design of both the law and implementation plans.

Conclusion

In conclusion, it is useful to discuss some challenges to implementation that were common across countries, suggesting that regardless of income levels and governance systems, the passage of the RTI law is a nominal step, and implementation requires continued vigilance from both independent oversight agencies and civil society monitors.

RTI is not politically neutral. Control of information provides opportunities for patronage and rent seeking for both public officials and political actors, creating inherent incentives to resist the law. Further, an RTI entails a fundamental paradigm shift toward a presumption of transparency and disclosure, away from the “presumption of secrecy” that has traditionally characterized bureaucracies (Weber 1992). An RTI law represents a fundamental paradigm shift from these embedded incentives and bureaucratic norms, and inevitably incites resistance, as is evident from the long struggles for the passage of the laws in several countries, and stalled efforts in others.

In the case study countries, championship of the law by political elites, primarily to establish their democratic credentials and gain legitimacy from international partners and domestic constituencies, often during political transitions, enabled some consensus on the passage of the law across the political spectrum. During the implementation phase, however, with the erosion of political momentum behind the law, the incentives of officials to comply with the new legislation also tended to erode, and both officials and politicians attempted to undermine the effectiveness of the law.

Restrictive amendments to limit the scope of the law *ex post* were introduced in Albania, India, Moldova, Peru, and the United Kingdom. In India, for instance, the Department of Personnel and Training attempted to restrict “file notings”—the notes of officials on administrative files—from the purview of the law.¹⁰ Moldovan authorities drafted legislation in 2005 to limit access to information. The United Kingdom attempted to exempt Parliament from the purview of the Freedom of Information Act, and created restric-

tive provisions about fees for requests. Similar efforts to block implementation have been evident in several developed countries as well.¹¹ In India, the United Kingdom and Moldova, civil society opposition and advocacy efforts thwarted these attempts, but in Peru and Albania, civil society resistance was less successful in preventing restrictions to disclosure.

Further, although most laws require government officials to provide assistance to requesters, requesters often had to make multiple trips to submit and follow up on requests, and very rarely got any assistance. In India, for instance, information requesters, especially in rural areas, reported facing harassment and threats (RAAG and NCPRI 2009), and a number of RTI activists were even reported killed.¹² When information was released, it was often incomplete or contained terminology impossible to decipher for either average citizens or CSOs.

Moreover, although RTI laws are intended to democratize access to information, in practice, access continued to be influenced by personal relationships and informal contacts. Hence, in Uganda, service de-

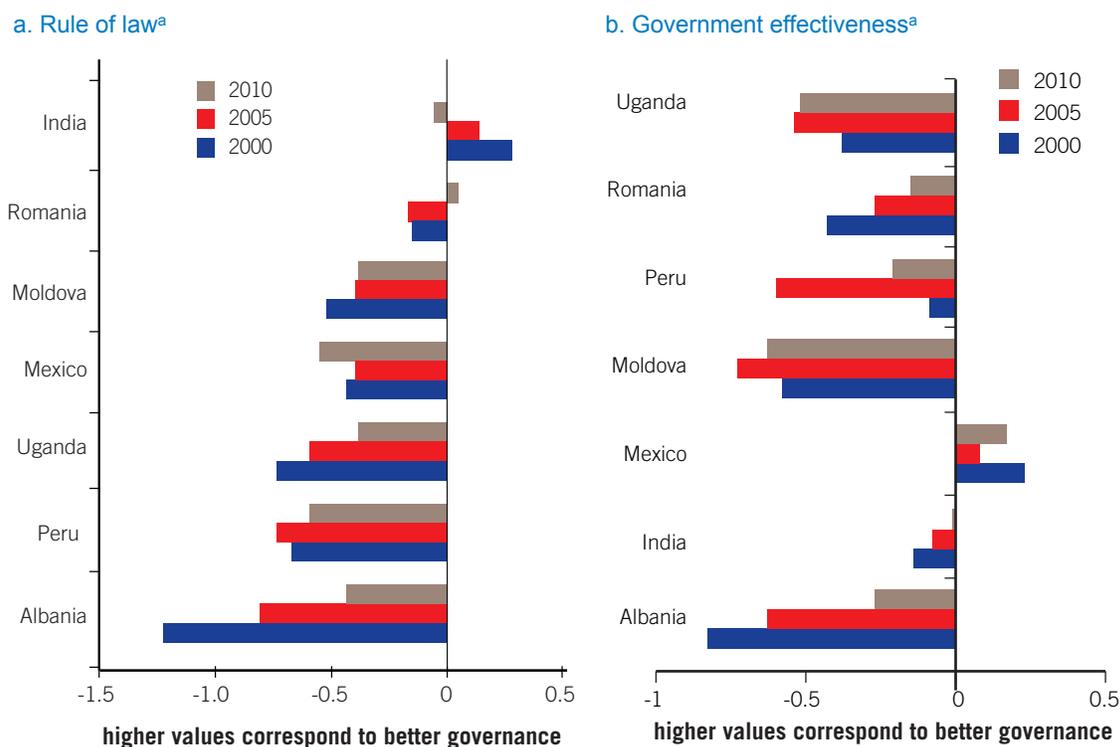
livery NGOs, which help deliver government programs and sit on ministerial committees, had easier access to information, while requests from accountability-focused NGOs, which are seen as more antagonistic, reported being routinely denied information.

A strong accountability environment, active and engaged media and CSOs, and an adherence to the rule of law can address some of these challenges, as the experiences of the better-performing countries show. But all countries need to focus on creating the right incentives for public officials to comply with the law along with training and awareness raising, and signaling that leadership considers the RTI a high priority. For instance, providing a higher profile to information units within an agency's structure, and factoring in information-responsiveness in performance evaluations could be ways of indicating leadership commitment.

About the Author

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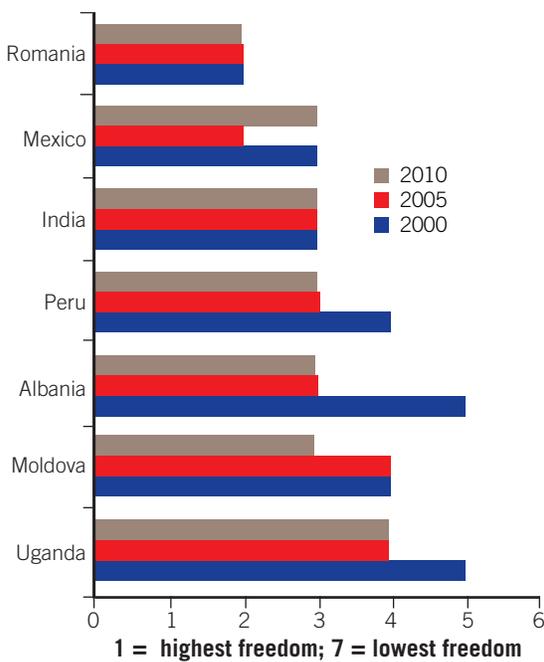
Figure 1. Rankings of Case Study Countries on Key Governance Indices



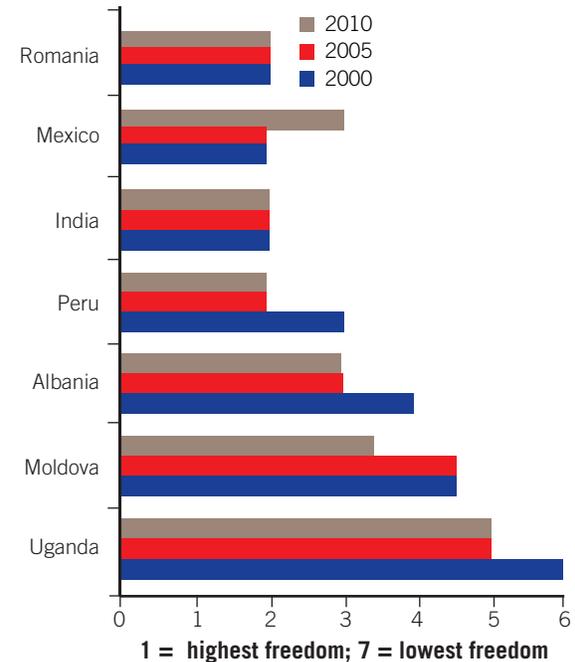
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Figure 1. Rankings of Case Study Countries on Key Governance Indices (continued)

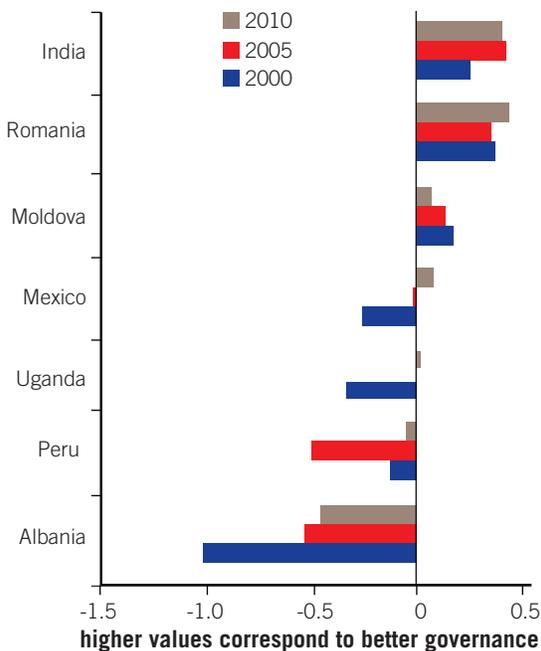
c. Civil liberties^b



d. Political rights^b



e. Voice and accountability^a



Source: a. http://info.worldbank.org/governance/wgi/sc_country.asp; b. Freedom House surveys, 2000–2010, <http://www.freedomhouse.org/report-types/freedom-world>.

Notes

1. In many countries, the right extends to noncitizens as well.
2. Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; African Charter on Human and People’s Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; and American Convention on Human Rights.
3. This note is based on a research project conducted in eight countries; more details and references can be found in Dokeniya (2013).
4. The World Bank’s Worldwide Governance Indicators on rule of law, government effectiveness and voice and accountability, and Freedom House indicators on civil liberties and political rights are good proxies for these dimensions (http://info.worldbank.org/governance/wgi/sc_country.asp).
5. RTI tends to be used by approximately .03–.4 percent of the population.
6. Freedom House indicators on political rights and civil liberties and WGI indicator on voice and accountability are good proxies for these dimensions.
7. In response to an appeal on nondisclosure of oil exploration contracts with Tullow Oil, the judge ruled

that since the plaintiff—CSOs—had not demonstrated the public interest in the disclosure of the contracts, the government’s decision to withhold was valid; this was a considerable misinterpretation of the law.

8. The 2009 *Global Integrity Report* pointed out that countries that are among the largest recipients of international donor assistance tend to have the largest implementation gap, suggesting that aid-dependent countries might establish laws and institutions to meet donor requirements, but do not necessarily implement them, leading to a proliferation of legal and regulatory reforms on paper, without actual benefit.

9. See the “Draft Model Law for All Member States on Access to Information” (http://www.achpr.org/files/instruments/access-information/achpr_instr_draft_model_law_access_to_information_2011_eng.pdf) and the “Model Inter-American Law on Access to Information” (http://www.oas.org/dil/access_to_information_model_law.htm).

10. The Government of India argued that this approach was justified on the basis that deliberative information is widely recognized as constituting a legitimate exemption. Several legal scholars in India have disagreed with this position and suggested that this information should be subject to disclosure (<http://right2information.wordpress.com/2006/08/15/juristic-administrative-and-political-views-on-file-notings-and-deliberative-processes/>).

11. In New Zealand, research showed that straightforward, nonpolitically sensitive requests resulted in on-time, satisfactory compliance, while politically sensitive requests were delayed, transferred, and refused (Palmer 2007).

12. http://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India.

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