Opening government

A guide to best practice in transparency, accountability and civic engagement across the public sector
The Transparency and Accountability Initiative is a donor collaborative that includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations, the Revenue Watch Institute, the United Kingdom Department for International Development (DFID) and the William and Flora Hewlett Foundation.

The collaborative aims to expand the impact, scale and coordination of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

The views expressed in the illustrative commitments are attributable to contributing experts and not to the Transparency and Accountability Initiative. The Transparency and Accountability Initiative members do not officially endorse the open government recommendations mentioned in this publication.

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Introduction
In January 2011, a small group of government and civil society leaders from around the world gathered in Washington DC to brainstorm how to build upon growing global momentum around transparency, accountability and civic participation in governance. The result was the creation of the Open Government Partnership (OGP), a new multi-stakeholder coalition of governments, civil society and private sector actors working to advance open government around the world – with the goals of increasing public sector responsiveness to citizens, countering corruption, promoting economic efficiencies, harnessing innovation and improving the delivery of services.

In September 2011, these founding OGP governments will gather in New York on the margins of the UN General Assembly to embrace a set of high-level open government principles, announce country-specific commitments for putting these principles into practice and invite civil society to assess their performance going forward. Also in September, a diverse coalition of governments will stand up and announce their intention to join a six-month process culminating in the announcement of their own OGP commitments and signing of the declaration of principles in January 2012.

To help inform governments, civil society and the private sector in developing their OGP commitments, the Transparency and Accountability Initiative (T/AI) has reached out to leading experts across a wide range of open government fields to gather their input on current best practice and the practical steps that OGP participants and other governments can take to achieve openness.

The result is the first document of its kind to compile the ‘state of the art’ in transparency, accountability and citizen participation across 16 areas of governance, ranging from broad categories such as access to information, service delivery and budgeting to more specific sectors such as forestry, procurement and climate finance.

Each expert’s contribution is organised according to three tiers of potential commitments around open government for any given sector: initial steps for countries starting from a relatively low baseline, more substantial steps for countries that have already made moderate progress and most ambitious steps for countries that are advanced performers on open government.

T/AI hopes that governments, civil society organisations, the private sector and other stakeholders will find this resource useful not only in informing OGP country commitments, but also more broadly in inspiring new reforms, advocacy and public-private partnerships to create more open governments around the world.

About T/AI

The Transparency and Accountability Initiative (T/AI) is a donor collaborative that aims to seize momentum and expand the impact, breadth and coordination of funding and activity in the transparency and accountability field, as well as to explore applications of this work in new areas. The collaborative includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations (OSF), the Revenue Watch Institute, the United Kingdom Department for International Development (DFID) and the William and Flora Hewlett Foundation. It is co-chaired by OSF and DFID.

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Editor: Julie McCarthy, Senior Advisor, Transparency and Accountability Initiative.
Illustrative commitments and best practice
1. Aid transparency

Contributor: Publish What You Fund

Aid transparency matters for many reasons – from improving governance and accountability and increasing the efficiency and effectiveness of aid to lifting as many people out of poverty as possible. At present, countries that receive international aid have little way of knowing how much aid is coming into their country and how it is being spent. Donors often face serious challenges in establishing where and how their help is most efficient and effective.

Aid transparency involves publishing information on aid flows and all donor, recipient country and NGO efforts that have developmental or humanitarian impacts. This should include the origin and destination of aid, as well as its purpose, conditions and contracts. When comparable and available, this information benefits both donors and recipients in assessing the effectiveness and impact of aid.

The recommendations here are divided into recipient and donor governments, but of course there are a number of governments who are doing both, and thus for whom both sections might be relevant when considering what steps to implement and how to sequence them.¹

Donor agencies and governments

Initial steps

Goal
Assess, test and develop a publication schedule for aid information that donor agencies already hold against the emerging standard.

Justification
The first steps in responding to emerging international best practice standards on aid transparency lie in assessing what aid information government agencies already collect, developing an implementation schedule for making available data in line with the standard, and investing in it to ensure that they deliver on and for the systems and data run by donors.

Recommendations
Undertake an assessment of information collection (both content and systems) on aid, foreign assistance and external finance flows, and activities and documentation currently held by each government agency that are used in the delivery of foreign assistance or aid. The assessment should relate to the emerging best practice standard for aid transparency.

1. Test and pilot the interoperability of data between and within the systems of donors and agencies (both between agencies of the same government/institution as well as between bilateral and multilateral agencies).

2. Develop an implementation schedule for the publication of existing information in line with the international best practice standard.

3. Ensure the refining and further development of best practice within existing agreements rather than building a parallel model (including the provision of resources and ensuring lesson learning and the revision of standards to ensure the standard is fit for purpose).

¹ The Collaborative Africa Budget Reform Initiative (CABRI) recently prepared a position paper on aid transparency. This details the formal position of 22 partner countries on what both donors and recipients should do in order to implement effective aid transparency. When preparing this submission, we have taken into account CABRI’s initial work on the development of a paper. Now that the document draft is public, we recommend that its contents and recommendations are taken into account as the Open Government Partnership progresses (see http://www.cabri-sbo.org/en/news/170-aid-transparency-la-transparence-de-l-ajuda- a-transparencia-de-ajuda).
More substantial steps

Goal
Publish all existing information already held by aid agencies, in line with best practice, and facilitate the dissemination and use of this information.

Justification
Many aid agencies already possess substantial information related to aid flows and activities, procurement strategies, policies and procedures, results, audits and evaluations to the international standard.

Recommendations
1. Publish existing aid information that is held within systems in a timely manner, in line with aid information standards, in machine-readable formats and under an open license.
2. Register that information on the international registry (http://iatiregistry.org/).
3. Develop internal procedures/authorisation to automate the delivery of information.
4. Develop data collection systems for the information that is found not to be collected currently.
5. Publish a timeline in which that data will also be made available.
6. Develop and implement guidance on the minimum use of exemptions on aid.
7. Make sure that all staff know they have the responsibility to disclose this information.

Most ambitious steps

Goal
Build systems to collect data that is not currently held, and invest in accessibility and use of that information in donor countries.

Justification
Some information is not collected and, in cases where it is not available, systems need to be established to collect it. Investment in transparency efforts need to cascade through the aid system in order to foster demand for, and use of, aid information. Supply should be driven on what is useful for citizens to maximize impact.

Recommendations
1. Build systems to collect and publish new information in line with the best practice standard.
2. Invest in mechanisms and resources for others to do the processing, for example through ‘infomediaries’.
3. Extend the use of best practice standards to grantees and contractors of assistance (including multilaterals and private and NGO grantees/contractors).
4. Foster the use of aid information at the recipient country level, within both government and civil society.
Recipient governments

Initial steps

Goal
Investing in and demanding the use of an emerging best practice standard on aid transparency that also delivers on recipient country needs.

Justification
There is an emerging international good practice standard on aid transparency\(^2\) that is broadly applicable to public and private bodies engaged in the giving and delivery of aid. At present, aid information is often not collected systematically or in ways that respond to partner country needs. For donor’s investments in aid transparency by donors to have maximum impact, they need to respond to the needs and systems of recipient countries. Recipient governments need to ensure that the common standards and formats that emerge are compatible with recipients’ needs and budgets, resource allocation and management systems and processes.

Recommendations
1. Endorse and invest in the emerging best practice standard for the transparency of aid and ensure that the needs of recipient country systems and processes are captured during the refinement phase.
2. Develop and coordinate a collective position on what aid information is needed between line ministries and agencies to avoid confusion and overlapping or duplicate systems.
3. Provide formal agreements for the disclosure of aid information held by donors that is associated with their countries (jointly or otherwise undertaken) in principle and in practice (including terms, conditions and contracts, aid agreements, results, monitoring and evaluations).

More substantial steps

Goal
Improve and align aid information systems and structures to best use information supplied and to standardise demand from donors.

Justification
There is an emerging international good practice standard on aid transparency\(^3\) that recipients can use to demand information from signatory agencies and donors, and this should be applied by all public and private bodies engaged in the funding and delivery of aid, including donors, contractors and NGOs.

Recommendations
1. Conduct in-country stock-takes of current aid information systems, information gathering tools and requests to donors for information on aid.
2. Undertake a process and lesson learning exercise relating to the integration of aid information into relevant systems such as budget, accounting and audit systems.
3. Streamline aid information collections.
4. Build systems to link aid information systems to the budget process and transparency.
5. Ensure the comprehensiveness of the information provided so that it includes off-budget aid (e.g. aid provided through IFIs and NGOs), humanitarian aid and climate finance funding, non-DAC donors and external financing streams.

Most ambitious steps

Goal
Make aid information more user-friendly and accessible to the public and encourage public oversight through proactive engagement.

Justification
Opportunities for public engagement in decision-making around aid flows can help improve aid efficiency and effectiveness. Public oversight can help reduce corruption and ensure that aid gets delivered where, when and how it is intended.

Recommendations
1. Publish information held about aid in a budget annex (or equivalent) to ensure full parliamentary oversight.
2. Encourage public participation and engagement with information on aid flows and budgets.

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\(^2\) See Annex 1 for more on the development of a common standard for aid transparency

\(^3\) See Annex 1 for more on the development of a common standard for aid transparency.
2. Asset disclosure

**Goal**

Regular and comprehensive disclosure of assets by all branches of government as well as by senior civil servants.

**Justification**

The justice sector is completely ignored in many countries' asset disclosure regimes, despite senior judges often being at the centre of corruption and bribery scandals. In other countries, while MPs and ministers are required to disclose their assets, senior bureaucrats and civil servants are not, despite the enormous powers and discretion they wield in both policy-making and procurement. The decision as to which officials should be covered by asset disclosure requirements is a contextual one that depends significantly on the country in question. In some countries, disclosures are limited to when an official enters office and/or exits his or her official position. There have been documented cases where officials have quickly transferred titles of key property and/or other assets to friends and relatives before entering and/or leaving office to avoid disclosing those assets publicly. In many countries, asset disclosures are treated as confidential information and are made available only to internal government watchdogs such as supreme audit agencies, who themselves may lack the capacity or political independence to effectively use the disclosures to monitor the actions of key officials. A better approach is to treat asset disclosures as public information by default.

**Recommendations**

1. Asset disclosure requirements should cover the leadership of the three branches of government (executive, legislative and judiciary) as well as the senior career civil service/bureaucracy and should be the same across those four sets of disclosers.

2. Asset disclosures should be regular (at least annual).

3. Asset disclosures should be systematic and should cover a range of key information. Among the information to be disclosed should be:

   a. **Assets**
      - Personal residence
      - Second homes, vacant land, buildings, farms
      - Financial investments (e.g. stocks, trusts, options, warrants, mutual funds, commodities, futures, money owed, savings plans, insurance policies and retirement accounts) and business assets (e.g. private corporations and partnerships)
      - Bank accounts, interest-bearing instruments and cash
      - Vehicles (e.g. cars, boats, airplanes)
      - Other significant movable assets (e.g. jewellery, art, furniture, cattle).

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4 A worst-case example can be found in Tanzania, where requesters of asset disclosures by MPs are only allowed to share information or concerns about the disclosures with the government itself. See http://report.globalintegrity.org/Tanzania/2007/scorecard/39.

5 This list is drawn from the recent work of Simeon Djankov, Andrei Shleifer and colleagues in surveying disclosure requirements for MPs in 175 countries. The authors used the results to construct the ‘universal’ ideal set of information that should be made public under a disclosure regime. http://www.economics.harvard.edu/faculty/shleifer/files/Disclosure_by_Politicians_AEJAPP_final.pdf
Most ambitious steps

Goal
A leaner and more effective system of random audits for all submitted disclosures where a preannounced percentage of submitted disclosures would be subject to an audit, with no submitter exempt from the potential of having his/her disclosure randomly selected.

Justification
While regular auditing of all submitted asset disclosures poses a non-trivial burden on government regulators, undertaking random audits of a smaller sub-set would go a long way towards bolstering an asset disclosure regime’s deterrent effect. The most powerful tool in the asset disclosure toolbox is the threat of an audit of the disclosure. Simply requiring officials to fill out a form poses little risk to an official seeking to hide certain commercial interests and/or sources of income from public view. Auditing that disclosure poses a much greater risk to the official seeking to avoid full disclosure and generates a powerful deterrent effect. Internationally, there are very few cases of asset disclosure regimes requiring regular audits of all submitted disclosures. The majority of countries that do perform audits on disclosures perform them only when irregularities are discovered or suspected, often following media investigations and/or reports issued by local civil society organisations.

Recommendations
1. An ideal system of random audits would have the following characteristics:
   a. The percentage or volume of disclosures to be audited would be publicly announced ahead of time.
   b. The random selection of which disclosures to audit would be performed via a transparent lottery/raffle-type system.
   c. The auditing would be performed by an independent third party, ideally an outside, non-governmental auditor (whether a private auditing firm or otherwise).
   d. The full results of the audit would be made publicly available immediately following the completion of the audit.
2. Apart from the random auditing of disclosures, a complementary commitment that is crucial to ensuring the effectiveness of a robust asset disclosure regime is public accessibility of the disclosures.
   a. Public accessibility might take different forms in different contexts. In countries where internet penetration is reasonably high, submitted disclosures should be made available online and should be searchable by basic criteria such as submitter, year filed and government agency or department.
   b. More ambitious governments could pursue a wholly online submission system for asset disclosures that would encourage greater standardisation and machine-readability of the results, while allowing for robust searching and analysis by the public. The costs of implementing such an online system would not be particularly high, and there would likely be strong interest from technologists in contributing in-kind support to help create such a system.

b. Liabilities
   - All debts, obligations, credit cards, mortgages, guarantees and co-signatures.

c. Sources of income
   - Financial investments (e.g. interest, dividends, annuities, pensions, benefits)
   - Business assets (e.g. corporations, partnerships, farms, rental properties, patents)
   - Private sector employment
   - Professional services (e.g. consulting and other paid contracts from the private or the public sector)
   - Boards and directorships
   - Other public sector employment
   - Lotteries, gambling, and one-time payments.

d. Gifts
   - All significant gifts and benefits received.

e. Potential conflicts of interest
   - Unpaid contracts and employment
   - Unpaid boards and directorships
   - Participation in associations, not-for-profit organisations and trade unions
   - Post-tenure positions and employment.

4. The disclosure of information should be precise and should avoid ranges. The requirements for asset disclosures by senior officials in the US federal government, for example, unhelpfully permit officials to merely indicate a range of value for their various assets and sources of income, often within wide bands that undermine that information’s precision and utility.

5. Completed asset disclosures should be efficiently archived, easily searchable and publicly available.

6 For example, it would be interesting to be able to quickly search and learn whether a number of lawmakers had consulting arrangements with the same government contractor in a country where outside employment was permitted for MPs while in office.
3. Budgets
Contributors: The International Budget Partnership

Budget transparency

Governments raise and spend public funds to meet public needs. To do this, they must make good policy choices, execute these effectively and be accountable for their decisions and actions. This is more likely to happen in budget systems that are transparent, i.e. those in which the government provides the public with comprehensive, timely, accurate and useful information. As a growing evidence base shows, open budget systems can enhance the credibility of policy choices, increase the effectiveness of policy interventions, limit corrupt and wasteful spending and facilitate access to international financial markets.

Initial steps

Goal
Governments commit to the timely, accessible and regular publication of the Executive's Budget Proposal, Enacted Budget, Audit Report and Citizens' Budget – the four most important budget documents.

Justification
Internationally accepted good practices require governments to publish at least eight key budget reports at various points in the budget year: Pre-Budget Statement, Executive's Budget Proposal, Enacted Budget, Citizens' Budget, In-Year Reports, Mid-Year Review, Year-End Report and Audit Report. Four of these documents – the Executive's Budget Proposal, Enacted Budget, Citizens' Budget and Audit Report – form the most basic building blocks of budget accountability, thus publishing them is the minimum requirement for an open budget system. Without access to the information in these documents, the public cannot understand or monitor the government's plans to collect and allocate budget resources. Nor can they track whether the government has actually spent public funds in accordance with these plans, and are therefore unable to hold the government accountable for the use of public funds.

The Executive's Budget Proposal outlines the government's revenue and expenditure plans; thus timely publication of this document is essential for the public to be able to engage in the debate over the government's proposals. The Enacted Budget is the result of legislative, and ideally public, consideration of the executive's proposal. Because this report documents the commitments that have been approved into law, it will form the basis of any monitoring of government execution. Audit Reports contain the findings of the supreme audit institution's formal, independent evaluation of whether the government has collected and spent public funds as set out in the Enacted Budget, and has done so in accordance with the law. Citizens must have access to this document to be able to gauge the government's performance. Budgets are typically highly technical documents and not easily understood by the majority of the public. A Citizens' Budget is a non-technical presentation of the budget (either the Executive's Budget Proposal or the Enacted Budget) that is widely accessible to all citizens.

Recommendations
1. Make existing core budget documents publicly available. Although most countries already produce an Executive's Budget Proposal, Enacted Budget and Audit Reports, not all make them publicly available. Governments that currently produce but do not publish these documents could do so immediately and at little expense. (This commitment should not be limited to these reports; governments should publish immediately all budget reports they are currently producing.)

2. Governments should seek to expand the proportion of the public that understands and can potentially contribute to the dialogue on public budgeting by producing and publishing a Citizens' Budget.

3. To increase the public's access to these reports, and avoid unequal access, budget reports should be posted on the government's website, at a minimum. Where internet access is limited, governments could make hard copies of their budgets widely available (either free or for a minimal fee) via public libraries and information desks throughout the country.

4. In multilingual countries, budget reports should be published in multiple languages.

5. In order to facilitate data manipulation, budget reports could be complemented by open data access.

6. Governments should commit to the timely publication and wide dissemination of each document. Late publication of these reports denies the public the ability to use the information to engage in decision-making processes.

Country examples
A number of governments that were not publishing these documents have recently begun to do so. In 2007, for example, Egypt and Mongolia published their Executive Budget Proposals for the first time. Similarly, in 2009 Liberia began to publish the Executive's Budget Proposal and Audit Report, and Afghanistan began to publish the Audit Report. In 2010 both Mexico and Brazil began to publish Citizens' Budgets.
More substantial steps

Goal
Governments commit to publish all eight key budget reports and ensure that these documents provide comprehensive information as required by good practice.

Justification
While it is critical for governments to provide the public with the most basic information on government plans and outcomes, as laid out above, a fully open and accountable budget system requires that the public have access to comprehensive information throughout the entire budget cycle.

The Pre-Budget Statement presents the broad parameters and macroeconomic assumptions of the Executive's Budget Proposal. It is at this stage, before the proposed budget goes before the legislature, that decisions about the size of the budget and how it will be allocated are made. A Pre-Budget Statement provides an opportunity early in the process to understand and engage with these fundamental choices.

Execution reports (In-Year Reports and Mid-Year Review) provide timely feedback on the progress of budget execution, thus allowing for mid-course corrections, reallocations or supplemental allocations, where necessary. Year-End Reports allow for a comparison between planned and actual spending, increasing accountability and informing decisions for the coming budget year.

Most ambitious steps

Goal
This commitment requires governments to publish a comprehensive record of all fiscal activities, including those that are not undertaken through the budget or necessarily reflected in the budget.

Justification
‘Off-budget’ activities are not subject to the same level of reporting, regulation or audit as other public transactions. Yet they involve the current and future use of, or the decision to forego, public resources; therefore, unless information on these activities is disclosed, the public will be unable to discern the government’s true fiscal status or adequately scrutinise its actions.

These activities include the use of extra-budgetary funds, such as pensions or social security funds, state-owned enterprises and discretionary or secret funds, that move the management of huge amounts of public resources outside the budget process (more recently these have included funds for donor aid, the proceeds of privatisation and arrangements for public-private partnerships). They also include quasi-fiscal activities in which public resources are foregone by state-owned enterprises, or by private companies at the direction of the government, that charge ‘below market’ prices for goods or services. For example, government-owned banks may provide subsidised bank loans. Finally, contingent liabilities are debts that the government may owe, such as pensions or government loan guarantees, but whose existence and total cost depend on future events.

Recommendations
1. Governments should ensure that comprehensive information is provided in each of the eight core budget documents published, including detailed, disaggregated information on revenues and expenditure and prior year data for comparative purposes.
2. Governments should follow established best practice in creating all budget reports. Governments can consult a number of manuals on public finance management for detailed information on the model contents of budget reports, including the IBP's Guide to Transparency in Government Budget Reports and the IMF's Fiscal Transparency Manual.

Country examples
A number of governments have also taken such steps recently to increase the comprehensiveness of their budget proposals. For example, in its 2010 budget proposal, the Colombian government for the first time began to provide data on prior year revenues and expenditures. Similarly, the Mongolian government improved the comprehensiveness of its budget proposal in 2009 by providing multi-year information on revenues and expenditures, future liabilities and donor assistance.

Recommendations
1. Separate from any mention in the Executive Budget Proposal, governments should separately report more detailed information on off-budget activities and those who receive benefits from them in complementary financial reports.
2. Specific information related to welfare entitlements and poverty programmes should be widely disseminated, especially among local communities that are targeted by these programmes.

Country examples
Every government agency in Chile publishes lists that are updated every three months with information on the salaries and benefits received by government officials; the names of contractors hired by governments and the contract amount; and beneficiaries of social programmes and subsidies. UK databases on all public spending – and US databases on stimulus spending – also identify recipient contractors and other beneficiaries. New Zealand and the US have excellent examples of comprehensive reporting on tax expenditures.

Budget participation

Access to budget information is a critical but insufficient in itself component of an open budget system. Recent research has shown that greater access to public information together with effective public engagement can help reduce corruption and enhance socioeconomic development. Public engagement creates opportunities for the public to contribute their knowledge and expertise, specifically on budget priorities and execution, thereby improving the quality and effectiveness of government spending. In addition, engagement by specialised civil society groups can augment the analytical skills available to the legislature, as well as amplify the findings of the supreme audit institution – significantly reducing the resource constraints that frequently undermine the work of these institutions.

Public engagement in budgeting happens mostly through three public entities – the executive, the legislature and the supreme audit institution – depending on the stage of the budget cycle. Therefore, opportunities should ideally be provided for the public to engage with each of these bodies at each level of commitment. Any system for enabling public engagement must be congruent with the constitutional roles of the legislature, executive and supreme audit institution. The legislature should provide the first opportunity for public participation, given its constitutional oversight role as keeper of the public purse. Public engagement with the supreme audit institution is critical to boosting the quality of oversight over the execution process, and direct public engagement with the executive branch is also necessary, particularly to enable constructive public input into the definition of budget priorities.

Initial steps

Goal

This commitment requires governments to introduce basic, low-cost opportunities for public engagement at each stage of the budget process.

Justification

Civil society organisations (CSOs) and citizens are among the best sources of information about a country’s needs and priorities. They can provide inputs that are critical to good budget decisions and support to ensure effective implementation. In addition, they often have the networks and expertise to detect potential cases of corruption or mismanagement; thus engaging them in the process can enhance the overall accountability of the budget system.

Recommendations

1. The Executive, led by the Ministry of Finance, should open the budget process to public engagement by holding consultations with the public as part of its process of determining the budget priorities that will drive the allocation of public resources.

2. Within the legislature, the finance committee should organise hearings on the overall macroeconomic and fiscal framework, while sector committees could hold more detailed discussions on individual departments and expenditure programmes.

3. Legislatures should allow the public and the media to attend (and broadcast on television or radio) hearings during which the budget proposal is debated.

4. In addition, legislatures should publish reports detailing their proceedings, including the testimony presented at the hearings. Such steps would, at the very minimum, enable the public to witness and understand how decisions about public funds are taken, and afford them an opportunity to understand the trade-offs at stake.

5. Supreme audit institutions should create communication channels for citizens and civil society to anonymously report cases where misuse of public funds is suspected, both online and through other means.

Country examples

Examples of executive-led public participation include one from India, where the Ministry of Finance has recently begun meeting with NGOs as part of its pre-budget consultations (a similar practice has occurred for several years in Kenya). The finance ministries in Kenya and Uganda have for many years conducted similar consultations on citizen budget priorities at the beginning of the budget drafting process. In South Africa, Trevor Manuel, the former finance minister, launched an initiative called ‘Tips for Trevor’, through which the public were invited to give tips on how to spend the country’s money.

Legislatures in almost every country already conduct committee hearings (or have the legal capacity to hold such hearings) before enacting the budget into law. Burkina Faso and Rwanda have recently started broadcasting legislature budget deliberations on television. In the past few years, a number of countries have started to publish detailed transcripts of legislature budget debates, including Azerbaijan, Bulgaria, Trinidad and Tobago, and Zambia. While these efforts do not directly create opportunities for direct public engagement in the budget process, they do build the capacity of citizens to debate and engage with the budget.

The supreme audit institutions in the US and the UK maintain ‘fraud hotlines’ through which the public can report suspected malfeasance in the use of public funds.
More substantial steps

Goal
This commitment requires the executive, legislature and supreme audit institution to provide citizens and CSOs with more direct and more extensive opportunities to engage with their work throughout the budget process, soliciting their opinions and proposals.

Justification
Though they are responsible for taking key decisions about how best to address their country’s needs and prospects for development, governments often lack important information and have limited analytical capacity for making choices about how to raise and spend public funds. By increasing the opportunities for the public and CSOs to go beyond having access to budget deliberations and oversight institutions to directly engaging in and influencing these processes, governments can benefit from knowledge of those close to communities or can augment their access to independent analysis and expertise.

Recommendations
1. The executive should hold more intensive consultations with the public, and should open spaces for citizens and civil society groups to present evidence and proposals on overall budget priorities, as well as macroeconomic policy and inter-sectoral resource allocation issues. This could be accomplished through sector- and ministry-level meetings with the public. Specific expenditure programmes, individual sectors or clusters of sectors should be covered in these consultations.

2. After opening budget hearings to the public, the legislature should provide opportunities for the public to testify at these hearings. Those invited to testify could include private citizens, academics, private research institutes and representatives of CSOs, community-based organisations, trade unions and churches or religious organisations.

3. The supreme audit institution should provide opportunities for public suggestions to influence the audit agenda, including the sample of agencies, projects and programmes in a country that it audits each year.

Country examples
In the past ten or so years, the executives in several countries have instituted consultative mechanisms that engage the public as part of the process of developing medium-term expenditure frameworks (MTEFs). In Tanzania, for example, a well-structured public expenditure review process brings together government, civil society and donor organisations in a forum where CSOs regularly contribute reports and analyses.

Examples of legislatures deepening the influence of the public in their deliberations include the Czech Republic and the Philippines, in both of which the public are invited to give testimony on the budgets of a number of key administrative units. In South Africa, the Finance Committee and sector committees regularly invite a range of non-governmental actors to testify in budget hearings.

In an example of more direct and meaningful public participation in auditing, the South Korean Citizens’ Audit Request System, introduced under the country’s Anti-Corruption Act of 2001, allows citizens to request that the supreme audit institution conduct audits of public agencies suspected of corruption or legal transgressions. Similar arrangements exist in a number of US states.
Most ambitious steps

Goal
This commitment is to broaden and deepen the opportunities for public engagement in the budget process by extending their reach and coverage, ensuring that civil society proposals are analysed and taken on board when possible, creating opportunities for direct public participation in decision-making over specific funds or earmarked resources.

Justification
Because of the cyclical nature of budgets, where what happens in prior years affects and informs decisions about future years, it is critical that all resources are tapped to ensure that budget deliberations are as effective as possible and that evaluation of budget implementation is as rigorous and thorough as possible. Therefore, all three branches of government need to continue to deepen the level at which citizens and civil society contribute to debates over budget proposals and oversight.

Recommendations
1. The executive should set aside specific resources to fund expenditure programmes identified through a participatory process that responds to the needs and priorities put forward by citizen groups. It could also provide an assessment of various civil society proposals and an explanation of whether and why these were included (or not) in the budget.

2. In order to maximise opportunities for public engagement in the budget process, the legislature should organise extensive public hearings in which the executive and a wide range of constituencies are invited to provide testimony and present proposals on all aspects of the budget. Moreover, it should publish a report detailing its discussions and decisions on the proposals presented.

3. To tap the knowledge and connections of the public further, supreme audit institutions should consider much more direct forms of engagement with the public and CSOs, including conducting joint audit investigations together with the public or CSOs. Alternatively, the executive could collaborate with citizens and CSOs to conduct local government audits that act as a parallel check on the findings of the supreme audit institution.

Country examples
A number of governments around the world have increased the effectiveness and impact of public spending by adopting participatory budgeting practices that allocate resources to programmes identified with the direct involvement of citizens and civil society groups. The best-known example is Porto Alegre Municipality in Brazil, but similar participatory budgeting processes have been adopted in over 100 cities in Brazil, and in a number of countries around the world.

An example of deeper public participation in oversight is a partnership between the Philippines’ supreme audit institution and several NGOs to conduct joint performance audits to determine whether a government programme or project has achieved its anticipated results. Audit teams include employees of the audit institution and representatives of non-governmental organisations. The teams receive joint training on conducting participatory audits before they began their audits.

The most impressive examples of using local government audits to verify findings by the supreme audit institution are the social audits currently being conducted in partnership between the Indian government and local citizens to monitor the implementation of the National Rural Employment Guarantee Act (NREGA). Such practices will allow audit institutions to augment their limited capacity, particularly in conducting performance audits.
4. Campaign finance

Contributors: Transparency International USA and the Transparency and Accountability Initiative

Around the world, political financing is increasingly at the forefront of public debate. The rapid growth of democracy around the world since the early 1990s has highlighted the need for stronger regulation and reform to prevent the negative influence of money in electoral politics.

Transparency of political party and campaign contributions is essential to protecting the integrity of democratic processes and ensuring fair elections. Laws requiring the public disclosure of independent political party and campaign contributions ensure that individuals, organisations, interest groups and corporations do not unduly influence a country’s elections or political leadership.

Measures addressed at reform of political party/campaign finance are often met with strong resistance from corporations and other organisations that use wealth to influence political parties and elections, and from the political leaders that rely on this wealth. Even when campaign finance laws are passed, they are often not rigorously policed or enforced due to weak legal frameworks, under-resourced regulators and/or lack of capacity. Political leaders and parties, independent contributors and regulators all have a critical role to play in addressing these weaknesses and in making ‘good faith’ efforts to improve transparency in political party and electoral campaign financing.

Goal

Restoring and enhancing trust in public institutions through full and prompt disclosure of all contributions and expenditures in political campaigns and elections.

Justification

Lack of transparency in funding for political campaigns has undermined trust in government at all levels in many countries around the world, raising concerns about undue influence over elections and, thus, legislation, government policy and appointments.

Recommendations

1. Governments should require that all groups or individuals engaged in or acting to influence the outcome of an election file prompt reports that clearly identify the amounts and recipients of their contributions. Political candidates and officials should file prompt reports on all amounts and sources of funds received and all expenditures.

2. Disclosure requirements should apply to candidates, political parties and related organisations and to groups engaged in political advocacy. These should apply at the federal, provincial and local levels and should cover all types of election, including referendums and recalls.

3. Reports should be required to be made available to the public promptly and in an accessible, easily understood format.

4. Disclosure requirements should be enforced by an independent agency with political independence, legal authority and adequate staff and funding to enforce disclosure requirements effectively.
More ambitious steps

Goal
Comprehensive transparency of all actors engaged in lobbying activity.

Justification
Government decision-makers and the public should have information on who is attempting to influence public policy decisions, and how.

Recommendations
1. Contributions received by officials, including gifts, entertainment and other financial support and names of donors should be publicly reported.
2. There should be mandatory public registration of lobbyists and regular disclosure of clients, issues and financial expenditures.
3. Corporations, labour unions, trade and professional associations and other non-profit organisations should be required to adopt disclosure policies on transparency of expenditures for lobbying and campaigns.

Most substantial steps

Goal
More timely and comprehensive transparency of lobbying activity to reduce actual, potential or perceived conflict of interest and undue influence.

Justification
Transparency is essential for citizens to trust that special interests will not unduly influence public policy and elections. Putting a wide range of information online within a short timeframe will help to ensure public access and build trust. Disclosure is meaningless unless regulators make information readily accessible to the public in user-friendly reports.

Recommendations
1. Each government should post on a central website a single searchable public database that includes sources and amounts of contributions and expenditures. This information should also be available in printed form.
2. Similar web-based and otherwise publicly accessible information should be published at the provincial and local levels.

Moreover, low-cost internet and database technology can make this information easier to interpret and to reorganise for research purposes.
5. Climate finance

Contributor: World Resources Institute

During the United Nations Framework Convention on Climate Change (UNFCCC), Conference of the Parties (COP) in Copenhagen, Denmark in 2009, developed nations agreed to collectively provide new and additional fast-start finance resources ‘approaching $30 billion for the period 2010–2012’ to help developing countries, particularly the poorest and most vulnerable, to reduce their greenhouse gas emissions and to adapt and cope with the effects of climate change. By 2020, developed countries also agreed to a goal of jointly mobilising, over the longer term, an additional ‘$100 billion a year to address the needs of developing countries’. These pledges present an opportunity to build trust between developed and developing countries in the international climate arena, in turn fostering progress towards a comprehensive post-2012 international climate agreement. Developed countries want to ensure that their funds are used efficiently and effectively, and developing countries want to know that committed funds will actually materialise in the promised amount and on time. A climate finance regime that is fully transparent in terms of the scale of resources flowing into countries, how they are channelled, the financial instruments used, how resources are spent and the oversight mechanisms put in place are critical to building this trust. Developed and developing countries have distinct but critical roles to play in facilitating the flow of climate finance and ensuring that climate funds are used effectively by: (1) delivering on their fast-start finance pledges; (2) providing long-term, predictable finance to developing countries; (3) developing and supporting transparent, inclusive and robust reporting systems for climate finance; and (4) working towards an open, transparent and inclusive process in designing and operationalizing the Green Climate Fund.

Initial steps

Goal

Developed countries deliver on their 2010–2012 fast-start climate finance pledges.

Justification

WRI research indicates that, to date, individual country pledges add up to $29 billion of the $30 billion in fast-start funding promised in Copenhagen. Countries are taking steps (e.g. through budget requests and appropriations processes) to make their pledges available, and are providing additional details of these pledges. For example, the government of the Netherlands has developed a website (http://www.faststartfinance.org) that aims to provide transparency about the amount, direction and use of fast-start climate finance. While this increased transparency is welcome, it is important for countries to deliver on their commitments in order to build trust among developed and developing country parties. This information is critical both to holding donor countries accountable for their commitments and building trust among parties. Increased transparency can also point to gaps in flows and guide future allocation of resources.

Recommendations

1. Developed countries must deliver on their fast-start finance commitments and provide further clarity on:
   - The scale of the funds provided
   - The method for determining whether the money is ‘new and additional’
   - The objective of the funding (i.e. mitigation or adaptation)
   - The institutions for channelling resources
   - The geographical distribution of the funding
   - The type of financial instruments used (i.e. grants, loans, guarantees)
   - The status of funding (i.e. committed, pledged or already delivered to a recipient country).

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More substantial steps

Goal
Developed countries provide stable, predictable and adequate long-term climate finance.

Justification
Developed countries must deliver on their commitment to provide the $100 billion per year to developing countries promised by 2020 to help them respond to the challenges of climate change. It will be very difficult to secure agreement on global climate action if there is no demonstrated willingness to help generate stable, predictable and adequate long-term climate finance. The UN Secretary General's High-Level Advisory Group on Finance (AGF) has shown that scaling up climate financing to support developing countries for climate change is challenging, but feasible. A menu of options is available to help deliver tens of billions of dollars towards the $100 billion financial target agreed at the Copenhagen Summit. Now it is up to countries to choose the option(s) that work best in their domestic contexts and to take necessary steps to raise new revenues through these innovative mechanisms.

Recommendation
1. Drawing on the findings of the AGF report, the international community must explore ways to generate and scale up new and additional long-term resources to developing countries for tackling climate change.

Most ambitious steps

Goal 1

Goal
Developed and developing country parties to the UNFCCC work together to design a transparent climate finance reporting system for both donor and recipient countries.

Justification
Developed and developing country parties to the UNFCCC must work together to create guidelines that will lay the foundation for reporting on climate change finance. These guidelines should be based on current international standards for good practice in transparent public finance management in order to take advantage of existing capacity and to avoid undue administrative burdens that would likely accompany a climate finance reporting scheme that differs significantly from these established processes.

Currently, tracking and monitoring climate finance pledges presents a number of challenges. The information that donor countries have made available on their pledges to date is incomplete and lacks specificity, precluding an accurate assessment of the level of funding and the potential impact for developing countries. Compounding the lack of details, information made public is often based on different methodologies for calculating pledges, covers different periods and sometimes lacks clarity on the balance of allocation between adaptation and mitigation. For example, parties to the UNFCCC have not yet achieved consensus on a clear and specific definition of additionality that can be applied uniformly to developed country financial pledges. As a result, countries have proposed a variety of methods for defining the additionality of their fast-start finance. In addition, country reporting often does not identify how pledged funds will be channelled to developing countries.

While tracking and monitoring the commitments made by donor countries is essential, equally important is ensuring transparency and accountability for what happens to climate funds once they reach recipient countries. The key components of an effective approach to managing and monitoring the use of climate funds are complete transparency about the amount of funds coming into the country and the details of how those funds will be spent, public access to all of this information, strong oversight mechanisms and opportunities for citizens and civil society organisations to participate in decision-making, monitoring and oversight.

Recommendations
1. A standardised financial reporting format with common definitions and methodologies for developed countries to quantify their climate finance contributions should be adopted.
2. A more robust process should be established at the international level to review data reported by developed countries.
3. A long-term commitment should be made to investing in a robust international reporting and review system.
4. With support from developed countries, governments receiving climate funds should put in place systems to report complete information on their use of the funds to their citizens and legislatures. They should also promote mechanisms for involving the public and civil society in managing how these funds are used and ensuring complete public access within countries to comprehensive data.
Goal 2

Goal
Commitment to open, transparent and inclusive processes in designing and operationalizing the Green Climate Fund.

Justification
The Green Climate Fund was established at the UNFCCC Conference of the Parties in Cancun in 2010. This fund is seen by many, particularly developing countries, as an opportunity to create a ‘legitimate’ institution for delivering scaled-up finance to address climate change. In Cancun, the COP decided to set up a Transitional Committee and entrusted it with the task of designing the Green Climate Fund. The Transitional Committee will include representatives from 25 developing countries and 15 developed countries, including representatives from the USA.

Recommendations
1. The Transitional Committee should commit to an open, transparent and inclusive process in the design of the Green Climate Fund and abide by the existing terms of reference. It should ensure mechanisms for civil society, private sector, MDB and UN agency participation in the process. This is important for transparency in the Transitional Committee’s processes.

2. Countries should also ensure that the Fund applies the highest environmental and social safeguards and best-practice fiduciary standards and sound financial management to its investments.10

10 Sources:


6. Electoral transparency, participation and accountability

Contributors: National Democratic Institute for International Affairs (ADI)

Electoral transparency and participation

The will of the people expressed freely through authentic elections is the foundation for the authority of democratic government. The obligation of governments to organize genuine elections, which must be based on universal and equal suffrage, is interwoven with the right of citizens to participate in government and public affairs, free of discrimination and without unreasonable restrictions. The rights to vote and to seek election to public office are inseparable from these tenants recognized in the Universal Declaration of Human Rights and conventions that bind over 165 countries. In essence, citizens not only have a right to participate in elections, they have a right to know for themselves whether the electoral process is valid. That knowledge, which is the basis for public confidence in elections and their resulting governments, cannot be achieved without transparency and monitoring by electoral contestants, citizen organizations and the media.

Genuine elections require that state institutions be politically impartial and that they act effectively to ensure that electoral processes are proper, otherwise misfeasance and forces of corruption can prevent them from being either free or fair. Election administration is central in this respect, but a significant number of other governmental agencies, as well as those seeking to be elected and those that monitor/observe, are vital to achieving authentic elections.

Initial steps

Goal

To establish a firm basis for public confidence in the impartiality and efficacy of electoral administration and related governmental institutions.

Justification

There is international consensus that election administration must be politically impartial and that it must effectively organize all of the complex, time-sensitive and large-scale processes that authentic elections require. International experience demonstrates that when there is a lack of public confidence in the impartiality and efficacy of election administration, suspicion and perceptions of malfeasance can destabilize a country, often leading to crisis and even widespread violence. Yet, in a great number of countries, there is no tradition of impartial and effective election administration, and in established democracies maintaining public confidence in administrative impartiality can often become a point of sharp controversy. A critical starting point for establishing confidence among the public, including electoral contestants, in election administration is establishing a legal framework that ensures its impartiality, effectiveness and transparency.

There is also international consensus that the political environment beyond the purview of election management bodies, and which is affected by an array of government institutions and other actors, can at times negate or substantially subvert electoral integrity. Visible and forceful steps to ensure political neutrality, proper actions and openness by state institutions are also starting points for establishing public confidence in the credibility of electoral processes. Assurances of commitment to proper actions by political competitors and by civil society actors are among such starting points as well.
Recommendations

1. Establish a legal framework that:
   - Sets forth clear criteria for selecting electoral officials based on their ability to act impartially towards political competitors, demonstrated personal integrity and capacities to oversee complex electoral processes, and that requires all nominations to electoral commissions be made public, with a public comment period, before appointments can be finalized (the first criteria can be relaxed where election management bodies are designed to achieve political impartiality through a balanced number of political party representatives);
   - Requires broad agreement of the political competitors (e.g., through a supermajority of legislators) concerning the appointment of members of election management bodies (EMBs, e.g., election commissions) and key administrative personnel;
   - Includes budgetary procedures that guarantee the ability of election administration to act impartially (free and independently from political pressures), effectively (with timely and adequate funding), transparently (budget proposals and the budget documents made publicly available in a timely and easily accessible manner) and accountably (through legislative oversight and public scrutiny);
   - Recognizes electoral competitors’ right to observe all aspects of the election process to ensure their rights are respected, including to gather information and seek remedies;
   - Recognizes the rights of citizens to associate through organizations that monitor electoral processes (e.g., nonpartisan citizen organizations and news media), and requires accrediting, without unreasonable restrictions, such organizations to observe all aspects of election administration, including, among others, voter registration, voting, vote counting and electoral results tabulation;
   - Requires timely publication of an electoral calendar that includes the dates of all steps in the election process, through announcement of results and seating of elected officials.

2. Ensure that the legal and regulatory framework requires that election results be publically posted at the location where ballots are initially counted (e.g., polling stations) and be released immediately at each juncture of results tabulation, in a format that includes results recorded at the initial ballot counting location as well as in an aggregated form.

3. Ensure that the legal and regulatory framework requires that consolidated results be immediately made available through a searchable catalog (e.g., a website) that provides access to results recorded at the location where ballots were counted (e.g., polling stations) as well as aggregated results, and ensure that the data’s format is reasonably structured for automated processing (analysis).

4. Issue publicly from the highest applicable government authority written orders to all state institutions to act in a politically impartial manner and to protect and promote the rights toward citizens and all electoral competitors without discrimination, and ensure that all state institutions provide publicly a plan for distribution and discussion of such orders.
More substantial steps

Goal
To increase public confidence in the credibility of elections and related governmental functions through enhanced public participation and transparency by government institutions.

Justification
Even where public confidence in electoral processes is established, it is easily shaken unless political contestants and the general public possess direct knowledge about how policies were established, decisions were made and how they were implemented. Participation in a variety of forms by political contestants, citizen organizations and media representatives provides direct knowledge, and if they credibly report their observations the public will have a firm basis for understanding. When this is augmented by direct public participation, through meeting attendance, public comment mechanisms, opportunities to seek and receive government held information and other means, understanding and corresponding confidence in electoral processes is further enhanced.

Advancing beyond rudimentary levels of confidence in general electoral performance, requires addressing some of the key elements, or subcomponents, of an electoral process, such as establishing the boundaries of electoral districts (which are central to equality of suffrage and nondiscrimination), qualification of political parties and candidates for the ballot, creation of the registry of eligible voters, ability of electoral contestants to reach the electorate via the mass media, as well as the conduct of voting, ballot counting and tabulation of results and the processing of electoral complaints and prosecution of electoral wrongdoers. Making government held information available in each of these areas and providing opportunities for electoral contestants, citizen organizations, the media and the public to scrutinize them is central to increasing public confidence in the credibility of elections and related governmental processes.

Recommendations
1. Require that EMBs at the national and lower levels announce meeting times and hold open public meetings.
2. Require that EMBs and the electoral contestants establish a liaison committee that meets regularly to discuss policy making issues before the EMB, as well as other electoral matters.
3. Require that the public, including political contestants, be timely notified of upcoming deliberations about adopting significant changes to electoral processes, such as moving to a system of electronic voting or electronic voter registration (e.g., electronic poll books or recording biometric data); conduct public consultations concerning such policy decisions, as well as technical requirements and related procurement processes, and provide for monitoring of all aspects of the design, testing, certification, operation and auditing of such electronic electoral technologies.
4. Require EMBs and other relevant governmental institutions to announce widely in advance intentions to make electoral related procurements that are over a specified amount, along with a clear description of the procurement decision making procedure, and require the public release of the names of all vendors or others that respond to procurement solicitations, as well as the name of the company that received the contract and the contract amount.
5. Provide to the public a searchable version of the voter registry that is reasonably formatted for automated processing, both in its preliminary and final forms, so that individual citizens may verify the accuracy of information or identify omissions and seek corrections, and so that citizen organizations can assist such activities and conduct broader voter registry verification exercises and political contestants can do the same.
6. Provide to the public data on the number of objections and claims for correction to voter registry information, along with the voting districts related to them and the disposition of the matters.
7. Provide publicly population data (including age), geographic and administrative district information that is relevant to determining the boundaries of election districts and information about the body charged with the process for delimiting election districts, and require that such bodies hold public consultations to receive input and answer questions concerning the boundary delimitation process.
8. Make immediately available voter turnout information, including the number of voters registered and the number of voters participating at the point of voting (e.g., polling station) as well as by aggregates for each electoral district and nationally, in addition to election results at the location of initial counting of ballots (e.g., polling station) and in the aggregate.
9. Publish a schedule of existing information from past elections about voter turnout, including the number of voters registered and the number of voters participating.
10. Publish the requirements for qualifying for the ballot; require that the qualification process be open to monitoring by representatives of the applicants, citizen organizations and the media.
11. Publish requirements for all state-owned and state-controlled mass communications media to remain impartial toward all electoral contestants, including sanctions for noncompliance, and provide that public requests for information and that data collected by governmental agencies that may monitor such media performance shall receive timely responses.
12. Require that EMBs produce within one year after major elections a comprehensive public report on the functioning of all elements of the electoral process, including lessons learned for fostering transparency, participation and accountability and actions to be taken to ensure effective administration and electoral integrity; and require that the report be presented to the legislature, which must conduct public hearings during citizens are allowed to present testimony.
Most ambitious steps

Goal
To solidify public confidence by broadening and deepening opportunities for participation, as governments mainstream public access to information related to electoral processes and proactively publish reasons for public policy decisions, as well as for procurement and other electoral related actions.

Justification
Public confidence in electoral processes is highest when political contestants and concerned civil society organizations (often through chosen experts) have a voice in policy formulation and decision making about electoral related processes. Proactively explaining the rationale and responding to inquiries about the procedures and rationale for policy formulation and decision making are essential for confidence building and developing an informed public.

Recommendations
1. Require that EMBs and other governmental institutions that play important roles in electoral processes must receive and respond to public requests for electoral related information under the assumption that information held must be made timely available.

2. Conduct training with personnel of EMBs and other government institutions that play important electoral roles (including at the sub-national level), concerning the public’s right to information (RTI) in the electoral arena and procedures to timely provide that information; appoint a public information officer with the authority to ensure that such information is provided, and broadly inform the public of procedures for requesting information.

3. Require that EMBs at each level of administration regularly (at least twice annually) conduct public consultations in which citizens are permitted to make comments and suggestions on issues they choose, including about ways to make information available, that EMBs must receive written public comments (including by electronic means) and that they must provide a regular (at least annual) report analyzing such comments.

4. Make publicly available, in a searchable form that is reasonably formatted for automated processing, results recorded at the location where ballots were initially counted (e.g., polling stations) and aggregated results, as well as voter turnout information including the number of voters registered and the number of voters participating at the point of voting, for at least the three most recent past elections, along with the location of the voting locations (e.g., polling stations) and the boundaries for such polling districts.

5. Require EMBs and other relevant governmental institutions to include experts selected by political competitors and citizen organizations to participate in the budget development process and in the procurement process concerning contracts over a specified amount; provide a website that shows all electoral related procurements in process above that amount, along with descriptions of decision making procedures, and publish all electoral related contract awards over the specified amount.

6. Provide to the public, in a widely available format (e.g., a website), a calendar of all meetings scheduled as well as those held with vendors, their agents and politicians.

7. Establish and adequately fund an independent expert panel, including experts selected or approved by the political contestants and civil society organizations, to review concerns about development requirements (including source codes), certification and testing, production and delivery, maintenance and auditing of electronic voting, vote tabulation, voter registration and other sensitive electronic electoral technologies; provide unlimited access of the panel to reports related to such technologies; empower it to conduct real-time tests of technologies in use during elections, and require that it report publicly its findings (which may respect proprietary interests of vendors and other technology suppliers) in the period before, immediately following and within six months after an election, and annually in non-election periods.

8. Provide to the public an easily accessible and searchable database (e.g., a website) that is reasonably formatted for automated processing of up-to-date population data (including age), geographic and administrative boundary information, and provide a means for political contestants and the public to submit proposals for drawing electoral district boundaries that maximize equal suffrage and nondiscrimination; require that the governmental body charged with delimiting electoral districts receive and consider such proposals, hold public consultations and issue a report on the criteria, methodology and rationale for boundary delimitation.
Accountability in the electoral context

Democratic elections are accountability exercises. Through them citizens hold to account incumbents for their performance in office and promise to hold to account those who seek successfully to be elected. At the same time, for elections to be genuine there must be accountability for the conduct of the processes and for those who seek to subvert fair competition and free expression of the will of the electors. This requires administrative measures to ensure political impartiality of state institutions and personnel, vigorous enforcement of equality before the law and equal protection of the law. Effective remedies for infringements of electoral rights and providing access to justice mechanisms are essential for the electorate and electoral contestants to obtain redress.

Access to information about such mechanisms and the steps taken by governmental institutions to establish accountability in the electoral context is fundamental to creating and reinforcing public confidence in the integrity of elections.

Breaking impunity for those who violate the electoral related rights of citizens and electoral contestants is a critical step in establishing public confidence where a strong record of authentic elections is not yet established. Demonstrating that governmental institutions that play important roles in elections are committed to deterring malfeasance and prosecuting electoral offenders is important for maintaining and advancing public confidence where democratic elections are expected by the populace.

Initial steps

Goal

To establish confidence among the public and electoral contestants that their electoral rights will be protected and mechanisms for accountability are in place.

Justification

Elections serve two essential functions in any country: to provide the vehicle through which the people express their will as to who shall have the authority to govern in their interests; and to resolve peacefully the competition for governmental power. Unless the population is assured that citizens can participate in electoral processes free from the harms of violence, intimidation, threat of political retribution and other forms of coercion – and unless the population believes that votes will be accurately counted and honored – barriers may undermine participation and the credibility of the electoral mandate. Unless the political competitors believe that an election provides a real opportunity to reach their goals, they too may chose to not participate or actively boycott. Unless electoral competitors are assured that they will be able to participate free from harms such as violence, and that they will have access to redress, including effective remedies, they may either choose not to participate or to turn to ‘self-help’, such as returning political violence with more violence. Making information available about the laws, sanctions, remedies and how to access mechanisms for redress is important to mitigating potentials for electoral violence and to promote electoral participation.

Recommendations

1. Include in the legal framework for elections, provisions that any government employee who uses governmental office, resources or employee time to pursue the advantage or disadvantage of an electoral contestant shall be sanctioned, and provide a mechanism for complaints to be lodged and a review to take place through administrative procedures that provide due process of law protections.
2. Include in the legal framework provisions that any governmental employee acting in a manner that violates the rights of prospective voters or electoral contestants (including through bribery, threats of political retribution concerning jobs, scholarships or service provision or other forms of coercion) shall be liable criminally and subject to specified, appropriate penalties.
3. Include in the electoral laws and/or criminal code specific definitions of electoral related crimes, along with appropriate penalties, and publish widely a compilation of such provisions.
4. Include in the legal framework for elections provisions that EMBs shall have powers and the financial resources to investigate on their own initiative possibilities of misfeasance and malfeasance, including any action that could affect an electoral outcome.
5. Require that every governmental institution that plays an important role in electoral processes (including, among others, law enforcement agencies and public prosecutors) must publish annually a report of the number of complaints received concerning electoral violations, actions taken, and the outcomes of such cases.
6. Require that all decisions (including the reasons for such decisions) by EMBs and other governmental institutions concerning the legal recognition and qualification of electoral contestants (including ballot qualification), legal recognition and accreditation of citizen organizations to witness the various elements of the election process, and accreditation of news media and international election observers to witness election processes (including appeals from any adverse rulings) be made publicly available in a timely fashion.
7. Require that all decisions (including the reasons for such decisions) by EMBs and other governmental institutions concerning the legal recognition and qualification of electoral contestants (including ballot qualification), legal recognition and accreditation of citizen organizations to witness the various elements of the election process, and accreditation of news media and international election observers to witness election processes (including appeals from any adverse rulings) be made publicly available in a timely fashion.
8. Publish widely an easily understandable guide to how citizens, including electoral contestants, can access mechanisms for redressing electoral violations, the required procedures and available remedies.
More substantial steps

Goal
To enhance public confidence in electoral integrity by better ensuring access to justice and furthering accountability of governmental officials in the electoral context.

Justification
Where the foundation is established for administrative and criminal accountability, as well as for the provision of remedies for electoral related harms, confidence in the electoral processes must be reinforced to assure the public and electoral contestants that administrative impartiality is being safeguarded and access to justice is being extended.

Recommendations
1. Ensure that access to electoral complaint mechanisms and judicial proceedings concerning electoral processes are not hindered by filing fees and deposits that are unreasonable in the national context and that requirements for lodging complaints or seeking redress (administrative or judicial) is defined broadly enough to allow the pursuit of any reasonable claim.
2. Publish clear requirements for all government personnel (including EMB personnel) concerning avoidance of conflicts of interest and management of potential conflicts of interest (economic, political and otherwise) that could undermine electoral integrity, disseminate them to all personnel and appoint an ethics officer to whom questions about such requirements should be directed.
3. Promulgate clearly defined restrictions for EMB personnel, and other government employees whose work affects election processes, on accepting gifts (including subsidized trips) from vendors, other companies (both international and domestic) and politicians, and include meaningful sanctions for noncompliance with the restrictions.
4. Promulgate protections against firing or other political retributions for persons who lodge complaints or otherwise in good faith make known to the public information concerning wrongdoing by any governmental official or employee that would likely subvert the integrity of elections.
5. Require legislative hearings that are open to the public and that provide for public testimony, which review the conduct of electoral processes, including the performance of EMBs and other governmental institutions that play important roles in electoral processes, and hearings on the financial performance of EMBs, and require that a comprehensive report with findings and recommendations be issued as a result of the hearings.

Most ambitious steps

Goal
To solidify public confidence that accountability in the electoral context is insured, by broadening access to justice and public participation through access to information.

Justification
Public confidence in electoral processes is highest when electoral contestants, civil society and news media are able to access government information about accountability efforts, develop direct knowledge about measure taken and offer input concerning reinforcing accountability in the future.

Recommendations
1. Make publicly available an easily accessible and searchable database (e.g., a website) that is reasonably formatted for automated processing of the data and that includes data on:
   - The number of administrative investigations, actions and disposition of cases concerning malfeasance and significant misfeasance;
   - The number of incidents of electoral related violence, the types and scales of such incidents, which law enforcement and/or public security body responded;
   - The number of complaints and challenges to electoral results, the parties lodging the matter, the remedy employed (if any) and the outcome of the action;
   - The number of criminal investigations of electoral abuses, the number of electoral related prosecutions and the charges involved, the parties to the actions and the outcomes of the cases;
   - The number and types of penalties, fines and incarcerations that were imposed by administrative or judicial tribunals in electoral related cases;
   - The number of administrative and civil actions (cases) concerning vendors and other contractors that concern electoral related procurements and other contracts, the names of the parties in the case, the nature of the claims and the outcomes of the cases (including penalties, if awarded).
2. Require (at least annually) disclosure of personal financial assets of members of EMBs and key senior administrative EMB personnel (taking into consideration the security implications of whether such disclosure is made publicly available or reviewed by a confidential anticorruption panel).
3. Fund and require training programs for personnel of EMBs and all governmental institutions that play important roles in electoral processes, including the performance of EMBs and other governmental institutions at all levels concerning legal framework provisions, right to information requirements, access to justice mechanisms, complaint procedures and remedies, conflict of interests, gift restrictions, asset disclosure and other accountability measures relevant to electoral integrity.
4. Consider establishing within EMBs an inspector general or other such office to receive possible instances of fiscal and other significant instances of misfeasance and malfeasance and consider establishment within EMBs at all levels and ombudsman or other such office to receive, investigate and address citizen complaints.
7. Electricity

Contributor: Electricity Governance Initiative

National departments of energy produce long-term plans that are variously called ‘power development plans’, ‘national power plans’ or ‘integrated resource plans’. These plans are based on forecasts for the amount of electric power that a country will need over the next 10–20 years, and propose a plan for how this need will be met. Elements of the plan include how many new power plants will be built, how much electricity will be imported, how much will come from renewable energy sources and how energy efficiency measures can reduce demand.

Power development plans thus indicate the resource mix that the department of energy intends to use to meet demand for electricity, and the amount of funding that will be needed to implement the plan. Total investments can be significant in this capital-intensive sector. Public oversight of these major investments of public resources is critical in a sector that has dramatic impacts on the national economy as well as global and local environmental impacts on public health and quality of life.

Initial steps

Goal

Each country’s relevant department of energy commits to the timely and accessible publication of its national power development plan, as well as documents relating to the technical, economic, social and environmental assumptions that inform the plan.

Justification

Access to the information in these documents will allow the public to understand proposed future investments in the power sector. The documents also provide a window into how public funds are being used to meet national objectives that depend on the power sector, such as economic growth, increased access to electricity and reduced greenhouse gas emissions. The assumptions underpinning the plan allow the public to understand how the relative costs and benefits of different types of resources (fossil fuels, renewable resources, energy efficiency) are being considered.

The public must have access to these documents in order to understand how power will be supplied, how much is needed and how much it will cost. Since these documents are technically complex, sufficient time needs to be allowed for analysis. Civil society organisations (CSOs) with the appropriate technical expertise should also have enough time to prepare non-technical presentations and to organise public information forums to explain the plan in terms that can be understood by all citizens.

Recommendations

1. At a minimum, the plan should be posted on the department of energy website.

2. More robust transparency would include a timeline of the decision-making process, together with the key actors that will be participating in this process, including public disclosure of the members of advisory committees.

Country examples

The departments of energy in Thailand and South Africa have published their national long-term plans on their websites. In South Africa, the DOE created a website portal for sharing information about the development of the plan. Civil society used the Promotion of Access to Information Act (PAIA) to release the composition of the advisory committee into the public domain and the Administrative Justice Act to enforce the 30-day minimum comment period. CSOs in both Thailand and South Africa have produced analyses of the plans and prepared non-technical presentations, which they have shared with the public.
More substantial steps

Goal
The department of energy (or higher level of government) commits to a process for public engagement around a draft power development plan.

Justification
Power sector planning involves political vision as well as technical inputs. Because multiple objectives need to be aligned, the public should participate in a dialogue on investment decisions and priorities that might otherwise be determined by an exclusive group of stakeholders. This allows stakeholders who are usually excluded from debates about energy to understand the decisions that are being made.

The energy sector is rapidly evolving, and engagement by specialised civil society groups can augment the expertise available to government decision-makers. Such expertise can be particularly valuable where new energy technologies are emerging and are not yet well understood by government.

Recommendations
1. A public comment period of at least 30 days should be held prior to the finalisation of the power development plan.
2. In addition to processes for submitting written comments, public hearings should be held that would allow for oral inputs. These may need to be held in multiple geographic locations.
3. A written record of all comments received and how they have been addressed should be made public.

Country examples
Thailand has held public hearings on its power development plan. South Africa held stakeholder consultations on its integrated resources plan in 2010 for the first time. As described above, non-technical presentations of the plan were prepared to facilitate an inclusive process.

Most ambitious steps

Goal
A multi-stakeholder advisory panel should develop a draft vision statement for national power development that is subject to wide public comment and review.

Justification
True public engagement in power sector planning requires that civil society experts have a seat at the table alongside government in strategy development, beginning with a preliminary articulation of the desired outputs of the power development plan as it relates to national objectives.

Recommendations
1. A multi-stakeholder advisory panel should develop a draft vision statement.
2. The government-led technical team should produce scenarios based on the modelling of the costs and benefits of various options for achieving these outputs.
3. These scenarios should be publicly reviewed, allowing for at least a 30-day comment period and preparation for public hearings.
4. A written record of all comments received and how they have been addressed should be made public.

Country example
The Northwest Power Planning Council in the USA began its most recent power plan review by asking for a public response to its characterisation of the major issues of concern to the region and also asking for suggestions of other topics. The council established a number of advisory committees, including committees on conservation resources, demand forecasting, generating resources and natural gas. Through public meetings with the advisory committees, the Council obtained the views of the Bonneville Power Administration, its customers, relevant public interest groups, the region’s ratepayers and other important participants in regional power policies. These included broad issues, such as the effects of climate change, capacity to meet loads, integrating renewable resources, power system interactions with the fish and wildlife programme etc.

The Council continued to release papers and draft forecasts for further public comment over the following two years that it engaged in the power planning process. These were more technical papers, including draft fuel price forecasts and draft demand and economic forecasts. Views from the public and advisory committees continued to be solicited through public meetings.

The Council then released a draft power plan for public review. It received 750 written comments over a 60-day period, and held public hearings in nine cities across the region, receiving the testimony of hundreds of interested individuals and representatives of organisations, utilities, businesses, public interest groups and government agencies. Transcripts of the public hearings and written comments received were published on the Council’s website. The final power plan included responses to comments received.

The Council followed the requirement of the Northwest Power Act to facilitate widespread public involvement in the preparation, adoption and implementation of the plan, and the Notice and Comment procedures in the Federal Administrative Procedures Act that require at least 30 days’ notice.
8. Environmental transparency, participation and justice

Contributor: The Access Initiative

Environmental transparency

People depend on a healthy environment for life and livelihoods. In order to safeguard the quality of the environment, it is essential to empower communities, individuals and civil society organisations (CSOs) to take part in decision-making. Policies that provide access to information, opportunities for public participation and access to justice have been critical in reducing pollution, improving environmental quality and enforcing the law. Access to information motivates and empowers people to participate in an informed manner.

Initial steps

Goal

Governments commit to the timely, accessible and standardised publication of (a) environmental impact assessment (EIA) reports; (b) air and water quality data; (c) permits, approvals and licences for development projects and industrial facilities; (d) facility and project monitoring and compliance inspection reports; and (e) regular state of the environment reporting. These are the five most important classes of environmental information.

Justification

In 1992, 178 governments signed the Rio Declaration on Environment and Development. Principle 10 of the Declaration recognises that ‘…at the national level, each 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 … States shall facilitate and encourage public awareness and participation by making information widely available’.

Citizens need information relating to the environment around them to ensure their own health and well-being. Environmental information is provided to citizens through well-recognised delivery mechanisms. The five most important classes of environmental information are described above; the expected outcomes of proactively making environmental information publicly available are to (a) facilitate the identification and resolution of environmental issues and problems at the earliest possible opportunity; (b) hold government agencies, officials and companies accountable for decisions that affect the environment and natural resources; and (c) ensure that citizens are included and engaged in the decision-making processes that affect the environment. This information allows the private sector to address environmental issues earlier on and in a cost-effective manner.

Recommendations

1. *Environmental impact assessments*: Citizens affected by proposed development projects should be provided with information about the location, scope, extent and nature of the project through the publication of EIAs in a timely manner during the planning stages and prior to project commencement. EIAs should contain predicted environmental impacts of the project and an assessment of environmentally friendly alternatives to the project.

2. *Air and water quality data*: Air and water quality data should be made available to the public proactively. Daily air pollution information should be posted on a government website or displayed in well-known public locations. Similarly, water pollution data should be made available on government websites on a proactive basis.

3. *Permits, approvals and licences for development projects and industrial facilities*: These documents should be published in full online in a timely manner and also made available to affected communities in written form.

4. *Facility and project monitoring and compliance inspection reports*: Responsible and mandated government agencies should perform inspections of projects and facilities to ensure compliance and to investigate complaints. These documents, which contain valuable information for citizens on whether projects and facilities are operating in compliance with environmental laws and within the standards and conditions imposed, should be made publicly available in a timely manner. Often this information is provided to the public and the agency through pollutant release and transfer registers (PRTRs).

5. *State of the environment reports*: The apex national environmental ministry or agency should regularly (every 2–3 years) publish a state of the environment report. Using the best available data, the report should set out the prevalent air and water quality across the country, identify environmental threats and challenges, analyse environmental indicators and trends and flag key policy changes required to protect, preserve and enhance the environment.

Country examples
A large number of countries already make these five classes of environmental information available to the public, although not all of them do so on a proactive basis. Over 100 countries have laws requiring EIAs for projects and a large number of them make these available to the public. An estimated 35 countries have PRTRs, while a further 30 countries are expected to establish such registers in the next seven years. Over 85 countries have published state of the environment reports; however, many do not produce them on a regular basis. Freedom of information (FOI) laws in over 85 countries allow citizens access to environmental permits and compliance reports as well as water and air quality data, but in most countries they are not disclosed on a proactive basis.

More substantial steps

Goal
Governments commit to proactively publish (a) reasons for decisions approving/rejecting/modifying development projects after EIA procedures, and (b) reasons for decisions approving/rejecting/modifying permits/licences/approvals for industrial facilities.

Justification
The single most important factor that improves accountability for decisions affecting the environment and mitigates abuse and misuse of official authority is a legal requirement to publicly provide written reasons for the decision. When decision-makers are forced to make written reasons for decisions publicly available, it also forces them to take relevant considerations into account, to exclude irrelevant considerations and to open the reasons up to scrutiny by the public, stakeholders and other accountability mechanisms.

Recommendations
1. Governments should commit to proactive publication in a timely manner of (a) reasons for decisions approving/rejecting/modifying development projects after EIA procedures, and (b) reasons for decisions approving/rejecting/modifying permits/licences/approvals for industrial facilities.

Country examples
Countries such as the USA, Australia, Canada, India and South Africa already require decision-makers to provide written reasons publicly or at the very least to affected stakeholders.

Most ambitious steps

Goal
Governments mainstream capacity building around access to information into their other environmental programmes.

Justification
Many governments have realised that developing citizen capacity for access to information is essential and requires additional investment and training, both for information requesters and providers.

Recommendations
1. Governments should provide guidelines and easily understood manuals on how and where to access environmental information to help improve the ability of citizens to access information.
2. Training and guidance materials on access to information should be provided to sub-national government officials.

Country examples
In some countries, governments have provided grants for community assistance, the establishment of training institutes for communities and training of CSOs at the community level. In Mexico, the USA and the EU, governments have made additional investments in staff capacity building and citizen training around access to information. In many countries, governments have developed guidelines and manuals in close collaboration with CSOs.
Public participation in decision-making affecting the environment

In the environmental and social context, public participation takes place largely as a part of procedures to assess and to mitigate environmental harm, such as in preparation of environmental impact assessments, permitting processes and through policy-making and planning bodies such as legislatures and zoning boards. Additionally, some countries have regularised opportunities for public participation in the formation of regulations and rules, which has significant consequences for lives and livelihoods. Findings from current governance literature show that increasing public participation improves the legitimacy of decisions, helps build stakeholder capacity, improves implementation and improves sustainability of decisions.\(^\text{12}\)

Initial steps

Goal
Governments should introduce mandatory, low-cost procedures for public comments and hearings in decision-making processes involving (a) new development projects; (b) siting and operational compliance of industrial facilities; and (c) the creation or revision of national, state, provincial or local policies, plans, laws and regulations affecting the environment.

Justification
The engagement of the public and stakeholders in environmental decision-making creates the necessary space for them to influence decisions that affect the environment and the natural resources they depend on. For participation to be fair and effective, a decision-making process should include a range of stakeholder voices. Decision-makers should listen and, to the greatest extent possible, respond to these voices. Decision-making can take many forms. At one end of the spectrum it can be direct – where stakeholders collectively make a decision, either by majority or by consensus. At the other end of the spectrum is indirect decision-making, where a third party, usually a government official, makes the decision with or without the participation of stakeholders.

Recommendations
1. Governments should introduce mandatory, low-cost procedures for public comments and hearings in decision-making processes involving all new development projects, the siting and operational compliance of industrial facilities and the creation or revision of national, state, provincial or local policies, plans, laws and regulations affecting the environment. This should apply to all levels of government. Full implementation of public participation means that each person should know about their right to participate and should have ample guidance on how, when and where to exercise this right.
2. Communication during participation should be timely, processes for input should be made known in advance and the government should seek to minimise logistical barriers. Decisions should be publicised before implementation so that aggrieved people can seek remedies and redress if they wish.\(^\text{13}\)

Country examples
Many developed and developing countries have established procedures to enable the public and stakeholders to comment on EIAs of development projects and to participate in public hearings before decisions are made. Examples include the USA, Canada, Australia, India, South Africa and Brazil. These and other countries have extended these procedures to permits and EIA processes.\(^\text{14}\)

\(^{12}\) Ibid.

\(^{13}\) Ibid.

More substantial steps

**Goal**
Governments establish and implement special procedures for reaching out to poor people, marginalised groups and tribal communities to ensure that they are included in public engagement processes covered by the above commitment on public participation.

**Justification**
Decisions that have significant environmental and social consequences are often made without the involvement of those whose interests are directly at stake. For poor people whose lives and livelihoods often depend on natural resources, and who are therefore most vulnerable to environmental risks, the consequences of exclusion can be especially severe. Weak access to decision-making may expose poor communities to high levels of pollution, remove them from productive land or deprive them of the everyday benefits provided by natural resources. Poor people in many countries face a daunting array of barriers to access, including low literacy levels, high costs (including the costs of corruption), exposure to risk through participation and lack of documentation of legal identity or rights to a resource that are necessary to influence decisions. Additionally, cultural norms that limit who may speak in public disproportionately exclude the poor. While voice in environmental decisions can make a significant difference in the allocation of resources and people’s ability to use those resources, it also plays a role in ensuring a sense of involvement and in helping individuals gain a sense of control over their lives. These too are important aspects of poverty alleviation.15

**Recommendations**
1. Governments should specify the right of poor people, marginalised groups and tribal communities to participate in environmental consultations and should create a requirement for decision-makers to consult these groups, among other affected communities.
2. Governments should then publish the results of all public participation during environmental impact assessments.

**Country examples**
The USA has enacted Executive Order 12898 (1994) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.16 The Government of Chile has prepared new EIA regulations that would make special provisions for reaching out to poor people in project decision-making. South Africa and South Korea also have some provisions on special procedures for the participation of poor and minority communities.

Most ambitious steps

**Goal**
Governments commit to publish responses to general categories of public comment for permitting, planning and regulatory decisions.

**Justification**
The single most important factor that improves accountability for decisions that affect the environment and mitigates abuse and misuse of official authority is a legal requirement to publicly provide written reasons for the decision. When decision-makers are forced to make written reasons for decisions publicly available, it also forces them to take relevant considerations into account, to exclude irrelevant considerations and to open the reasons up to scrutiny by the public, stakeholders and other accountability mechanisms, especially when these comments correspond to the major categories of stakeholder input and comment.

**Recommendation**
1. Along with issuance of each major final permitting, planning and regulatory decision, governments should publish a summary of major categories of objections, comments and proposed alterations to the permit, plan or regulation.

**Country examples**
This practice is carried out by the USA as a best practice in environmental impact assessment. Other countries, such as the Netherlands, keep public records of citizen input in strategic environmental assessment for ecosystems and a reviewing panel must document a response to major concerns.

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15 http://www.accessinitiative.org/sites/default/files/A Seat at the Table_FINAL2010.pdf
Access to justice for the environment

Access to information, meaningful participation, the redress of environmental harms and the enforcement of law are guaranteed through ‘access to justice’. Access to justice is the right to redress and remedy and ensures accountability and the rule of law. Redress and remedy can be provided by several different institutions, including the judicial branch of government, special administrative forums in the executive branches of government, extra-governmental dispute resolution mechanisms and even traditional forms of mediation.\textsuperscript{17}

Initial steps

**Goal**

This commitment requires governments to ensure that citizens and persons whose environmental transparency and inclusiveness rights are violated or who suffer environmental harm have independent and impartial institutions and mechanisms for obtaining relief and redress for their grievances.

**Justification**

Broadly speaking, access to justice serves four principal purposes in the context of environmental decision-making. First, it strengthens freedom of information, allowing civil society to press governments for information they are otherwise denied. Second, access to justice allows citizens the means to ensure that they participate meaningfully and are appropriately included in decision-making on environmental matters. Access to justice also levels the playing field by empowering groups to enforce environmental laws that may not otherwise be enforced. Access to justice increases the public’s ability to seek redress and remedy for environmental harm and allows the public to hold officials accountable for carrying out proper procedures in environmental decision-making and enforcement.

**Recommendations**

In opening both regular and specialised courts for environmental decisions, a number of ‘institutional design’ choices must be made. These will have strong consequences for the performance of the court. When establishing these courts, governments should consider:

1. Whether to establish a judicial court or administrative tribunal and at what level of independence;
2. What substantive laws, policies and principles the court or tribunal will have jurisdiction over;
3. Whether the court or tribunal should be a first-instance, intermediate appellate, and/or supreme (final review)-level institution and whether it should have civil, criminal or administrative authority, or a combination of these;
4. What territory should be covered by the court or tribunal, from a town to a city to a state or province to an entire nation;
5. Whether the jurisdiction will make the workload appropriate or too low or too high;
6. Providing broad standing, meaning what qualifications will be required of parties to bring an action in the court or tribunal or otherwise participate in a case;
7. What it costs for parties to bring cases and prosecute them to final decision, and taking steps to reduce those costs;
8. How the court or tribunal will manage to get adequate, unbiased input on the increasingly complex scientific/technical issues in environmental cases;
9. Establishing alternative dispute resolutions (ADRs) which can often be a cheaper, faster and better way to resolve environmental conflicts, and how these might be incorporated into the procedure;
10. Qualifications, training, tenure and salary for decision-makers to ensure the quality of the court’s or tribunal’s decisions;
11. What process mechanisms will permit the court or tribunal to move cases through the decision-making process more efficiently and effectively and less expensively; and
12. What powers will be needed to make the court’s or tribunal’s decisions effective, from mediated agreements to injunctions to criminal fines and incarceration, and all the creative alternatives in between.\textsuperscript{18}

**Country examples**

Some of the best examples of administrative and judicial institutions established for providing access to justice on environmental matters come from Australia and New Zealand. The Land and Environment Court of New South Wales, Australia is one such example.

\textsuperscript{17} http://www.accessinitiative.org/sites/default/files/voice_and_choice.pdf

\textsuperscript{18} http://www.accessinitiative.org/sites/default/files/GreeningJustice_Final_31399_WRI.pdf
9. Extractive industries (oil, gas and mining)

Contributor: Revenue Watch Institute

‘Breakdowns in governance are generally recognized as the principal reason why natural resource wealth does not generate more sustainable development.’ – IMF, 2009

More than 50 countries depend on oil, gas and hard minerals as their most important sources of government and export revenues. Large-scale fisheries and leasing of agricultural lands are also becoming important sources of revenue. Perhaps in no other sectors are economic outcomes and the openness of government more closely linked.

Sub-soil minerals are deemed to be public assets in most parts of the world. Fisheries, lands and forests can also be public assets. As the government is managing such resources in trust for the people, the people have a right to know what is being done with their natural wealth.

Establishing clear transparency and accountability requirements will increase policy efficiency, reduce opportunities for self-dealing and diversion of revenues for personal gain, raise the level of public trust and reduce the risk of social conflict. An informed and engaged public can hold the government to account, but will also help ensure that complex, large-scale projects meet government standards for environmental and social protection as well as revenue generation.

The overarching goal is comprehensive transparency and accountability in the governance of natural resources, from the decision to extract to the granting of concessions, the collection of revenues and the management of resource revenues. Producing, importing and investing countries have a shared interest in advancing open government in natural resource management.

Initial steps

Goal

To establish openness in granting access to natural resources and in the fiscal returns for the state.

Justification

Fiscal policies and contractual terms should ensure that the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit. Governments and investors are generally better served if there are clear rules applicable to all investors in similar circumstances. Transparency and uniform rules help ensure that operators know that treatment is non-discriminatory, reduce opportunities for corruption and may reduce demands from individual investors for special treatment. More broadly, resource decisions involve long-term commitments. These will be more credible and less subject to abuse if citizens understand their rationale. Citizens can only be confident about the integrity of the resource extraction process if they know about it.

Recommendations

1. Make all rules and regulations for natural resource licences and concessions available in a public database, with clear definitions and explanations. Countries could publish all rules and requirements for resource development, including fiscal terms, property rights and social and environmental protections, to give citizens a baseline against which to monitor and measure government policies, as well as levelling the playing field for investors. In addition to oil, gas, mining, forestry and fisheries, there is an acute need for disclosure of rules and regulations around the leasing of agricultural lands.

2. Make public the terms of each concession the state has granted to exploit a natural resource. Countries could disclose the terms and counterparties of all natural resource deals to allow legislators and citizens to monitor whether the laws and regulations are being followed and to assess the quality of deals being made on their behalf. The IMF ‘Guide on Resource Revenue Transparency’ and the Natural Resource Charter consider publication of contracts to be best practice. The fullest possible information could be disclosed to the public relating to the granting of each concession, including public offering documents, lists of pre-qualified companies, successful and unsuccessful bids, contracts and other agreements signed with extractive companies, including the identity of the beneficial owners. The independent public agency that has oversight of the rights and the implementation of contracts could make regular and timely public reports on any anticipated and concluded allocation of natural resources licences.

3. Issue regular and detailed reports of resource-related revenues in the public domain. Countries could voluntarily publish all natural resource-related revenues – including signature bonuses, royalties, taxes, payments in kind and transit revenues – in a central location for public consumption. Countries could do this by joining and implementing the Extractive Industries Transparency Initiative (EITI), and/or by independently undertaking to publish resource revenue information in a proactive, timely and comprehensive manner. All operating resource companies can be required to disclose project by project production volumes, costs, revenues and payments to the state. Revenue transparency is essential to ensure public accountability for both income and spending. Resource-related payments are often generated outside normal budgetary processes, so a dedicated disclosure procedure may be needed to capture these flows in public data.
Country examples

For the 41 resource-rich countries surveyed in the Revenue Watch Index 2010, the average score for transparency on access to resources was only 44 out of 100. The Revenue Watch Index finds that 22 countries disclose information regarding licensing procedures. Colombia, Liberia, Peru, Timor-Leste and the USA publish minerals contracts/leases on public lands in full. Afghanistan’s new minerals policy calls for public tenders and publication of bids as well as resulting contracts. Ghana’s 2011 Petroleum Revenue Management Bill requires the government to publish information on receipts from petroleum companies – online and in national newspapers – on a quarterly basis. In addition, audited statements of Ghana’s oil accounts will be made public this year. Thirty-three mineral-rich countries, ranging from Azerbaijan to Norway and Peru, are implementing EITI, which requires dual disclosure by companies and the government of resource-related payments and receipts. A national multi-stakeholder committee of government, companies and civil society, creating an automatic public oversight mechanism, oversees the process. Liberia, Mongolia, Nigeria and Norway are considered to provide the most comprehensive information in a clear form through EITI.

More substantial steps

Goal 1

Goal

To make available more detailed information to allow the public to better assess and influence the quality of public natural resource management.

Justification

Successful natural resource management requires government accountability to an informed public. Resource projects can have significant positive or negative local economic, environmental and social effects, which should be identified, explored, accounted for, mitigated or compensated for at all stages of the project cycle. Alongside disclosure of information, governments should adopt transparent processes for taxing, collecting and managing revenues and for taking spending decisions. Transparency can improve the efficiency and effectiveness of government policies. Public disclosure requirements can improve the quality of data the government gathers and maintains. This makes it easier for relevant bodies such as financial, energy and mining ministries, as well as environmental and regulatory agencies, to do their jobs. Reliable and frequent data can make it easier for governments to plan and manage their budgets and long-term development plans. Transparency also reduces the cost of capital.

Recommendations

1. Publish environmental and economic impact studies for all natural resource projects. Such reports will help the public assess the costs and benefits of resource development.

2. Publish regular reports on the contribution of resource sectors (hydrocarbons, mining, forestry, etc.) to the budget and other allocations. Countries could regularly publish all revenue streams derived from the natural resource sector that contribute to the government’s budget in a timely and comprehensive manner. Not all resource revenues go into the budget. Some may be reinvested by a state-owned company, distributed directly to citizens or put in a natural resource fund.

3. Publish resource-related revenue transfers to sub-national governments. Countries could regularly publish all fiscal transfers to the sub-national level that relate to natural resource revenues or extractive activity. In a number of countries, sub-national units get a defined share of resource revenues, and these transfers may be very large and not be part of the national budget. Direct distributions to citizens should also be disclosed.

Country examples

The Revenue Watch Index found that only 15 of 41 leading minerals-producing countries publish impact reports. These include Botswana, Brazil, Chile and Tanzania. Until 2010, Russia published the contribution of its resource sectors to the budget. In 2003, the Nigerian Ministry of Finance began publishing monthly in newspapers how much oil money was being transferred to each governor and, eventually, to each municipal authority. This was the first time that the public had had access to this information. Ghana and Indonesia have included sub-national transfers in their EITI templates.
Goal 2

Goal
To extend transparency and accountability rules to state institutions with important operational responsibilities in resource management.

Justification
The effectiveness of sovereign wealth/stabilisation funds will be enhanced if there are transparent rules or guidelines for triggering asset accumulation and withdrawals, with any deviations subject to public debate and formal procedures. Reliable and frequent data can make it easier for governments to plan and manage their budgets and long-term development plans. Similarly, state-owned enterprises are more efficient when decisions are transparent and subject to market tests. Public oversight can help protect against the entrenchment of bad practice leading to poor outcomes. Citizens are best able to hold governments and companies to account where they, their parliamentary representatives and civil society organisations are well informed and have the capacity and freedom to act on information they obtain. It is increasingly accepted that citizens have a basic right to information about government activities and use of public assets.

Recommendations
1. **Publish all data related to sovereign wealth/stabilisation fund holdings and management.** Countries could publish (a) regular reports showing contributions to the fund, earnings, holdings and withdrawals/distributions, including to the budget; (b) investment rules for the fund; and (c) regular independent financial audits. A growing number of resource-rich countries are creating such funds to manage part of the revenues generated by resource sectors, and many manage hundreds of billions of dollars. Some funds are extremely opaque, others fully transparent. As such large sums of public monies may be transferred and invested by these funds, they should be as transparent as the national budget.

2. **Publish audited accounts for all state-owned extractive companies based on internationally recognised accounting standards.** Countries could regularly publish independent audit reports for all state-owned companies involved in natural resource exploitation at home or abroad. Of 41 countries in the Revenue Watch Index, 35 have a state-owned company (SOC). As their operations directly affect the success and impact of public resource development, their operations should also be open to public scrutiny. More transparent SOCs also tend to be more successful and profitable for the state.

3. **List all state-owned extractive companies on a stock exchange.** Even if the state retains the majority of shares, listing will give both investors and the public (who are also shareholders) access to a regular and detailed flow of information on the company.

4. **Ensure regular and free participation of parliamentarians, civil society and the media in the oversight of the natural resource sector.** Countries could guarantee systematic legislative and public hearings around licensing rounds and all major concessions to ensure that they align with the development aspirations of the country and to minimise risks of corruption. Countries could create platforms for engaging civil society in the monitoring of contracts (particularly environmental and social aspects) and the oversight of revenues from the natural resource sector, including through initiatives such as the EITI.

Country examples
Timor-Leste and Norway have transparent resource funds. All of these recommendations are consistent with the Santiago Principles, a set of 24 voluntary principles and practices agreed by major sovereign wealth fund owners to ensure an open international investment environment. Norway’s Statoil and Brazil’s Petrobras are publicly listed and publish their audits.

Transparency International’s report on the transparency of companies in the extractive industries – which assesses 44 major oil and gas producers (20 international and 24 national oil companies) – finds that non-listed SOCs are less transparent than peers that are listed on a stock exchange. For example, Petronas and Sinopec (listed SOCs) disclose more information on their anti-corruption programmes, their organisation and country operations than their unlisted peers Sonangol, PDVSA and Sonatrach. Norway’s parliament has played a central role in policy discussion regarding oil licences and the role of the petroleum sector in the country’s development strategy. In Sierra Leone, the access of both public and parliament to the agreement offered to London Mining by the government led to the review of the contract. In Brazil, the NGO IBASE has developed a sophisticated scorecard to monitor the social and environmental practices of extractive companies. The inclusion of civil society in the policy dialogue around the extractive sector is one of the most remarkable accomplishments of the EITI in the 33 countries in which it is implemented.
Most ambitious steps

Resource-producing countries

**Goal**
To allow continuous public monitoring of natural resource development projects around the country.

**Justification**
The development of a country’s natural resources should be designed to secure the greatest social and economic benefit for its people. Extractive resources are public assets and decisions concerning their exploitation and use should be a matter for public debate. Resource governance is strengthened when those decisions are subject to well-informed public scrutiny and when decision-makers are held to account.

**Recommendations**
1. **Create a national public web registry of all natural resource concessions.** Countries could create a national online registry that includes physical demarcation, identity of leaseholders, production volumes, costs and revenues for each lease.
2. **Create national policy and performance benchmarks and monitoring.** Countries could create a national policy on natural resources that (1) identifies a long-term strategy for how the sector fits into national development; (2) sets clear economic, social and environmental performance benchmarks for the sector; and (3) identifies a scheme for monitoring the country’s progress.

**Country examples**
Angola has begun to do this with its oil blocks, updating monthly. South Africa has launched a web platform that will enable greater openness on licensing and concessions in its mining sector. Ghana is establishing a Public Interest and Accountability Committee with civil society participation to oversee the petroleum sector. The New Partnership for Africa’s Development (NEPAD) has committed to develop a self-monitoring and peer review process to benchmark extractive resource management, using the Natural Resource Charter as a platform.

Capital-providing countries

**Goal**
To have the home regulator of resource companies and/or providers of capital for the natural resource sectors observe and promote high standards of openness.

**Justification**
Some argue that applying strict standards of openness will reduce a resource-rich country’s ability to attract necessary investment to the sector. If capital-exporting countries adopt high transparency standards, that concern (or excuse) disappears. Transparency also reduces financial risk for investors and enhances security of supply for consumers.

**Recommendations**
1. **Require that all listed companies in the jurisdiction disclose their resource-related payments to governments, country by country and project by project.** Payments, with underlying cost and revenue data, will enable citizens to know how much public value is being derived from national resource wealth and assess how economic rents are being shared between the state and the investor.
2. **Apply International Finance Corporation (IFC) transparency requirements to all export credits, political risk guarantees and other forms of support to extractive projects.** Countries could require all export credit agencies, multilateral investment guarantee and other sovereign lending and insurance arms for natural resource projects abroad to publish information on extraction projects. These projects are highly dependent on such official support, so transparency standards by export credit agencies and other sources of project finance and investment guarantees can help to increase openness and accountability globally.
3. **As part of aid transparency, report in detail and in one place all foreign aid funding for extractives-related projects.** Transparency in overseas development assistance (ODA) flows (in cash and in kind) provided by bilateral and multilateral agencies would strengthen aid effectiveness in the sector, increase openness and accountability and complement transparency from lending institutions.

**Country examples**
The 2010 Dodd-Frank Act requires, inter alia, all companies listed in the USA to publish the details of payments relating to resource extraction made to governments, country by country and project by project. Similar legislation is under consideration in the EU and Canada. Many companies, including Newmont and Talisman, publish some country-by-country payment information voluntarily. Congress has required the US government’s political risk insurance agency Overseas Private Investment Corporation (OPIC) to follow IFC transparency standards for extractive projects. The World Bank recently began to map and disclose its support in the natural resource sector and beyond on a project-by-project basis. The practice could be universalised to other donors following IATI principles.

Global marine fisheries are in a state of crisis. Data collated by the United Nations Food and Agriculture Organization (FAO) shows that since the early 1980s total landings of fish from the sea have decreased steadily and the majority of commercially targeted fish stocks are fully exploited or overexploited. Scientific studies in almost all regions of the world highlight decreasing fish catches and the degradation of marine ecosystems, primarily caused by overfishing but also compounded by climate change, pollution and habitat destruction. The global commercial fishing fleet is now estimated to be at least twice the size needed to catch marine fish sustainably, and many forms of industrial fishing cause high levels of by-catch and discards. The World Bank has estimated that, due to subsidies, waste and unsustainable management, lost rents from marine fisheries amount to $50 billion per year.

The inability to stem overfishing represents a profound failure of governance on national and international levels. Lack of transparency and government openness is increasingly recognised as part of the problem. In many coastal and island states, basic information on which companies are allowed to fish, how much these companies can catch, how much revenue is being generated from fisheries and how this is being spent is obscured from the public. Commercial fisheries tend to be secretive, aided by the fact that they operate ‘off-shore’ and out of sight. Studies on illegal fishing in Africa, which has been conservatively estimated to be worth $1 billion each year, claim that levels of illegal fishing are closely related to proxies of good governance, including transparency, media freedom and the rule of law.

Lack of transparency is not a problem unique to developing states, but it is citizens living in Africa, Asia-Pacific and Latin America who disproportionately feel the negative impacts of governance failure, corruption and overfishing. This is partly due to the importance of marine fisheries to national incomes, diets and livelihoods in many poorer coastal and island states. According to FAO, developing countries now account for 60% of the global fish trade, estimated to be worth $100 billion annually, and of the estimated 135 million people directly employed in marine fisheries 90% are based in developing countries. Many more people, particularly women, are engaged in artisanal or subsistence fishing and fish processing. Furthermore, fish from the sea is a vital source of low-cost, high-quality protein, and alternatives to fish are either expensive or in short supply for significant numbers of coastal communities.

The current trend of overfishing and the degradation of marine ecosystems will therefore have a catastrophic impact on developing countries, including worsening food security. Lack of transparency is not only undermining the effectiveness of fisheries management and denying national revenues; it is also obscuring the true value of marine resources, as well as the social and economic cost of losing them. Less than half of African countries publish data on fish catches and exports, and illegally caught fish may account for up to 30% of fish trade worldwide. A commitment by governments, in all regions, to be more open about the management of fisheries would lead to improved knowledge about the actual and potential contribution of fisheries, which in turn may stimulate political will to better address the threats caused by overfishing and the further degradation of marine ecosystems.

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20 Ibid.
24 FAO. 2010. ‘State of World Fisheries and Aquaculture’. **Fisheries/ Opening government**
Initial steps

Goal 1

Goal
Governments publish detailed and up-to-date information on the proposed contents of bilateral fisheries access agreements.

Justification
Access to national waters for foreign commercial fishing boats is often governed by bilateral fisheries access agreements. These are contracts negotiated by governments or fishing associations that pay for a certain number of fishing boats to operate in a given area. It has been estimated that there are at least 100 fisheries access agreements in operation worldwide, and the amount spent on access agreements is approximately $1 billion.25 The majority of these agreements provide fishing opportunities in the national waters of developing countries and island states for distant water fishing fleets flagged in the European Union, Russia, Japan, China, Taiwan, South Korea and the United States.

Fees paid to host countries are often considered ‘off-budget’ payments, and are therefore not reflected in annual government accounts. Although most access agreements are calculated on a percentage of the value of expected fish landings, access agreements can also contain extra funds for development projects, or they can form part of broader government-to-government aid. The terms of these agreements should – but often do not – place restrictions on fishing intensity and by-catch, as well as restrictions on the type of fishing gear, the sea areas or seasons in which boats can operate. At a minimum, they should be in conformity with prevailing national regulations.

Public knowledge of the contents and implementation of access agreements is limited. Most access agreements are negotiated confidentially and few of them are published. This lack of transparency creates opportunities for corruption, and citizens are denied important economic and environmental information on how their marine resources are being exploited. Maintaining the confidentiality of access agreements, which is a condition typically imposed by those paying for access, also places host countries at a disadvantage in negotiating better terms. This is because they have little information about what other countries are receiving.

Recommendations
1. Governments should commit to publishing all existing contracts of access agreements, and they should ensure that future contracts of all fisheries access agreements are made publicly available before parties sign these agreements, thereby allowing for public debate and input. Such documents should be translated into local languages where necessary.
2. All details of the actual financial sums paid/received through these contracts, and any further documentation relating to scientific and economic audits or evaluations of these agreements, should also be made public, preferably through the website of the ministry or department responsible for marine fisheries in the host country, as well as through the national press.

Country examples
The EU started publishing details of fisheries access agreements with developing countries in the early 1990s. All contracts signed between the EU and third countries are available on the EU’s website, as well as some meeting notes from the joint committees that oversee the implementation of these agreements.26 Certain other documents, such as ex ante and post ante evaluations of these agreements commissioned by the European Commission, are still kept confidential. Fisheries agreements signed between the USA and Caribbean and Pacific island countries are publicly available, and are negotiated openly and regionally, whereas all bilateral access agreements signed between developing countries and Japan, China, Russia and Taiwan, among others, are kept entirely confidential.

Goal 2

Goal
National fishing authorities publish detailed and timely information on commercial fishing licences and catch quotas.

Justification
Many countries do not publish any information on the details of private fishing licences, including which company has bought the licence, the type of fishing allowed and any restrictions on fishing activity, the price paid for the licence, the flag state of the vessel or the quantity of fish that the licence holder is allowed to catch. This means that citizens are denied basic information on the management of their marine resources, which undermines research, public debate and the quality of decision-making. It also creates opportunities for embezzlement and fraud. In the Solomon Islands, an investigation by the Auditor General in 2002 revealed that the country had lost $4 million through the theft of licence fees by the Ministry of Fisheries. Similar cases have been documented in Fiji and Guinea-Bissau.27

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26 http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm
Lack of transparency in fishing licences also undermines international and national efforts in combating illegal fishing: with greater knowledge on the legal status of fishing boats, the public and the fishing sector will be able to identify instances of illegal fishing and fishing by unlicensed boats. FAO has recently established a Global Record for fishing vessels that requires national authorities to submit information on fishing authorisations for all commercial fishing boats. FAO has argued that a failure to contribute to the Global Record thus far is undermining international law enforcement and obscures product traceability.

Recommendations

1. All fishing licences and permits authorised by governments for boats of over 10 metres in length or 10 gross tons\(^2\) should be made public and available on the websites of the authority issuing the licence, within seven days of it being granted. Late publishing of information on licences undermines the ability of the public and other fishing vessels to use such information to monitor illegalities and fraud.

2. In countries where the relevant fishing authority does not have a working website, there should be a commitment to provide detailed information on licences on an annual basis in the national press and to the public on request at any time.

Country examples

The fisheries authorities of Madagascar publishes complete details of fishing licences in local newspapers. Gabon published a full list of fishing licences for the first time in 2010.\(^2\) Countries including South Africa, Namibia and New Zealand have comprehensive websites containing details of all fishing licences and catch quotas, including information on price, conditions of the licence and details on the companies that buy licences.

Goal 3

Goal

Governments should publish complete and up-to-date information on penalties and fines imposed on individuals and companies for illegal fishing activities.

Justification

Illegal fishing poses one of the key threats to the sustainable use of marine resources. It is a problem in all waters, but may be particularly prevalent in developing countries due to lower capacity in monitoring, control and surveillance, as well as weak governance. Public information on arrests or prosecutions stemming from illegal fishing is important, not only to act as a deterrent, but also to allow citizens insight into the effectiveness of government agencies in combating illegal fishing and the appropriateness of resulting punishments and penalties. Increased public information on successful cases of prosecuting illegal fishing boats may also stimulate greater reporting of illegalities by citizens and responsible boat owners. Few countries make such information available, and when boats are caught fishing illegally, details on penalties or fines can be kept secret. This may create an environment where forms of corruption and payment of bribes can undermine the rule of law. Moreover, there is considerable concern in many developing countries that operators of foreign boats caught for illegal fishing locally are pardoned due to diplomatic pressure from the home governments of boat owners.

Recommendations

1. Governments should commit to making timely information publicly available on all surveillance activities, infractions observed/recorded and fines or punishments related to illegal fishing.\(^3\) This information should be made publicly available through annual reports or documents on government websites.

2. Where governments lack the capacity to publish annual reports, or they do not have existing websites on marine fisheries, fishing authorities should provide information on penalties and fines imposed on companies or individuals committed for illegal fishing to members of the public on request.

Country examples

Government agencies in the USA that are responsible for law enforcement against illegal fishing, including the Department of Fish and Wildlife and the National Coast Guard, publish substantial details on penalties and fines associated with illegal fishing, and these government organisations have a good reputation for being open and responsive to requests for information on this issue. The government of New Zealand publishes regular updates on cases of illegal fishing through the website of the Ministry of Fisheries, and includes statistics on penalties and fines in its annual reports. In the past, the South African Department for Marine and Coastal Management included details of high-profile arrests and court cases for illegal fishing in annual reports, although this type of information was selective and there has been a shortage of similar information in the past few years.

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\(^2\) Boats smaller than this can be classified as artisanal fishing boats. In many developing countries, artisanal fishing boats are numerous and often they are not licensed. Placing a restriction on the size of boats for which information on licensing should be made public makes this goal more achievable and realistic.

\(^3\) http://www.finances.gouv.ga/IMG/pdf_registr_licences_peche_publie_09_DGPA_cle0196f.pdf

\(^3\) This does not include information on on-going investigations, which in many cases needs to be kept confidential.
More substantial steps

Goal
Governments commit to publishing comprehensive information on subsidies paid to the fisheries sector.

Justification
Government subsidies paid to the fisheries sector worldwide are considered a major cause of overcapacity in the global fishing fleet, which directly contributes to overfishing and the intensification of competition between fishing boats. The most recent and thorough estimate of subsidies paid to the fishing sector globally is approximately $27 billion. Of this amount, $16 billion can be classified as ‘capacity-enhancing subsidies’. Since 2001, deliberations at the WTO have attempted to place disciplines on the use of fisheries subsidies that contribute to overcapacity, such as subsidies on fuel and boat-building. In 2005 the WTO Ministerial meeting in Hong Kong led to a strong commitment by governments to strengthen fish subsidy disciplines, including a specific call for WTO rules to address issues of transparency and enforcement (the ‘Hong Kong Mandate’). Discussions are on-going and a final outcome has yet to be reached. However, for the time being, governments provide inconsistent and limited data on fisheries subsidies. This inhibits public debate and undermines the potential role that civil society can play in monitoring subsidy payments and impacts.

Most ambitious steps

Goal
Governments produce comprehensive annual reports on marine fisheries that are accessible to the public, including clear information on fisheries policy, available data on production and trade, revenues received from commercial fisheries and a summary of expenditures and financial statements.

Justification
Comprehensive annual reports on marine fisheries provide citizens with an understanding of how their marine resources are being managed, the objective and priorities of the state’s approach to managing these resources and what achievements have been made in meeting policy objectives. Lack of information sharing by governments creates distrust and frustration among stakeholders, which can undermine responsible fisheries governance. It also allows governments to pursue fisheries policies that may not be in the interest of the majority of citizens. Not all countries produce such reports but, in producing them, governments can consult technical guidelines produced by FAO on best practice in information sharing. However, because best practice in producing annual reports is currently lacking, further work needs to be undertaken by international organisations and experts to develop guidelines, including what information should be considered essential. A commitment by governments to produce annual reports for marine fisheries would certainly ensure that such guidelines are produced and that technical assistance is made available.

Recommendations
1. All governments should commit to publishing comprehensive data on subsidies paid to the fisheries sector, as stated in the 2005 Hong Kong Mandate. The public should be notified of subsidy payments to the fisheries sector in advance of these payments being made, thereby increasing the scope for public debate and possible objections to be made.
2. In disclosing information on subsidies, governments need to provide comprehensive information on the amount transferred, the purpose of the subsidy and details of the recipient company or organisation and owner.

Country examples
Having responded positively to a request for information, the EU released comprehensive data on fisheries subsidies in 2008, amounting to approximately €1 billion. An NGO initiative, http://fishsubsidy.org, has made this information publicly available through a searchable website. Subsequent analysis of the data by fishsubsidy.org and other organisations, including Greenpeace and UNEP, has greatly enhanced debates on EU subsidy reforms, including raising awareness of where capacity-enhancing subsidies have been given to boats targeting overfished stocks, and where subsidies have been given to boats known to be engaged in illegal fishing.

Recommendations
1. Governments should produce comprehensive annual reports, made available online and in hard copies that are distributed widely through local CBOs and NGOs. They should contain a summary budget and financial statement of the department responsible for managing fisheries, as well as information on the revenues generated from selling fishing licences and access agreements. All this information is vital for stimulating broad-based participation in policy and service delivery, including among the small-scale fishing sector.
2. Financial resources need to be set aside for this activity, and governments should highlight annual reports as an important tool in the management of marine resources. In multilingual countries, these reports should be translated.

Country examples
Countries that produce substantive annual reports on marine fisheries include, among others, the Seychelles, Namibia, South Africa and New Zealand. These reports are made available to the public on government websites. Other countries fail to produce annual reports, or they produce annual reports inconsistently and they contain limited data and information, often with no financial information. In some cases, lack of funding and expertise may be a barrier to the publication of such reports.


11. Financial sector reform

Contributor: Global Financial Integrity

The nexus of corruption, economic development and money laundering is embedded in the global financial system. The currently opaque nature of the system attracts the proceeds of corruption and the laundering of those proceeds, thereby stripping critically needed resources out of developing countries. Moreover, the same financial system fosters the trafficking of drugs, arms and people by creating opportunities to launder revenue from these criminal activities. In addition, tax evasion, in rich and poor countries alike, is facilitated by the ability to hide money in offshore accounts. Without a more transparent financial system, the full potential of work to curtail corruption, limit money laundering and boost economic development and alleviate poverty will not be realised.

Initial steps

Goal

Governments require their banks and other financial institutions to include domestic as well as foreign politically exposed persons (PEPs) as part of their risk-based due diligence when a request to open an account is made. This is in line with Article 52 of the UN Convention Against Corruption and the recommendations of a recent World Bank report.

Justification

The term ‘politically exposed person’ refers to elected or appointed government officials who are entrusted with a prominent position and persons related to such an individual. Particular attention must be paid to PEPs when they attempt to open accounts with financial institutions because of the higher possibility that they may be in possession of funds that come from corrupt activities. Depletion of capital undermines the ability of poor countries to build their economies and become productive and vibrant participants in the world economy. Further, while a public official will sometimes divert funds for his or her own benefit, he/she may often use accounts and corporate vehicles in the name of family members or associates in order to disguise the origin of the funds.

Porous anti-money laundering regimes in countries where illicit funds are most likely laundered contribute to illicit flows. Indeed, according to a 2009 World Bank Report, there is ‘an overall failure of effective implementation of international PEP standards’ and ‘… surprisingly low compliance with Financial Action Task Force requirements on PEPs’.

Domestic PEPs must be identified and included in a financial institution’s due diligence efforts in order to eliminate opportunities for laundering money, and (as logic would dictate) because a domestic PEP in one country is a foreign PEP in the eyes of all other nations. By requiring financial institutions to identify all of their customers who are PEPs, whether they are domestic or foreign, and then conduct enhanced due diligence on those deemed to be higher-risk, those institutions will play a far more effective role in curtailing corruption and money laundering.

Recommendations

1. Financial institutions should be required to carry out at least annual reviews of their PEP customers through a senior-level audit committee. This is the best way to ensure that domestic PEPs are included in banks’ due diligence procedures. Such a committee would be able to take a bigger picture approach and avoid focusing on individual transactions as opposed to aggregates or trends.
2. If the financial institution is multinational, this committee should examine PEP customers across the group.
3. A customer’s risk profile may vary over time and financial institutions must ensure that they are able to monitor the fluctuating risk posed by PEP customers. As part of this process, the financial institution would have to be vigilant in its efforts to keep its PEP lists up to date.

Country examples

Governments with regulations or guidance calling for foreign and domestic PEPs to be included in bank due diligence include Antigua and Barbuda, Argentina, the Bahamas, the British Virgin Islands, Brazil, Bulgaria, Cape Verde, the Cayman Islands, Dominica, the Gambia, Grenada, Haiti, Indonesia, Malawi, Mauritius, Mexico, Montenegro, Pakistan, the Philippines, Qatar, Sierra Leone, South Africa, Thailand, United Arab Emirates and the Virgin Islands.

Goal

Require governments to collect data from financial institutions on income, gains and property paid to non-resident individuals, corporations and trusts. Mandate that data collected be automatically provided to the governments where the non-resident individual or entity is located.

Justification

Globalisation and the liberalisation of economic activity have converted the private sector into a world without borders. This creates a major challenge for national tax authorities because similar changes in their enforcement powers have not kept pace with industry. National tax authorities continue to be constrained by national borders and collecting tax revenue has been difficult.

Additionally, bank secrecy and other confidentiality laws in many jurisdictions (such as tax havens and international financial centres) prevent disclosure of relevant information by financial institutions to government authorities. Further, lax response by tax authorities in those jurisdictions to information requests from foreign governments often delays or prevents cases against tax cheats.

Tax, not aid, is the most sustainable source of finance for development, and tax havens undermine developing countries’ efforts to pay their way. The United Nations 2002 Monterrey Consensus and the 2005 UN World Summit require developing countries to mobilise domestic resources for development. This means tackling illicit capital flight and tax evasion. Moreover, the Commentary to the OECD Model Income Tax Treaty and the Commentary to the UN Model Income Tax Treaty both refer to automatic exchange of tax information.

Recommendation

1. A process should be developed and implemented whereby interest income and related tax information are automatically exchanged among other states.

Country examples

The European Union Savings Tax Directive (EUSTD)\(^ {34}\) is an agreement between the EU member states to automatically exchange information with each other about individuals who earn interest in one member state but reside in another (three EU countries – Austria, Belgium and Luxembourg – have chosen to withhold taxes on accounts held by foreign nationals rather than report account information to tax authorities). The Directive was approved in 2003 and came into effect on 1 July 2005. For example, under the EUSTD, if a resident of Germany holds a bank account in Spain, the Spanish bank will provide details of interest payments on that account to the German revenue authority. This is known as ‘automatic exchange of information’ and enables each tax authority to compare the amount of income declared by that individual on his or her own personal tax return with the information provided under the EUSTD.

\(^{34}\) http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/index_en.htm
Most ambitious steps

Goal 1

Goal
Governments require and enforce that financial institutions identify the ultimate beneficial owners or controllers of any company, trust or foundation seeking to open an account.

Justification
The flow of illicit money including tax evasion, the proceeds of corruption, terrorist financing and a host of other global ills can be traced to the lack of information available about the beneficial owners of corporations, trusts and foundations. Often located in one of some 70 secrecy jurisdictions around the world, these entities can absorb, hide and transfer wealth beyond the reach of any law enforcement agency, and can often be reincorporated in another secrecy jurisdiction at a moment’s notice. No country currently has an effective system of collecting and making available beneficial ownership and control information on corporations and trusts established there. Nor is it completely explicit even in the overarching global anti-money laundering standard established by the Financial Action Task Force (FATF) that financial institutions, when opening an account, must identify the real person who benefits from the funds, and that this cannot be a nominee director or shareholder, or an attorney.

As the collapse of Enron showed, multinational corporations can have thousands of subsidiaries hidden around the world. Corporate entities can use these structures to transfer profits abroad in order to reduce tax liability or to circumvent local regulation in developing countries. Multinationals can use abusive transfer pricing (manipulating prices of inter-subsidiary transactions to shift profits) to divert profit to no- or low-tax jurisdictions, and this is very hard to detect.

Convoluted structures of this kind are also commonly used as a way of siphoning off and handling illicit funds, including corruptly and criminally acquired assets, as they enable the true ownership of assets to be disguised, particularly when opening bank accounts and transferring money. The impact of corruption on developing countries is devastating, and these structures help to facilitate it.

Financial institutions, including banks, are required to identify their customers as part of their due diligence on opening accounts, but the true customer is often hidden behind layers of companies and trusts. Then, if money needs to be traced by investigators, these structures also make uncovering the true nature of transactions and tracing beneficial ownership and the origin of funds very difficult. The modus operandi of illicit financial flows are not aberrations but part of a broad structural problem.

Due diligence is the first line of defence against the laundering of illicitly acquired funds, so strengthening these procedures increases the integrity of the entire system. Financial institutions will be able to fulfil their regulatory requirement to identify their customers and their sources of funds. Beneficial ownership information collected by financial institutions will help investigators to track down the movement of illicit funds more quickly and effectively. This information will also enable national authorities to better estimate tax revenue (and plan for its utilisation) and to identify where tax is being evaded.

Recommendations

1. Jurisdictions should publish and keep beneficial ownership lists up to date. They should ensure that they collect and maintain a current and publicly available list of the beneficial owners and controllers of corporations, limited liability companies, other legal persons and legal structures, such as trusts organised under their laws.

2. Anti-money laundering laws should be made explicit on beneficial ownership identification requirements for financial institutions. Anti-money laundering laws in each jurisdiction should be explicit that financial institutions must identify the beneficial owners who are natural (i.e. real) persons or listed corporations, not nominee corporations or disguised trusts. Jurisdictions must ensure that these laws are properly enforced, and that the FATF requirements for establishing beneficial ownership as part of the customer due diligence process are rigorously implemented globally.

Country examples
Switzerland is known to have thorough due diligence procedures for customers opening a bank account, and photo identification (a passport or national identity card) is required. However, it is unclear if Swiss banks require photo ID from the person opening the account (which could be an attorney or other legal representative) or from the true beneficial owner of the account.
Goal 2

Goal
Provide greater transparency over how state funds are managed and make it harder for corrupt rulers to exercise personal control over government assets.

Justification
Citizens have a right to know how their countries' funds are being managed on their behalf. This is particularly true in a dictatorship where one individual, or a small cabal, exercises almost complete power over the state. In such cases there is a very thin dividing line between state and personal investments. For example, it appears that the Gaddafi family has significant control over the state funds invested in the Libyan Investment Authority. These funds may look like they belong to the state but are actually under the effective personal control of a ruler who has captured the state.

State accounts from countries with high levels of corruption and poor transparency should raise a serious red flag for banks, in the same way that the personal accounts of politicians from these countries would. Banks and investment managers should not be able to hide behind the shield of holding 'central bank accounts' or 'sovereign wealth funds' in order to do business with corrupt authoritarian regimes.

A solution to this problem of personal control by dictators over state funds is greater transparency, over both funds held and loans made. This would make it harder for corrupt regimes to keep their people in the dark over state assets. It would also make banks think twice before agreeing to manage funds for countries with poor records on human rights and corruption.

Recommendations
1. Banks and other investment managers should be required to disclose full details of all state assets that they manage.
2. The Bank for International Settlements (BIS) should be required to fully publish the bank and non-bank deposits that are reported to it by central banks (e.g. publish this deposit information by countries from which the deposits are received). This information is not published at the moment. BIS collects this information from all central banks, aggregates it and gives a report stating how much a country has deposited abroad in total, but with no breakdown as to where it is held. This is commercial bank deposit data and private deposit data, not central bank data.
3. Banks should be required to publish details of loans they make to sovereign governments or state-owned companies, including fees and charges. Proposed loans should be published in a timeline fashion so that the parliament of the recipient country has an opportunity to scrutinise the deal.

Country example
In 2006 a Global Witness report revealed how $3 billion of Turkmenistan's gas income was held at Deutsche Bank in Frankfurt under the effective personal control of then dictator President Niyazov.\textsuperscript{35} Deutsche Bank and the German regulator, BaFin, said that concerns about control of the account were unfounded as these were 'state accounts'. However, a former chairman of the Central Bank told Global Witness that Niyazov treated this money as his personal account. The parallels with the Libyan Investment Authority funds, reportedly managed in London by HSBC and under the control of Colonel Gaddafi's son Saif, are clear.

\textsuperscript{35} http://www.globalwitness.org/sites/default/files/pdfs/its_a_gas_april_2006_lowres.pdf
Forests are a public good, from a social, economic and ecological perspective. In many countries they are also publicly owned, and are popularly viewed as the patrimony of a nation state and not simply the property of the government of the day. At the same time, the forest sector is particularly prone to bad governance, as a narrow group of interests dominate policy processes. Forest-rich countries are consequently deprived of valuable revenues from taxation, fees and carbon-based payments for avoided deforestation – in 2002 the World Bank estimated global revenues lost due to illegal logging at over $12 billion annually.

However, the negative consequences are more fundamental: forest use is agreed behind closed doors and without the knowledge or consent of local people. Consultation processes, where they do exist, tend to be between unequal partners – one informed, the other uninformed and with little capacity to negotiate. Resulting management of public forests fails to deliver public needs or pro-poor development goals, but rather facilitates unsustainable forest use and trade in illegal timber. Problems of law enforcement and revenue redistribution are systemic, not the work of ‘rogue elements’. Unless civil society is able to put real pressure on governments to address these weaknesses, positive change is unlikely. There is widespread recognition – not least by the inclusion of a mechanism for Reducing Emissions from Deforestation and Forest Degradation (REDD+) in the UNFCCC – that halting global deforestation is critical in the battle against climate change.

**Goal**

Government embraces transparency and participation through access to information and decision-making in the forest sector; by developing and implementing systems for information management and dissemination; and by establishing protocols for consultation on policy development and free, prior and informed consent regarding forest management or other allocation of land use concessions.

**Justification**

A primary reason for the failure of forest governance is the lack of access to information and decision-making. Reluctance to disclose information on the management of public resources often hides corruption and complicity with illegal activities. If reliable information were in the public domain, civil society could effectively monitor government progress and hold state actors to account. Forests represent sources of rich biodiversity, livelihoods and cultural expression, and provide significant state revenues. Benefits lost through poor resource governance heighten dependency, damage livelihood assets and jeopardise poverty reduction.

Good governance of natural resources is driven by ordinary citizens having an interest in holding governments to account and being equipped to do so. Governments will respond when citizens identify and voice their needs and expectations and exert pressure on policy-makers to implement fair and effective ‘rules’, including instituting legal reforms, tackling criminality and corruption, and engaging with civil society. Policy-makers have an interest in greater participation to improve the sustainability of outcomes: citizens who feel included in policy processes are less likely to resist the rules.

**Recommendations**

1. A consultation protocol should be codified so that interest groups and affected communities know that they will be informed when and how consultation processes will take place in the course of policy formulation, and will know how their contributions will be incorporated.

2. Governments should cooperate with independent assessments of transparency in the forest and related sectors, similar to the Open Budget Index or the Corruption Perceptions Index.

3. Systems for revenue disclosure similar to the Extractive Industries Transparency Initiative (EITI) should be developed, including transparent redistribution of revenue to affected communities and enforceable social responsibility arrangements directly between concessionaires and affected communities.

4. A natural resources charter should be adopted to ensure best practice in concession allocation. This should include free, prior and informed consent from indigenous peoples and other rights-holders. It should also include transparent and accountable criteria-based decisions on allocation, typically through a competitive bidding process. Concession contracts should be publicly available, possibly as an add-on function to EITI.

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**Goal**

Governments do no harm through committing to safeguarding social and environmental values of forests through transparent and participatory monitoring of such safeguards, independent assessments to validate them and implementation of all corrective actions.

**Justification**

Foreign investment in the forest sector, whether through development assistance or private finance, and whether for logs, biofuels or carbon, has a huge significance in aid-dependent countries and those with an economy based on natural resources. It often moves ahead of policy development, as recent land-grab concerns have shown. At the same time, the Rio World Summit on Sustainable Development will celebrate its 20th anniversary in 2012. In 1992 the precautionary principle was enshrined in the Rio Declaration and adopted by 172 governments, yet it is frequently ignored. Since Rio, sustainable development interventions in forestry have generally resulted in widespread deforestation or unsustainable forest degradation and have often caused significant harm to the well-being of forest communities and their local environments. As a result, the environmental crisis is hitting poor people much more than the affluent, while the poor typically have the least influence over development policy design.

Rio presents an opportunity for governments to re-evaluate the accepted thinking on development interventions in the forest sector. Governments should call for an international review on the results of 20 years of forest sector policy reforms, poverty reduction and the sector’s contribution to the MDGs. Using Rio and other precedents, REDD+ has adopted a set of safeguards affecting climate-related forest governance to be ‘promoted and supported’, which governments should implement.

At the same time, credibility and trust in governments has diminished significantly, and there is a growing need for independent participation, assessment and analysis to design policy, generate data and verify claims. A system of accountability, with different actors – from the state, private sector and civil society – holding each other in check, is required.

**Country examples**

A number of tools exist to encourage transparency and participation, among which freedom of information legislation is often an important first step. Brazil has led the work on a publicly accessible system of satellite-based monitoring of forests. Global Witness has been piloting an international Forest Transparency Report Card since 2009, independently assessing governments on the amount, quality and accessibility of information on forest use and management that they publish. Pilot projects operate in Cameroon, Ghana, Liberia and Peru and in addition are planned for Ecuador, Guatemala and the DRC. WRI’s Governance of Forests Initiative has developed broader assessment tools in Brazil, Indonesia and Cameroon. The forest sector has been included in the EITI in Liberia. In 2010 a law on consultation reached the final stages of ratification in Peru. There is a process to develop a natural resources charter for extractive industries, which needs to be adapted for the forest and related sectors. In the REDD+ context, two recent initiatives seek to improve participation in, and shared ownership of, diagnostic tools: UNDP has adopted Participatory Governance Assessments and CARE and other NGOs have developed Climate, Community and Biodiversity Standards to ‘foster multiple-benefit approaches to carbon mitigation projects’.

**More substantial steps**

**Recommendations**

**REDD+ safeguards**

1. REDD+ actions should complement or be consistent with the objectives of national forest programmes and relevant international conventions and agreements.

2. Transparent and effective national forest governance structures should be put in place, taking into account national legislation and sovereignty.

3. The knowledge and rights of indigenous peoples and members of local communities should be respected, by taking into account relevant international obligations, national circumstances and laws.

4. There should be full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities.

5. REDD+ actions should be consistent with the conservation of natural forests and biological diversity. They should not facilitate the conversion of natural forests (for logging and agro-industry), but instead should be used to incentivise the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.

6. Actions should be taken to address the risks of reversals.

7. Actions should be taken to reduce displacement of emissions.
Other best practice actions

1. Environmental and social impact assessments (ESIAs) for forest and related sector projects should be strengthened, such that they include calculations on carbon balance as well as social and environmental safeguards, and that meaningful changes are made to projects where these assessments conclude there is a likely failure to reduce emissions or a threat to safeguards.

2. The EU Forest Law Enforcement, Governance and Trade (FLEGT) programme, and associated Voluntary Partnership Agreements (VPAs) should be adopted; these integrate a developmental and environmental agenda into agreements on legality licensing for timber exported to Europe. The opportunities provided by VPAs to increase openness in forest governance have meant that the agreement often lays the foundation for transformative change in the sector.

3. There should be full financial transparency and independent financial audit of REDD+ funds, which are likely to be considerably larger than development assistance but also to rely on the same political and bureaucratic inefficiencies that currently exist.

4. Independent forest governance monitoring should be undertaken to provide civil society oversight of, and credibility to, government-led assessments of the safeguards.

Country examples

Global Witness has pioneered and has gained unique experience on Independent Forest Monitoring (IFM) in Cambodia, Cameroon, Honduras and Nicaragua. Similar initiatives have been introduced in the Republic of Congo. VPAs have been signed in four countries – Cameroon, Gabon, Ghana and the Republic of Congo. They are at various stages of discussion or negotiation in approximately twenty other countries. The VPAs, as well as the various multilateral REDD+ initiatives, all include independent monitoring in some form, but none them are actually operational yet (Global Witness has no information on current best practice for ESIAs).
Most ambitious steps

**Goal**

Governments seek a new paradigm for forests by committing to the removal of all subsidies to the industrial forestry sector that result in deforestation or forest degradation in natural forests, and instead use their own funds and international development assistance to develop participatory forest management regimes that deliver a wide range of goods and services.

**Justification**

To date, roughly 50% of the world’s forest cover has been deforested and converted to other uses. The remaining 50% is divided between areas that have been degraded (logged) or consist of monoculture plantation (30%), while the remaining 20% is defined as intact natural forests. This proportion of intact forest is rapidly diminishing, yet it is the most biodiverse and carbon-rich form of forest. Demand for timber and agro-industrial plantations severely threaten both the degraded and intact forests. The large-scale, export-oriented logging industry is predominantly interested in the world’s remaining intact forests, and it is this activity that attracts much development finance, despite its very poor track record of delivering economic development. Like other natural resources, forest-rich countries suffer from the ‘resource curse’. Furthermore, the myriad of ecological, carbon storage, genetic, livelihoods and cultural functions that intact natural forests provide to humankind mean that the impacts of forest loss are felt much more deeply, by many more people, than a simple analysis of economic costs and benefits might describe. UNEP has recently estimated that logging costs an additional $42 billion in external costs to local environments that are currently unaccounted for.

REDD+ initiatives could potentially provide the political and financial landscape to support a change away from the ‘timberisation’ of forests. Civil society participation, transparency of financial flows to forested developing countries and genuine good governance of the forest sector should ensure that REDD+ supports the protection of trees rather than becoming a disguised subsidy to an industry structure that sees timber as a commodity, not forests as a basis for life on earth.

**Recommendations**

1. There should be a strategic paradigm shift away from industrial-scale forest conversion (logging and agro-industry) and towards an optimal use scenario, which puts participation at the centre of decision-making.

2. The destruction of the world’s remaining intact forests, even under ‘sustainable forest management’ plans, should not be eligible for development assistance.

3. The efforts of policy development, scientific research and national development strategies should shift towards forest use, which reduces biodiversity loss and carbon emissions and sustains rural livelihoods and economies. The shift and urgency required are commensurate with the shift from fossil fuels to low-carbon energy.

**Country examples**

Although there have been many small-scale initiatives in community forestry enterprise development, they tend to be ‘niche’ activities and there are very few national-level schemes.
13. Land transparency

Contributor: Global Witness

Land is a public good from a human security, economic and environmental perspective. Governance of land, especially at a time of rising global demand for food, fuel, fibre and mineral resources, is becoming increasingly critical. It has been estimated that global food demand will increase by 70% by 2050, requiring net investments in agriculture 50% above current levels. Global large-scale investments in farmland in particular have already begun to escalate: in 2009 investment reached 45 million hectares alone, up from an average annual expansion rate of only 4 million hectares leading up to 2008. In terms of meeting future food needs, 80% of future arable land expansion is predicted to take place in Latin America and Sub-Saharan Africa, however the same regions expect a reduction in available arable land by the end of the 21st century due to climate change and population growth.

This paper uses the term “land related investments” to cover all forms of public and private investments which impact on local peoples access to and control over land. Although agribusiness investments have received significant international attention, large areas of land are routinely allocated for other purposes, such as mineral concessions and economic development zones. The proposals outlined in this document attempt to cover multiple purposes, unless otherwise specified.

In 2010 the World Bank attempted a definitive documentation of trends in farmland deals. Its results were limited by a lack of verifiable data on the location, size, ownership and purpose, but it concluded that 70% of the demand is targeting Africa, especially Ethiopia, Mozambique and Sudan, followed by Latin America and East and Southeast Asia. Of the projects studied, 37% were for food, 21% for industrial or cash crops, and 21% for biofuels. Their median size was 40,000ha, with a quarter involving concessions larger than 200,000ha and only one quarter being less than 10,000ha in size. China, the Gulf States, the UK, US and Russia were listed as the main source countries, however a significant proportion of investment was domestic, and many major source countries are themselves recipients of large scale land acquisitions.

Large-scale land acquisitions by domestic, international, private and public actors are presented by investors and governments as win-win solutions: simultaneously providing local employment opportunities; transfer of technologies to developing countries; and profitable financial returns. In fact, they can lead to significant negative impacts on local access to and control over natural resources, household economies and food security; frequently involve human rights violations; as well as driving deforestation and environmental destruction. Communities affected by such land deals are often unable to hold their governments or business enterprises to account: land acquisitions are agreed in secrecy without their knowledge or consent. Such a lack of mechanisms or political will to ensure transparent, accountable and equitable decision-making and allocation of concessions undermines governance and democratic process. In addition, it fosters an environment where high level corruption between political and business elites prevails, where capture of natural assets becomes the norm, and where investment incentives are stacked against companies willing to do the right thing.

The key challenge is how to balance investments requiring the acquisition of land, with the risks such projects can pose to local livelihoods, governance frameworks, environmental sustainability and climate change related dynamics. Increased responsibility must be taken by States, parastatals and companies making investments, as well as those States and communities on the receiving end. Government-level leadership is required to develop an international norm for the management of land-related investments which ensures they are transparent, accountable, equitable and sustainable.

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Initial steps

**Goal**

Governments (in their role as both regulators of private investment, and initiators of public investment) adopt transparency and accountability as fundamental requirements for land-related investments. This is achieved through strengthening international standards, developing national protocols for consultation, information disclosure and independent multi-stakeholder oversight, in order to ensure all stakeholders are held to account for decision-making relevant to land-related investments.

**Justification**

Effective governance of land and natural resources is critical to ensuring equitable and sustainable economic growth. For resource-rich developing countries, such natural assets provide a one-off opportunity to be harnessed to kick-start the economy and move beyond aid dependency. Unfortunately, while decision making around how land and natural resources should be allocated and to whom continues to be done in secret, these natural assets instead increase the risk of the resource curse. In the face of growing food insecurity it is essential that Government decision-making over allocating land for domestic food production versus allocating it to foreign agribusinesses is transparent and accountable.

Improving governance of land is dependent on ensuring ordinary citizens having the tools to, and an interest in, holding their governments and business enterprises to account. Given timely and accurate information, communities can better understand, get involved in decision-making, and monitor the outcomes of activities which affect their livelihoods. Governments have an interest in greater participation to improve sustainability outcomes: citizens who feel included in policy processes are less likely to resist the rules. Business enterprise actors are incentivised to strive towards best practice safeguards for corporate responsibility when compliance with regulatory frameworks are monitored and sanctions in place. In recognising the critical role which private and public sector investments play in the land and natural resource sectors, international institutions began developing best-practice guidelines for tenure governance of land and natural resources, and principles for how agricultural investments could be done responsibly. Both standards are now being completed under the mandate of the Committee for Food Security (CFS).

**Recommendations**

1. Codify a consultation protocol at the national level which ensures full respect for the rights to free, prior and informed consent for indigenous peoples, as well as ensuring that this principle is extended to all affected communities whose livelihoods depend on land and natural resources. Ensure that through this, interest groups and affected communities are informed, know when and how consultation processes will take place in the course of policy formulation and decision-making, and know how their contributions will be incorporated;

2. Strengthen environmental and social impact assessment frameworks for land related projects, such that they are based on the precautionary principle, include social and environmental safeguards, calculations of broader and cumulative ecosystem impacts (such as carbon balances), and that meaningful risk mitigation strategies are developed and implemented;

3. Develop multi-stakeholder oversight mechanisms that incentivise membership, monitor governments and business enterprises in terms of national legislation as well as international standards, and support the piloting of such a mechanism in least developed countries that are economically dependent on agriculture;

4. Commit to standards for transparency which require business enterprises to publicly disclose investment contracts and other relevant documents (including details of beneficial ownership of companies, impact assessments, evidence of consultation and consent agreed upon with affected communities, management plans and reports from independent third party monitoring of implementation), in a locally accessible and timely format;

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41 The phenomenon by which natural resource wealth often results in poor standards of human development, bad governance, increased corruption and sometimes conflict.

42 The Committee on World Food Security was established in 1974 as an intergovernmental body to serve as a forum in the United Nations System for review and follow-up of policies concerning world food security including production and physical and economic access to food. During 2009 the CFS underwent reform to make it more effective by including a wider group of stakeholders and increasing its ability to promote policies that reduce food insecurity. The vision of the reformed CFS is to be the most inclusive international and intergovernmental platform for all stakeholders to work together to ensure food security and nutrition for all. It will work in a coordinated manner in support of country led processes that lead to food security. Further information can be found here: http://www.fao.org/cfs/cfs-home/en/

43 Defined by Article 15 of the 1992 Rio Declaration as “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” For further details refer to: http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163
5. Nominate independent grievance mechanisms, such as courts, human rights commissions or ombudsman, to which land tenure holders, business enterprises or other key stakeholders may refer complaints and bring actions concerning the non-observance of the conditions of any land-related investments;

6. Ensure that the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests (VGs) and the principles for responsible agricultural investments (the “principles”), being developed under the mandate of the CFS include safeguards and mechanisms to guide governments and business enterprises in how to improve transparency and accountability in the decision-making and management of land and natural resource tenure, in relation to investments. Specifically ensure they:

• reflect the work of the Special Rapporteur on the Right to Food and the Special Rapporteur on Business and Human Rights, and existing international standards for the operations of business enterprises, such as the revised IFC Performance Standards and the ISO 26000 guidance on social responsibility;

• recognise, respect and prioritise the investments in land made by small holder food producers;

7. Implement both the VGs and the principles by ensuring that development partner assistance strategies are consistent with these standards and allocate additional financial assistance towards building the capacity of governments and other stakeholders to support their implementation.

Country examples

A number of tools exist to further transparency, participation and impact assessment methodologies which can help guide national level implementation. Freedom of Information legislation, international human rights frameworks, the convention on biological diversity and others and key starting points. The work of the Special Rapporteur on Business and Human Rights has clarified the responsibilities of the State and Business Enterprises with regard to transparency, participation and accountability, especially within grievance mechanisms. Global Witness is undertaking research to better define what type of information disclosure is needed, when in the decision-making process it should be made available, and who is responsible for disclosing it, as a means to strengthen tools available to local communities to protect their rights affected by large-scale land acquisitions. The VGs and “principles” have the potential to be the first international standard which will provide government consensus on the interpretation of the international human rights frameworks in relation to governance of land and natural resources. However, the extent to which they will be able to fulfil this depends on member state support of such provisions being included during the drafting processes currently underway.
More substantial steps

Goal
Governments harmonise regulatory frameworks for land related investments to ensure they place safeguards for transparency, accountability, equity and environmental sustainability upon business enterprises, government authorities and other stakeholders. Governments commit to addressing incentives which fuel secrecy, enable corruption and undermine governance through a range of national and international policy instruments.

Justification
Unless governments have adequate legislation and rule of law, increasing global demand for food, fuel, fibre and mineral resources, could further undermine governance frameworks. National and local government authorities in many developing countries lack the capacity and resources to safeguard against these risks. Consequently, instability arising from severe food crises, landlessness and land and resource conflicts have focused the attention of policy makers towards land governance. Securing the tenure of land and natural resource ownerships is increasingly viewed as a key national security priority by many G20 governments. Whilst international best practice standards can provide guidance, ultimately national and international regulatory frameworks are required to determine how land is allocated and managed, and to ensure protection of the rights of all stakeholders involved.

Recommendations
1. Develop freely accessible and locally available registries of land which make public the titles, leases and transaction details of large-scale transfers of land and land-related investments at the country level (ideally using internet-based, open source resources);
2. Commit to revising national level regulatory frameworks for the land and natural resources sectors, to ensure alignment and harmonisation with existing international obligations, voluntary commitments and standards, as well as the VGs and the principles;
3. Put in place frameworks for home States to regulate the overseas operations of businesses registered in their jurisdictions and the host State of the country, to ensure relevant obligations and voluntary commitments are respected. Regulation protection against human and legitimate tenure rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies, as well as actors financing or facilitating such land-related investments. Legislate for provisions which terminate concessions or land leases for non-observance of contract conditions;
4. Expand company listing reporting requirements to include details of the environmental and social impact assessments undertaken by business enterprises for potential land-related investments, including evidence through which free, prior and informed consent for the project was granted by affected communities, as well as progress towards implementing mitigation management plans for any identified social or environmental risks;
5. Promote and implement the recommendations made by the Special Rapporteur on the Right to Food to the UN Human Rights Council that locally focused “agro-ecology” food production systems are the model which will most effectively achieve increased productivity, sustainability and contribute to the progressive realization of the human right to adequate food.

Country examples
The World Bank has included the funding of national land registries as a core area of land reform initiatives in countries such as Cambodia. Countries which have taken legislative steps to improve land tenure security and safeguard local rights against irresponsible large scale land acquisitions include Indonesia (in 2009), the Philippines (in 1997) and Botswana. However, local rights are most under threat in countries which often lack the political will to either strengthen or enforce the rule of law. For this reason, recent developments (eg. the work of the Special Rapporteur on Business and Human Rights) to further understanding of extra-territorial obligations of States and Business Enterprises in relation to their overseas investment interests can play a critical role in mitigating risks for local people and the environment. Meanwhile, we can see the potential for international norms eventually becoming law from the progression of the Extractive Industry Transparency Initiative to revenue-transparency reporting requirements being adopted by the U.S. Securities and Exchange Commission (in July 2009).

Goal
Governments undertake reforms to planning, implementation and regulation of land and associated natural resource management to enable decision-making which is long-term, strategic, systematic, holistic and equitable. Governments prioritise capacity building, resource commitments and legislative changes to deliver such reforms.

Justification
Government decision making is frequently short-term, un-strategic, ill-informed, secretive and silo-based. This prevents government agencies fully considering the trade-offs between alternative uses, the cumulative impacts, or the negative externalities of proposed land use changes. It risks undermining progressive initiatives to reform land and natural resource governance implemented at the sectoral-level, as well as having potentially significant negative environmental, socio-economic and governance impacts. The expected outcome of the initial and substantial steps outlined in sections 1 and 2 above is to put in place the regulations and implementation frameworks to enable governments to make land-related investments transparent, accountable, equitable and sustainable. Nevertheless, government leadership through political will, financial and technical resources is still required to ensure that such regulatory changes lead to improved information disclosure and accountability mechanisms on the ground.

Recommendations
A paradigm shift away from short-term and un-strategic decision making on land use changes towards a long-term and optimal use scenario with accountability at its centre. Long-term land and natural resource use plans need to be developed with full participation and engagement of all relevant stakeholders, be fully transparent and the result enshrined in law. External financial assistance (such as that provided through development assistance or REDD strategies) should be dependent on progression towards such reforms.

Country examples
Although many developing countries have long histories of undertaking participatory land and / or natural resource use planning, such processes tend to be localised and lack the legitimacy or mandate to secure tenure effectively. Long term, transparent and comprehensive mineral resource mapping and management has been a key recommendation made by Global Witness for how States can improve the governance of extractive resources. As pressure for investments in land increases, governments need to place the same importance in how they strategically manage this demand on land.
National governments expend from 2 to 8 percent of gross domestic product (GDP) and 2 to 30 percent of central government expenditure (CGE) on the military sector – with the global average hovering at 11 percent of CGE since 2002.\(^45\) The IMF has found that higher levels of military spending (as a percentage of GDP or CGE) correlate positively with corruption, and higher levels of weapons procurement correlate most markedly with corruption.\(^44\)

Access to reliable and relevant data on military expenditure can not only help expose and deter corruption, but also allows scholars and the public to assess and seek to influence a government’s priorities and track changes in the relative level of military expenditure over time, which may indicate how a particular state views its security threats. For instance, rapid increases in military expenditure over a short period of time may be a warning sign of imminent internal or external conflict.

During the Cold War, governments on both sides accommodated some transparency in military spending without apparently compromising their security. Since the end of the East-West divide, the international community has sought to increase openness in the security sector in all regions of the globe in order to build internal and international trust. Even in the area of intelligence budgeting, the part of the security sector that remains most firmly in the dark, several governments have increased openness in recent years without any harm to their national security as a result.

### Initial steps

#### Goal

Governments make accurate information about military spending publicly available in a reasonably detailed and disaggregated form.\(^47\)

#### Justification

The more detailed the information made available to the public, the more protection there is against misuse of funds and the greater is the potential for building trust within and across borders.

#### Recommendations

1. Governments annually publish military budgets, including a breakdown of figures for personnel (disaggregated), procurement, research and development (if applicable), construction, and operations. Information should be included about off-budget expenditure and revenue sources for the military (e.g., industries or natural resource concessions under the control of the armed forces) and foreign assistance flowing directly to defense/security budget lines.

2. Governments specify whether paramilitary forces exist and, if so, whether they are included in the military budget.

3. Governments submit reasonably detailed data to the United Nations via the Standardized Instrument for Reporting Military Expenditures (MilEx).\(^48\)

#### Country examples

The great majority of the world’s countries provide some basic data on military expenditure, in many cases over the Internet as well as in printed official documents.\(^49\) But comprehensiveness, accuracy, detail and accessibility are lacking for most. UN member states agreed to begin submitting data on their military expenditure to the United Nations in 1981. In 2009 and 2010, 20 countries submitted information via a simplified form— including Armenia, Cambodia, El Salvador, Indonesia, Israel, and Lebanon, and another 40 provided data using a more detailed form, including Burkina Faso, Colombia, and Nepal.

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\(^{47}\) The definition of what is included in “military expenditure” varies. The most widely utilized data source for global military expenditure is from Stockholm International Peace Research Institute (SiPRI). SiPRI’s definition includes all current and capital expenditure on: the armed forces, including peacekeeping forces; defence ministries and other government agencies engaged in defence projects; paramilitary forces when judged to be trained, equipped and available for military operations; and military space activities – to include the costs of personnel (military and civil) including retirement pensions and social services for personnel and their families; operations and maintenance; procurement; military-related research and development; military construction; and military aid (in the military expenditures of the donor country).

\(^{48}\) The United Nations provides two sample forms for the submission of data, one simplified and one more detailed and disaggregated. States should fill out the more detailed form. The UN Office for Disarmament Affairs publishes information received a website: http://www.un.org/disarmament/ovarmss/Milex/html/MilexIndex.shtml

\(^{49}\) Only nine countries (Cuba, Equatorial Guinea, Eritrea, Guyana, Myanmar, North Korea, Somalia, Turkmenistan, and Uzbekistan) have not released basic military expenditure data in recent years. http://www.sipri.org/research/armaments/milex/researchissues/measuring_milex
More substantial steps

**Goal**

Transparency, accountability, and oversight procedures that permit citizen engagement in all stages of military budgeting, spending, procurement, and auditing.

**Justification**

A more open military budgeting process allows for democratic participation and provides further protection against misappropriation of funds (corruption) or the misdirection of security forces for political or personal interests.

**Recommendations**

1. Governments publish a detailed legislative proposal for the coming year’s military budget with sufficient lead time to permit open debate and amendment before the budget is finalized.

2. Governments publish all contracts for procurement of military or other equipment over a reasonable threshold (threshold will vary depending on the government’s level of military expenditure). In order to minimize corruption relating to military procurement, governments should maintain a national, publicly accessible database of all major procurement contracts.\(^{50}\)

3. Military spending is subject to an annual independent audit, including all sources of revenue. The audit report should be published and locally accessible.

4. Submit information on weapons holdings and transfers to the United Nations Register on Conventional Arms.

**Country examples**

The UK National Audit Office provides a model information portal on oversight of MOD budgeting, including clear and concise descriptions of the content of various audits and reports.\(^{51}\) India also has a comprehensive military auditing system.\(^{52}\) The UN created a register of conventional weapons holdings and trade in 1991, following the Gulf War. The UN “Transparency in Armaments” initiative invites states to provide data annually on the preceding year’s military holdings, procurement through national production, and arms transfers in an effort to encourage restraint in the production or transfer of arms and to help identify excessive or destabilizing accumulations of weapons. Although participation has flagged somewhat in recent years, since its inception, 173 states have submitted reports to the UN Register on one or more occasions.\(^{53}\)

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\(^{50}\) See, for example, http://www.USAspending.gov and http://www.defense.gov/contracts/


\(^{52}\) http://cgda.nic.in/index.html

Most ambitious steps

Goal
Governments disclose a top-line figure for intelligence spending, as well as information about component intelligence agency budget lines, and establish parliamentary and external oversight bodies to ensure the integrity of expenditures and operations.

Justification
The secretive nature of the work of intelligence services, their recourse to special powers, and their operation at the margins of the law have resulted in most governments shrouding this area of public expenditure in complete secrecy. In the past decade, as global concerns about terrorism have grown, intelligence services have been endowed with ever greater powers of collection and freedom of operation, and they now consume a larger share of public funds. These trends have generated renewed awareness about the need for effective oversight structures – both to ensure that intelligence services conduct their work in compliance with the rule of law and international human rights standards and to protect against corruption concerning this highly secretive and unaccountable sector. Increased budget transparency and the establishment of independent oversight bodies are necessary to provide basic public accountability.

Recommendations
1. Governments publish their overall budget for intelligence, with disaggregated budget lines for different intelligence component agencies or services and/or selected functional activities (e.g., collection, analysis, covert action).
2. Governments create some form of select oversight body and process (executive, legislative, and/or judicial) that monitors the detailed budget and operations of the intelligence agencies.
3. Governments establish an independent oversight body with the powers needed to review effectively the raw intelligence and assess, in some manner, the outputs in order to help ensure against misuse or politicization of the information.

Country examples
In recent years, governments of the UK, Canada, and the Netherlands have published their overall intelligence spending levels, with no apparent or claimed negative security consequences. The Dutch Government furthermore publishes the amount spent on “confidential expenditures” and also notes the percentage of the budget devoted to staff expenses, user allowance, and operational management and task funds. In 2007, the US began reporting the aggregated national intelligence budget figure for the preceding fiscal year, and in October 2010 the Secretary of Defense disclosed the size of the military intelligence program budget for the first time. In February 2011, the US Office of the Director of National Intelligence announced that the US Government was requesting $55 billion in national intelligence budget for fiscal year 2012, marking the first time that the top-line figure has been released publicly before Congress has acted to appropriate the funds. In South Africa, the National Assembly’s Joint Standing Committee on Intelligence oversees the budgets and operations of all intelligence agencies. In the US, a Select Committee on Intelligence in each the House and the Senate set the budget levels and oversee policy behind closed doors.

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56 As required by Public Law 110-53, since 2007 the US Director of National Intelligence discloses the aggregate amount of funds appropriated by Congress for and expended by the National Intelligence Program for the preceding fiscal year within 30 days after the end of the fiscal year. The NIP budget includes only the amount that is not devoted purely to military operations. For fiscal year 2010 that figure was $52.1 billion.
15. National security transparency and accountability

Contributor: Open Society Foundations

No questions are more important to ensuring democratic government and fundamental human rights than those involving decisions about war, peace and protection of a country’s national security. Inherent in this truism, however, is a fundamental tension. On the one hand, democracy and respect for fundamental human rights depend on public access to government information: access to information not only safeguards against abuse by governments, officials and private entities working with them, but also permits the public to play a role in determining the policies of the government. On the other hand, the conduct of diplomacy, military operations and intelligence activities all require some measure of secrecy in order to be effective.

Striking the right balance is made all the more challenging by the fact that courts in most countries demonstrate the greatest deference to the claims of government when national security is invoked. This deference is reinforced by provisions in the security laws of many countries that trigger exceptions to the right to information as well as to ordinary rules of evidence and rights of the accused upon a minimal showing or assertion of a national security risk. A government’s over-invocation of national security concerns can seriously undermine the main institutional safeguards against government abuse: independence of the courts, the rule of law, legislative oversight, media freedom, and open government.

Initial steps

Goal

All public bodies that handle national security information, including the armed forces, ministry of foreign affairs, intelligence and special services, are covered by access to information and proactive disclosure requirements, subject only to specific and limited exceptions approved by the legislature.

Justification

Security sector and other agencies that handle national security information should be covered by access to information laws or other disclosure obligations for at least four reasons:

1. Application of such laws reaffirms both to the entities and the public that security sector agencies, like all public bodies, are subject to the rule of law and democratic accountability.

2. Application of disclosure obligations has led to exposure of wrongdoing, mismanagement and threats to public safety, health and the environment that might not otherwise have come to light.

3. Exceptions in access to information and related laws have proved effective in protecting information that truly does need to remain secret. We are not aware of any instances in which disclosure of information pursuant to an access to information law resulted in harm to national security that exceeded the public interest in knowing the information.

4. Intelligence and security agencies produce a great number of documents that are invaluable to researchers, scholars and the public that do not reveal anything about confidential government actions. For instance, the US Central Intelligence Agency (CIA) holds extensive documents concerning Saddam Hussein’s history of human rights abuses. None of these documents reveal anything about US policies or CIA activities, but they do reveal a great deal of information of public interest about what Saddam Hussein did and what and when the US knew about these abuses.

59 OSF thanks the following organizations for their assistance in developing these sample commitments: Africa Freedom of Information Centre (Africa), American Civil Liberties Union (US), Centre for Applied Legal Studies, Witwatersrand University (South Africa), Centre for National Security Studies (US, international), Centre for Studies on Freedom of Expression and Access to Information (CELE), Palermo University (Argentina, Latin America), Commonwealth Human Rights Initiative (India, Commonwealth), Conectas - Human Rights (Brazil, global south), Egyptian Initiative for Personal Rights (Egypt), Fundar (Mexico), Institute for Information Freedom Development (Russia), Institute for Defense Security and Peace Studies (Indonesia), Institute for Security Studies (Africa), National Security Archive (US, international), Open Democracy Advice Centre (South Africa, southern Africa), OpenTheGovernment.org (US), and Project on Government Oversight (US).
Recommendations

1. States should pass or amend their laws, or the Head of State should issue a decree, to make clear that all public bodies that handle national security information are subject to disclosure requirements. Specific and limited categories of information that must be kept secret to protect the nation’s security – such as identities of sources, and intelligence gathering techniques – may be exempted by statute.

2. The existence of all public bodies, including intelligence entities, should be publicly disclosed, as well as contact numbers, budgets and general powers and authorities of such bodies.

3. States should preserve police, military and intelligence archives, should open them to the public to the extent not inconsistent with protecting legitimate national security interests, and should criminalize the willful destruction or alteration of records unless expressly permitted by law.

4. States should establish bodies to review the decisions of security sector agencies to withhold information. Such oversight bodies should be autonomous, adequately resourced, and equipped with the powers needed to fulfill their mandates.

5. No information should remain classified indefinitely. The presumptive maximum period of secrecy on national security grounds should be established by law and should be subject to extension only in exceptional circumstances and by a decision-maker independent of the initial classifier.

Country examples

India’s Right to Information Act 2005 applies to all branches of the armed forces, the Ministry of Defense, the Coast Guard, the Department of Atomic Energy, nuclear power plants, aeronautics and space research organizations (except the Aviation Research Centre), and state civilian and armed police organizations.60 The Act allows intelligence and security services to be exempted from the law,61 but Parliament can debate any exclusion and force the government to withdraw it. Moreover, all security and intelligence agencies, even those excluded from the purview of the RTI Act, are obliged to disclose information about allegations of corruption and human rights violations committed by their officials and employees.62 In the US, no agency may be entirely exempted from the Freedom of Information Act (FOIA); only “operational files” of intelligence agencies – e.g., informants’ identities, and secret methods of information gathering that would be ineffective if revealed – may be exempted, and only by a statute duly passed by both Houses of Congress.63 For instance, a bill to exempt the operational files of the Defense Intelligence Agency was defeated in 2000 because the bill, if passed, would have shielded the activities of foreign death squads, torturers and other human rights abusers.64 More recently, President Obama ordered that no category of intelligence information may be kept forever secret, and the CIA is now disclosing its highest level President’s briefs from the 1960s. The interagency appeals panel (ISCAP) has ruled in favor of disclosing CIA documents in more than 60% of cases, illustrating the value of an appeals panel that is independent, includes representatives of several agencies, and is adequately resourced. Knowing that files may not be kept secret forever has had a significant positive effect on promoting archival programs and good governance in general.

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60 Right to Information (RTI) Act, sec. 2(h).

61 Sec. 24 of India’s RTI Act provides that the Central Government and any state governments may add any intelligence or security organization to a list of bodies exempted from the Act.

62 RTI Act, Sec. 24(2) and (4) require that “information pertaining to allegations of corruption and human rights violations shall not be excluded.”

63 “Operational files” of several intelligence agencies— including the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office and the National Security Agency—are exempted by statute from the FOIA pursuant to 5 U.S.C. § 552 (b)(3), which exempts materials “specifically exempted from disclosure by statute.”

More substantial steps

Goal
States make public, and do not classify, information about human rights violations, corruption and other serious wrongdoing, including information needed by victims to obtain redress or by prosecutors to bring criminal charges.

Justification
States increasingly are adopting access to information, secrecy and related laws that expressly state that information about human rights violations, corruption or other serious crimes may not be withheld or classified, and must be provided on request. States have adopted mandatory transparency provisions for several reasons: disclosure of such information deters wrongdoing, facilitates accountability, promotes good governance, and helps victims obtain some satisfaction. Moreover, adherence to the principle of open justice is crucial to guard against excessive judicial deference to the executive and to ensure respect for human rights even during periods when vital national interests are under threat. Only in exceptional circumstances may the high public interest in knowing about torture and other serious abuses be overridden, namely, when the state can establish that disclosure of information would pose an identifiable, likely and significant risk of serious harm to a legitimate and important national security interest.

Recommendations
1. States should pass laws that explicitly state that information about human rights violations, corruption or other serious wrongdoing may not be classified or otherwise withheld from the public. Best practice is to disclose such information proactively.
2. States should commit to not invoke national security as a ground for denying information that an individual needs either to establish that he/she was the victim of a human rights violation or is not guilty of a criminal offense.

Country examples
The laws of more than a dozen countries – including Albania, Ecuador, Guatemala, India, Mexico, Peru, Romania, Russia and Uruguay – expressly provide that information about human rights violations, violations of law in general, and/or corruption may not, under any circumstances, be classified or withheld, and some provide that such information must be disclosed proactively.

65 See e.g., R (Binyam Mohamed) v. Secretary of State for Foreign and Commonwealth Affairs (No 4) [2009] 1 WLR 2653 ["BM (No 4)"]; 36; and [Court of Appeal] 131.
66 Mexico’s Federal Transparency and Access to Public Government Information Law 2002 includes a clause in Article 14 that explicitly overrides exceptions when the information is "related to the investigation of a severe violation of fundamental rights or crimes against humanity." Romania’s RTI law provides that “information that favors or conceals the violation of the law by a public authority or institution” cannot be classified and should be disclosed in the public interest. Law no. 544/2001 of the 12th of October 2001 on Free Access to Information of Public Interest, Article 13. Article 7 of the Russian Federal Law on State Secrets states that “It is not allowable to classify information regarding violations of human rights and illegal wrongdoing by state bodies and their officials.” Albania’s Law on Classified Information states that “[c]lassification shall be prohibited when made with the intent of covering up (suppressing) violations of the law, or failures or the ineffectiveness of the state administration; depriving a person, organization or institution of the right of access [to the relevant information]; or preventing or delaying the disclosure of information whose protection is not justified by national security interests.” Sec. 10 of Law No. 8457 of Feb 11, 1999 on Prohibition of Classification.
Most ambitious steps

Goal

Mechanisms exist to ensure that public servants, including members of intelligence services and special forces, are able to report evidence of serious wrongdoing to independent oversight bodies without fear of retaliation; public servants are able to report such evidence to the media and public without fear of criminal punishment; and the media and other members of the public are able to publish and disseminate such reports without fear of punishment.

Justification

Numerous regional and national bodies, from the Council of Europe to more than 20 national governments, are currently reviewing their laws and policies to increase protections for public sector personnel who disclose information that reveals serious wrongdoing. It is increasingly recognized that protections for insiders (sometimes called “whistleblowers”) is a crucial element of any strategy to effectively combat gross misuse of resources and abuse of power, and to ensure that the public has access to information needed to participate meaningfully in policy making as well as to protect against threats to public safety, health and the environment. Moreover, experience shows that the most effective way to deter leaks of classified or otherwise sensitive information is through career incentives and disincentives and pursuit of policies that are recognized as legitimate, not through use of criminal law or penalties directed against public servants. Criminal prosecution of media and other information disseminators for reporting government information is inconsistent with democratic principles and freedom of the press. Genuinely sensitive information is best protected through the use of narrowly defined statutes criminalizing disclosure of clearly defined and limited categories of information whose disclosure would likely cause identifiable and significant harm to national security that is not outweighed by the public interest in knowing such information.

Recommendations

1. Members of the public, including the media, should be able to publish information without fear of criminal prosecution or other official sanction or penalty, in order to safeguard the crucial role of the media and social watchdogs in promoting democratic governance.

2. Public sector personnel, including members of the intelligence services and other security sector agencies, should be authorized, and indeed encouraged, to provide information to oversight bodies of serious wrongdoing, mismanagement, or threats to public safety, health or the environment, without fear of retaliation, so long as they reasonably believe the information to be accurate. Such reports should be properly investigated and appropriate remedial steps taken. Security procedures should be established to enable these disclosures to occur while keeping secret the identity of the whistle-blower as well as, where necessary, the reported information itself.

3. Public sector personnel should not be criminally prosecuted for disclosing to the public information concerning serious wrongdoing, mismanagement, or threats to public safety, health or the environment if they have exhausted internal reporting procedures or if internal reporting would likely be fruitless or subject them to retaliation.

4. Before public sector personnel are subject to sanctions of any sort beyond paid administrative leave for disclosing classified information to the public in violation of any oath, agreement or rule, they first must be afforded full due process rights by law and in practice, including a fair hearing before a body independent of the agency seeking to impose sanctions.

5. No journalist should be compelled to reveal a confidential source or unpublished materials in an investigation concerning unauthorized disclosure of information to the press or public.

Country examples

The European Court of Human Rights ruled in 2008 that the dismissal by the Government of Moldova of an employee in the prosecutor’s office for making disclosures to a newspaper concerning pressure from public officials to dismiss criminal proceedings against police officers constituted an unlawful interference with the employee’s right to impart information. The unauthorized leak could be justified in light of the lack of an alternative, effective remedy; the public interest in and truthfulness of the information, which outweighed any harm caused by the disclosure; and the employee’s good motive.67 During the period 2007-2010, the Parliamentary Assembly of the Council of Europe undertook a study of whistleblower protection regimes in Europe and other parts of the world and adopted a set of principles to serve as a guide to its member States for instituting similar legislation.68 These principles include robust protections for “protected disclosures,” defined to include “all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers.” Governments throughout Europe, the Americas and other parts of the world have started to domesticate and implement many of these principles.

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68 These principles are contained in Resolution No. 1729 of the Parliamentary Assembly of the Council of Europe, available at http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1729.htm, last accessed on August 12, 2011.
Open government data / Opening government

16. Open government data

Contributor: Centre for Internet and Society – India

Openness in relation to information on governmental functioning is a crucial component of democratic governance. There are few things more abhorrent to democracies than a lack of transparency in their functioning, and secrecy in public affairs is generally a sign of autocratic rule. Such transparency is the foundation for the seeking of accountability from those who exercise power over public policy issues and governmental functioning, including not only governments but also large corporations, trade unions, civil society organisations (CSOs), funding agencies and special interest groups. This information would also include all information on private bodies that can be accessed by public authorities.

Transparency helps citizens to independently evaluate governmental functioning and thus hold accountable any instances of corruption or mismanagement, whether at the level of policy formulation or at the level of implementation. Thus, the freedom of speech and expression and the right to receive information, which are seen as two sides of the same right under most international covenants, are both vitally important in ensuring transparent and accountable governance.

Making public information that is produced by the government is slightly different from merely making public information on governmental functioning. While many instances of the former are subsumed within the latter (e.g. information collected by the government), there are also areas where the two categories do not overlap. Openness with respect to government-produced information is part of the right of the public to access any output of taxpayer funding. Thus the category of ‘governmental information’ or ‘governmental data’ can be taken to include information about the government and governmental functioning, as well as information collected and produced by the government.

In addition, there can be two related but independent grounds on which the right of the public to governmental information is often founded. The ‘open government data’ movement – it is now a demand cutting across multiple nations and deserves to be so called – is predicated upon there being a certain degree of transparency in public functioning, notably through the existence of ‘right to information’ or ‘freedom of information’ statutes. Specifically, the open data movement generally understands the public’s right to information to include (1) the proactive disclosure of information; (2) the internet being the primary medium for such disclosure; (3) information being made available for access and for re-use free of charge and; (4) information being made available in a machine-readable format to enable computer-based re-use.

As it would be meaningless to demand the additional components that go to make ‘open government data’ in an environment where the basic right to information does not exist, all recommendations here (including initial steps) presume that such a right exists.

Initial steps

Goal

A commitment by the government to provide proactive disclosure of existing digital data on the web.

Justification

Most governments already rely on computers at least for information storage at most levels even if they often perform information processing and sharing (i.e. conduct governmental transactions whether government-government, government-business, or government-civil society) offline. This information that already exists in a digital form – quite often in the form of text documents and spreadsheets – can and should be made public, based on a narrow negative blacklist. This blacklist should have a list of categories of information that should not be made available because of a narrow set of concerns such as privacy and properly classified state secrets. While this will undoubtedly result in the haphazard release of files that may be difficult to comprehend or use effectively, this is not a reason for keeping data offline and out of public reach. Once a process has been initiated of continually putting data up online, the data and the process can themselves be bettered through more elaborate technological and process-related improvements. Proactive disclosure steps can and should be taken even without the implementation of a robust procedural back-end for information gathering, processing and sharing along with the technology that enables it. While such robust information architecture and back-end infrastructure is certainly desirable, it is not necessary for the immediate online release of files that are already in digital format.

Recommendations

1. The government should create a minimal front-facing infrastructure, in terms of both technology (namely, a website) and human resources (people who are tasked with the responsibility of uploading governmental records, documents, reports and other information).

2. A negative list of information that may not be shared should be drawn up by each public authority so that all other material can be made publicly available immediately, keeping in mind the more general guidelines that exist in national and sub-national policies and laws on the right to information.

3. A timeline should be put in place to ensure that proactive disclosure of existing government information continues to happen on a regular basis, until more rigorous steps are taken towards open government data.
More substantial steps

Goal

All government data is made available, in a form that ensures ease of use and reuse.

Justification

Making government data available online is just the first basic step. All information released requires a proper underpinning in informational policy and technological support to realise full transparency, citizen participation and full social and economic value. Governments should use smarter technologies to ensure that the policy commitment to open government data can be realised in practice. In particular, searchability in the system greatly helps to ensure accessibility for persons with disabilities. Such searchability is often easy when it comes to text, but ends up being more complicated in other areas. For this reason, some of the suggestions on this have been kept for the next section (on proposals for most ambitious steps).

Recommendations

Policy and process

1. An information policy should be formulated that deals comprehensively with best practices with regard to information collection, storage, retrieval and management at the national level, and that allows for the adoption of that policy either with modification or directly by sub-national governments.
   a. Part of this policy must ensure that most new information is either created in a digital form, or is digitised from paper as soon as is practicable, and that later transactions of this information happen, as far as possible, over electronic modes of communication.
   b. This policy must also ensure that as much as electronic receipt of governmental information is seen as a right of citizens, so is non-electronic receipt.

2. A technological policy should be formulated that mandates the use of open standards in all e-governance to promote interoperability and prevent vendor lock-in, with only temporary and limited exceptions.
   a. This must be accompanied by a document on technological architecture (whether called an e-governance interoperability framework (e-GIF) policy, or a national enterprise architecture (NEA)) that lays down the broad parameters of the technology framework to enable the information architecture policy, including the metadata standards.

3. The ability to reuse the published data must be guaranteed as part of a public sector information/open government data policy. This is crucial to enable journalists, CSOs and others.

4. All information must be provided free of cost at least in cases where:
   - The government is not monetising the data, nor has plans to do so; or
   - The data is for use by individuals and small and medium enterprises; or
   - The data is available without any special fees under right to information/freedom of information statutes.

Technology

1. All public authorities must be made to ensure that they use open standards, such as Unicode, prescribed in the e-GIF/NEA. In addition, their data processing and publishing processes must comply with those laid out in these architectural documents.

2. Sector-specific and use-specific metadata must be included in all files and objects made available to the public, so that when they use the services to retrieve objects they can make sense of the objects and manipulate them appropriately.

3. This metadata must be standardised, as this is a crucial requirement to enable easy categorisation and searching of information. An important part of searching through the data is also searching through the full contents of the datasets.
Most ambitious steps

**Goal**

To translate the publishing of open governmental data into better data via input from the public.

**Justification**

Public outreach and citizen-oriented tools are crucial to ensuring a vibrant online and offline public sphere where government data are used and discussed and a feedback loop is created, rather than this being a mere data dump. Using service-oriented architecture will help in ensuring platform independence, better scalability, greater code reuse, higher availability of services, parallel development of different components and many other benefits in terms of provision of data for governments. A robust service-oriented architecture will enable citizens to be treated as yet another client asking for information, and will enable useful application programming interfaces (APIs) to be built that will allow for easy access for power users to the data.

Integration with social media is a must, because it allows governments to reach vast networks of people at once and defray costs. Such integration will allow governments to go where many citizens are, rather than trying to get the citizens to come to them. However, care must be taken to ensure that such integration is done with adequate safeguards for privacy, long-term archival capability and data portability.

**Recommendations**

**Policy and process**

1. The pro-elite bias that is often inherent in online technologies must be actively neutralised through policy. Such a policy must be designed to ensure that there is no elitist capture of the benefits of open government data, and that there is active promotion of ‘offline translation’ of data, especially in technologically divided countries where the gap between those who have access to technology and those who do not is wide.
2. Governments must allow for correction of data by the public.
3. Offline translation of data must be facilitated, especially in technologically poorer countries.

**Technology**

1. Documents should be structured with semantic mark-up, which allows for intelligent querying of the content of the document itself. Before settling upon a domestic usage-specific semantic mark-up schema, well-established XML schemas should be examined for their suitability and should be used wherever appropriate.
2. Multiple forms of access must be provided to the data, and it must be made available interactively through the web for non-technical users. For more advanced users, the data must be available for bulk downloads, and it should also be accessible through well-documented open APIs.
3. There should be a single-point portal (similar to the UK’s Data.gov.uk) to provide access to different public authorities’ data.
4. All data should be Cloud-based to the extent that it ensures lower overheads for the government.
17. Police and public security

Contributor: Open Society Foundations

Initial steps

Across the globe, the primary point of contact most citizens have with their government is a police officer. Competent and honest law enforcement is a mainstay of the rule of law. Insufficient or ineffective investment in the public security sector can result in weak or non-functioning security institutions, unable to respond to or deter crime and violence.

Goal

States make information on budgets, personnel and crime publicly available in a timely and accessible manner.

Justification

Basic information on budgets, line accountability and crime rates is necessary for citizens to assess the costs of policing and distribution of law enforcement resources relative to public safety needs as well as to other spending priorities.70

Recommendations

1. States should publish all laws and regulations setting out police powers (including regulations concerning the private security sectors).
2. States should publish basic budgets and lines of leadership and authority for national police force(s).
3. States should publish basic data on number of personnel (distinguishing sworn officers and administrative staff); number of police officers per capita and by region; names and functions of special units; numbers of officers assigned to each special unit; and weapons and non-lethal equipment assigned to officers.
4. States should publish the number of recorded crimes, breaking out violent crime from property crime, and within violent crime, noting numbers of homicides and rapes and other gender violence.
5. States should publish the arrest rate and clearance rate (rate of handling cases) on an ongoing basis and in a timely and accessible manner.
6. States should provide information to citizens on how to register a complaint against the police (including where and how to file a complaint, protection for whistleblowers, the process for reviewing complaints, time-frames for adjudication).

69 OSF thanks Prof. David Bayley, State University of New York at Albany, and Prof. Hugo Frühling, University of Chile, and Director of the Center for Studies on Public Safety, for their comments

70 Countries organize their police systems in different ways. Most of them have more than one police force—e.g., state police, communal police, municipal police, and/or judicial police. Some also undertake military duties (e.g., gendarmerie), and in some countries military forces supplement police forces in national emergencies (Mexico, Egypt) and/or to help carry out basic police functions (Nigeria). There may also be special police forces or units (e.g. tax and military police). In some countries, the main forces operate at the state and local levels, and national police forces specialize in addressing particular categories of crime (e.g., drug enforcement, immigration and customs enforcement).
More substantial steps

Goal
States disclose more detailed information about budget allocations; cases of misconduct and complaints against police; information about the actors involved in protecting citizens; and disaggregated information on patterns of criminality and justice.

Justification
Publication of information—about the structures and numbers of police personnel, salary scales, seized assets, persons in detention, and measures of core activities of the criminal justice system—is one of the most powerful ways to protect against corruption and mismanagement in police forces, support more informed discussion of operational approaches, and improve public perception of the police.
Care, however, must be taken to avoid perverse incentives, a risk especially when activity measures are set as key performance indicators. Information about patterns of criminality, including distribution and level and rates of crime, allow citizens to assess whether remedial approaches being taken are effective and whether the police are addressing crimes that affect most people, or targeting special interests or groups to their advantage or disadvantage. For instance, if a country’s budget is published revealing high amounts for the police relative to other essential functions, and the numbers of crimes recorded and arrests made are relatively low, then the public is better positioned to raise questions about efficiency and good management, and assess whether the information suggests good policy or, to the contrary, mismanagement and corruption.

Recommendations
1. States should publish information on lines of authority and chains of command so that responsibility is clear.
2. All police personnel—including senior management, district and regional chiefs and patrol officers—should be publicly identifiable (that is, they should be required to wear badges with names or ID numbers clearly visible).
3. Private security personnel should also be clearly identifiable by company name and badge number or name.
4. Basic pay scales, qualifications for entry to the police, recruitment and promotions processes should be public.
5. Data about assets seized by the police (including real estate, cars, weapons, drugs, and cash) should be made public on an ongoing basis, in a timely and accessible manner.
6. States should publish data on complaints against police, both those received directly by police and those made to prosecutors, independent complaint bodies and ombudsmen offices, including reasons for those complaints and their disposition (including rejected, substantiated, mediated, upheld) and all disciplinary actions taken against officers.
7. States should publish information on procurement rules, regulations and procedures. All tenders and major acquisitions should be public, as well as the names of companies winning contracts.
8. Crime data should be further disaggregated by age, sex, ethnic background or nationality, weapon used if any, and region.
9. States should publish data on persons held in police detention, including length of detention, age, sex, ethnic background and nationality, and geographic district.
Most ambitious steps

Goal
States publish national crime statistics and submit datasets and other information to international bodies so that progress can be tracked over time. Information is generated that enables scrutiny of each stage of the criminal justice system from police, prosecutors, courts, corrections and probation departments, as well as coordination among the various stages.

Justification
Timely information about national crime statistics is essential in order to be able to track and address overall trends and sub-trends, and compare criminal patterns across countries. Criminal justice systems include many components that do not work independently and problems frequently arise concerning coordination between various steps of the criminal justice process. Information that tracks the progress of individuals through the criminal justice system is important both to detect and address abuse and corruption and to support development of fairer and more effective policies.

Recommendations
1. States should compile and publish annual victimization surveys/crime reports so that overall trends and sub-trends can be monitored.71
2. States should submit data to the UN Office on Drugs and Crime for the International Crime and Victimization Survey.72
3. States should publish data on the number of people in pre-trial detention, acquitted, and serving sentences in prison.
4. States should make national crime data bases (including victimization surveys) open and accessible to academic researchers and civil society organizations and the general public, and further publication should be permitted without restrictions.
5. Information should also be disclosed in a systematic fashion on-line and made available locally through media and posting at police stations.
6. Data sets should be available online in formats that are easily downloadable in order to facilitate comparison with other government data sets.
7. States should collect and publish detailed information on criminal justice statistics from policing through to probation, including the following:
   - Police data. Basic demographic statistics on the police force and administrative staff, including sex, age group, and ethnic background or nationality.
   - Prosecution statistics. Data covering all steps of decision-making by prosecutors, including initiating and abandoning prosecutions, bringing cases to court, and sanctioning offenders by summary decisions.
   - Detention statistics. Regular data on persons in police custody, in pre-trial detention, and on bail and electronic monitoring, including the legal bases (charges) and length of detention.
   - Judicial (Court) statistics. Integrated systems of data related to all actors in the criminal justice system.
   - Conviction statistics. Data on persons who have been convicted – i.e., found guilty according to law – disaggregated by offence and by sex, age group, and ethnic background or nationality of the offender. 73
   - Corrections. Information on numbers of persons in detention, distinguishing juveniles and women, and type of facility (e.g., high, medium or minimum security), early release decisions, and numbers of persons on probation. Figures should enable analysis of repeat offending and cycling through the criminal justice system.

Governments spend between 15% and 30% of gross domestic product on procurement, notably for essential public services, such as clean water, education and health care. The global procurement market is estimated to exceed $14 trillion. With corruption adding an estimated 20% or more to the cost of procurement, failure to address this problem means a staggering potential financial loss, a disastrous impact on citizens denied adequate public services and distorted competition penalising ethical companies.

Reducing corruption in government procurement requires government, the private sector and civil society action to improve transparency, accountability and integrity. This proposal focuses on essential preventive measures by each stakeholder, including:

1. **Government**: Transparency of government procurement rules and procedures and growing use of technology for information dissemination; accountability through asset disclosure and conflict of interest requirements;
2. **Private sector**: Integrity through requirements for private sector suppliers that prohibit bribery, collusion and fraud; and
3. **Civil society**: Accountability through civil society engagement and oversight.

These proposals draw upon commitments made by the more than 140 parties to the United Nations Convention against Corruption (UNCAC) and to other agreements, including APEC Procurement Transparency Standards, Inter-American Convention against Corruption and the OECD Foreign Bribery Convention.Securing implementation of these recommendations will require a mechanism for regular and public reporting, with input from civil society. This proposal suggests, where possible, drawing on existing mechanisms for reporting progress on the accords enumerated above.

## Initial steps

### Goal

Full implementation into domestic law and regulation of procurement transparency, access to information, asset disclosure and conflict of interest provisions (based on UNCAC, APEC Procurement Transparency Standards and other multilateral accords).

### Justification

Transparency in government procurement helps reduce corruption by permitting public oversight of the use of public funds. It increases the likelihood that public institutions will function fairly, openly and efficiently and according to a clear set of predictable rules and conditions necessary for economic development and fair competition. This will foster economic development and increased foreign direct investment (FDI).

### Recommendations

1. Information relating to procurement procedures and contracts that have been awarded should be made publicly available.
2. Conditions for participation, such as selection and award criteria, should be established and published in advance.
3. Except in cases of national security and law enforcement, information should be made publicly available on the governmental organisation and the functioning and decision-making processes of its public administration.
4. Information should be made publicly available on the revenues and expenditures of each governmental organisation.
5. Officials should abide by conflict of interest policies regarding matters before them and should certify that neither they nor any family member or close associate have any direct or indirect financial interest in that procurement. These certificates should be made available to the public on a central website.
6. Transparency should extend to asset disclosure by high-level officials, such as elected members of the legislature, the top tier of personnel of the executive branch and government ministries and locally elected officials (governors, mayors etc.), as well as those involved at any stage in procurement decision-making.
7. Asset disclosure information should be made publicly available on a timely basis, with investigations of unexplained enrichment.
8. Governments should require bidders to certify as part of the bidding process:
   a. Compliance with all applicable laws and regulations, from bidding through contract execution;
   b. Maintenance of a code of conduct prohibiting fraud, collusion and bribery and protecting whistleblowing by employees, sub-contractors and other third parties;
   c. Adoption of a code of conduct and implementation of ethics training for employees;
   d. Adoption of internal controls for prevention, detection, remediation and sanctions.

### Country examples

In 2007, APEC economies reported on their legal and regulatory implementation of the APEC Transparency Standards, including those relating to government procurement. The APEC Anti-Corruption and Transparency Group has called for reporting of APEC leaders’ and ministers’ commitments on anti-corruption and transparency. Mexico has instituted an online asset disclosure system.
More substantial steps

Goal
Creation of single, countrywide, public, online database providing information about government procurement.

Justification
For citizens to truly monitor how government resources are spent and for suppliers to have fair competition, a wide range of information regarding public procurement should be easily available in a timely manner.

Recommendations
1. Each country should post on a single website available to the public (and not just to suppliers) a searchable database that includes notices of planned procurements, the procurement method used (and the justification for that method), the value of procurements, contracts awarded, names of contractors and, for major projects, sub-contractors, number of procurement challenges, appeals and decisions on procurement challenges and debarred contractors.

Country examples
Many governments, including Mexico, Chile and Korea have posted extensive procurement information online. The United States website, http://www.usaspending.gov, provides comprehensive information on all federal procurements and is searchable by date, type of procurement, name of procuring entity and contractor, type of goods or services procured, etc. The World Bank maintains a website of debarred suppliers and, in cooperation with regional development banks, has agreed to cross-debar suppliers found to have engaged in illicit practices.

Most ambitious steps

Goal
Participation of civil society in monitoring government procurement.

Justification
Civil society can play a significant role in promoting accountability in government procurement, and can contribute an independent and impartial voice to the procurement process. Using civil society to verify that procurement procedures have been followed and to review the application of evaluation criteria and contract awards validates the procurement and lessens the risk of corruption in the process. It also heightens public awareness and trust in the process.

Recommendations
1. All countries should permit independent experts selected by civil society organisations (CSOs) to participate in all stages of government procurements above a certain threshold (which could differ from country to country based on the level of development), including procurement funded by international financial institutions such as the World Bank, and to publish their findings no later than ten working days after the award of the contract.
2. Governments should be responsive to civil society requests for information and resources necessary to perform meaningful oversight and should take corrective action on findings.

Country example
The Government of Mexico has permitted ‘social witnesses,’ appointed by civil society, to participate in procurement proceedings since 2004. Since 2009, participation of a social witness has been mandatory in procurements valued at more than about $23 million. The social witness is required to issue an alert if he/she detects any irregularities in the course of the procurement. At the conclusion of the procurement proceedings, the social witness issues a publicly available statement including observations and, as appropriate, recommendations. The statement is posted on the website of the procuring entity, as well as on the government’s central procurement website and in the file of the tender. In the Philippines, civil society is invited to participate in procurements and has done so in many cases. In addition, the Philippines’ procurement law allows any citizen to file complaints with the local ombudsman if irregularities are detected in a specific public procurement.

19. Right to information

Contributors: Access Info Europe and the Centre for Law and Democracy

Open, participatory and accountable government is contingent on members of the public having access to the largest possible amount of information held by public authorities: it is the right to know what the government knows. Information should be withheld from the public only where absolutely necessary, on the basis of harm to legitimate interests, where there is no overriding public interest in knowing the information.

The right of access to information (right to information or RTI) has been recognised by international human rights tribunals (Inter-American Court of Human Rights and the European Court of Human Rights) and leading international authorities (including all four special mandates on freedom of expression at the UN, the Organization of American States, the Organization for Security and Cooperation in Europe and the African Commission, and the Inter-American Juridical Committee) as being an intrinsic part of the right to freedom of expression.

There are now over 80 countries which have access to information laws, a massive increase from the 13 countries in 1990, but this still leaves well over half of the 192 UN member states without a legal framework ensuring the public’s right to information. Furthermore, in most of the countries that have RTI laws, practice is still mixed, with responsiveness to requests for information being unpredictable and proactive publication practices either poor or patchy. A culture of bureaucratic secrecy prevails in many public administrations and requesters are often asked why they want access to a particular document or piece of information. Exceptions are applied very broadly and timeframes for responding are often not respected. Information is not always provided in the requester’s preferred format and in many countries limits on reuse are imposed by government copyright and other rules restricting reuse of public sector information unless a fee is paid.

All countries, irrespective of their current levels of transparency, should make the commitment to provide effective guarantees of the fundamental right to information. Countries should then commit to move up to the next level on each of the indicators elaborated below. Many countries will not fit neatly into one level and will need to adopt a mix of commitments.

Initial steps

Goal

To ensure a basic right to information for all through a functioning legal mechanism for submitting requests and through proactive publication of core classes of information.

Justification

The right to information is not complete without the freedom to make use of that information to form opinions, call governments to account, participate in decision-making or exercise the right to freedom of expression in any other way. This right of access to information places two key obligations on governments. First, they have an obligation to publish and disseminate to the public key information about what different public bodies are doing. Second, governments have the obligation to receive from the public requests for information and the obligation to respond, either by letting the public view the original documents or to receive copies of documents and information held by public bodies.

Recommendations

1. Legal framework guaranteeing the right to information
   a. The legal framework (constitution/statutory law/jurisprudence) recognises the right to information as a human/civil right.
   b. The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions, calls for a broad interpretation of the RTI law and emphasises the benefits of the right to information.

2. Legal framework for reactive disclosure of information (i.e. requests)
   a. An RTI law is adopted which meets minimum standards for the right to information, including that:
      • Everyone (including non-citizens and legal entities) has the right to file requests for information;
      • The right of access applies to all material held by or on behalf of public authorities and recorded in any format, regardless of who produced it;
      • The right applies to all branches of government and all private bodies performing public functions or that receive significant public funding;
      • Public authorities are required to respond to requests as soon as possible and within a maximum of 20 working days;
      • Filing of requests is free and centrally set fee schedules do not allow public authorities to levy charges that exceed actual costs of reproduction and delivery. Viewing records and receiving electronic copies is free and there are fee waivers for impecunious requesters;
      • Exceptions to the right of access protect interests that are recognised as legitimate under international standards and are subject to a test of a risk of actual harm and a mandatory public interest override. Partial access shall be provided for.
3. Protection
   a. An independent oversight body is established (e.g. an information commissioner) so that:
      • Requesters have the right to lodge an appeal free of charge and without the need for legal assistance;
      • In the appeal process, the government bears the burden of demonstrating that it has not operated in breach of the rules;
      • The oversight body has the mandate and power to perform its functions, including to review classified documents and to inspect the premises of public bodies.
   b. The decisions of the independent oversight body are binding and it has the power to order the disclosure of information.

4. Promotion
   a. Public authorities are required to appoint information officers (and information offices in larger institutions).
   b. Information officers and senior public officials from each public authority are trained on their openness obligations and on procedures for releasing information.
   c. Public information about the rights available is made available in key locations such as on websites and noticeboards and in places where this information is likely to reach a wide public.
   d. There is a commitment to review existing information management systems with a view to improving them in order to be able to answer requests within the timeframes established by the RTI law.

5. Proactive
   a. Public authorities are under a legal obligation to publish core classes of structural, financial and operational information.
   b. This commitment may, with a view to reducing the burden on public authorities, include a timetable for progressive roll-out at different levels of government (central, regional, local), making use of the communication channels available, such as websites or noticeboards.

6. Open government data
   a. Requesters have a right to request information by email whenever public authorities have functioning email systems.
   b. There is a commitment to open government data policies and a clear plan to implement them.
   c. The RTI law includes the right to access information in electronic format and the right to request and access entire datasets (databases) on the same cost basis as other information (i.e. free for electronic access).

7. Measure and evaluate
   a. All public authorities systematically collect data on the number of requests, rates of response, exceptions relied upon and classes of information proactively published.
   b. Public authorities report the information above annually to a central body (for example, an information commissioner), which publishes an annual report summarising this; the annual report is presented formally to parliament and made widely publicly available.

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More substantial steps

Goal
To ensure that the right of access to information is fully developed in the legal framework of the country and works well in practice, that significant volumes of information are published on a proactive basis and that there is effective oversight protection of the right.

Justification
There are significant variations in how the right of access to information is protected by law and respected in practice around the world. Much information is still inaccessible because the scope of access to information laws falls below internationally agreed standards, and because of governments’ unwillingness or failure to publish information proactively. More comprehensive proactive publication of government information is crucial to governments becoming closer to citizens and to increased public awareness and understanding of government policies, programmes and obligations. Enhancing responsiveness and ensuring that the right to information is enforced and protected is essential to ensuring that the public know what their governments are doing and can participate in a meaningful way in decision-making.
Recommendations

1. Legal framework for reactive disclosure of information (i.e. requests)
   a. The RTI law is amended to reflect better practice, for example by:
      • Extending the scope to cover the legislative and judicial branches;
      • Ensuring that the right of access applies to state-owned enterprises (commercial entities that are owned or controlled by the state);
      • Extending the scope of the right to the archives and to classified information;
      • Providing assistance to all requesters who need it, in a timely manner.
   b. The harm and public interest tests are applied rigorously in practice for all exceptions.
   c. The standards in the RTI law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.
   d. Laws that include secrecy provisions are amended/repealed to bring them into line with the RTI law.

2. Protection
   a. The independent oversight body has the power to impose appropriate structural measures on public authorities (e.g. to conduct more training or to engage in better record management).
   b. Sanctions (administrative and/or criminal in nature) may be, and in practice are, imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.
   c. There are legal protections prohibiting the imposition of sanctions (of a criminal, civil, administrative or employment-related nature) on those who, in good faith, release information pursuant to the law.
   d. There are, similarly, legal protections prohibiting the imposition of sanctions on those who release information which discloses wrongdoing (i.e. whistle-blowers), as long as they have acted in the genuine belief that they were exposing wrongdoing.

3. Promotion
   a. Basic training on the right of access to information is provided to all public officials and targeted training is provided to those in relevant positions.
   b. Training is provided to relevant officials in private bodies performing public functions.
   c. Awareness-raising campaigns to inform the public of their right to information are undertaken using multiple media.
   d. Responsibility and resources are allocated to a central body, such as an information commissioner, to promote implementation of the right to information.
   e. Effective information management systems are in place (one indicator of success is the percentage of requests answered within ten working days).

4. Proactive
   a. Public bodies publish an index or register of information held.
   b. All information released pursuant to freedom of information (FOI) requests is released proactively and is accessible via a searchable database.
   c. All laws and other legal rules, in both original and consolidated versions, are made available free of charge in a searchable database.
   d. Key classes of information needed for anti-corruption and accountability, such as contracts and reports on completion of contracts, declarations of assets and expenses data, are published in full (and not just in summary versions).
   e. Public consultations are held to test how relevant proactively published information is and to refine practices accordingly.

5. Open government data
   a. There is a commitment to ensure that all public authorities are online and email-enabled within a fixed period of time.
   b. Core classes of proactively published information are available in open and machine-readable formats.
   c. In order to ensure that government information is reusable, when electronic access is requested information is released in machine-readable and open source formats wherever possible.
   d. Internal regulations and public procurement rules require disclosure-enabling features to be designed into IT systems, including through anticipation of the need to sever information, which is subject to a legitimate exception, such as privacy.
   e. There is a commitment progressively to digitise information not currently held in digital format.

6. Measure and evaluate
   a. All public authorities gather detailed statistics on requests and responses and on proactive publication, and report every six months to the oversight body; these reports are also submitted to parliament and made public.
   b. The oversight body has the power to recommend remedial measures to public authorities.
   c. The oversight body or another body conducts and publishes regular public awareness surveys on RTI.
Most ambitious steps

Goal
To reach maximum standards of openness, including a highly developed proactive publication regime, and fully functioning and effective mechanisms for requests with rapid response times.

Justification
Since 1990 the number of countries with access to information laws has skyrocketed from only 13 to more than 80. Governments with well-established RTI laws and systems already in place should focus on enhancing response times, measures for redress, citizen capacity to understand and exercise their rights, the depth, breadth and timeliness of proactive and reactive disclosures, the public’s ability and freedom to reuse information and the collection of statistics on how government agencies are performing on RTI-related matters.

Recommendations

1. Legal framework for reactive disclosure of information (i.e. requests)
   a. The right is extended to private bodies when the information they hold is necessary for the protection of fundamental rights.
   b. The RTI law is amended to contain an explicit override to exceptions which applies when requested information relates to violations of human rights, crimes against humanity, corruption or abuse of power, or threats to public health or the natural environment.
   c. Other exceptions are narrowly construed in law and applied judiciously in practice, subject to a well-developed public interest test elaborated through guidance from the information commissioner and courts.
   d. Timeframes for responses are reduced so that requests are answered rapidly and in a maximum of ten working days (with an extension possible for complex requests).
   e. Effective internal measures are in place to address problems of access, such as delays, failure to respond, etc. For example, a central government body could be responsible for tracking and monitoring responses to identify problems and proposing solutions.

2. Protection
   a. A system is in place for redressing the problem of public authorities systematically failing to disclose information or underperforming (either through imposing sanctions on them or requiring them to undertake remedial actions).
   b. Comprehensive whistle-blower protections are in place, which are applied in practice.
   c. The grounds for external appeals are broad, including systemic failures, for example relating to proactive publication obligations.
   d. The information commissioner processes appeals and reaches decisions within an average of 30 working days (for countries that currently have significantly longer times for processing appeals, the commitment should be to reduce the current average time by 50%).

3. Promotion
   a. Measurable levels of knowledge among public officials (including in obligated private bodies) are achieved regarding the public’s right to know and proactive publication obligations.
   b. Measurable levels of public awareness about the right to information are achieved.
   c. Education on the right to know is introduced as a subject in school curriculums (for example for children in the 13–16-year age range) and courses on this are widely available at the university level (for example, for law and journalism students).
   d. Significant power and funding is provided to a central body to promote the right to information. This should include a substantial budget for public education and the ability to require public authorities to take measures to address structural problems.

4. Proactive
   a. Real-time updates are provided for core classes of information.
   b. Real-time updates of financial spending information are provided.
   c. National companies’ registers are made available in full, free of charge, in online searchable versions.
   d. Searchable databases of court jurisprudence are available to the public free of charge.
   e. Full use of ICTs, including effective tagging and powerful search engines, is employed to make proactively published information rapidly discoverable.
   f. There is a commitment to move beyond core commitments to make proactively available all information that the public might be interested in, subject only to the regime of exceptions.

5. Open government data
   a. The reuse of information released to the public is not constrained by government copyright or other intellectual property or licensing restrictions; where necessary there is a commitment to abolish government copyright (i.e. copyright on information created by public authorities).
   b. Special arrangements (legal or practical) that permit some public authorities to charge for the raw data produced as part of their core functions are reviewed and repealed; instead, access to such date is provided free of charge, including for purposes of reuse.

6. Measure and evaluate
   a. Quarterly statistics are gathered by the oversight body, and published and sent to parliament.
   b. Public consultations/focus groups are employed to facilitate direct public participation in debate on how to improve government openness, including how to make proactive published information accessible, relevant and comprehensible to the wider public.
   c. Detailed metadata on all requests is published proactively on a regular (e.g. quarterly or monthly) basis in an open data format.
20. Service delivery

Contributor: Twaweza

The delivery of effective education, health and water services is essential to human well-being and spurring economic growth. Governments have expanded investments in these services in recent years, and in many countries today typically one-third of public monies are spent on education, health and water. For citizens, the use of these services provides the most common interface with their governments and the most tangible manifestation of the state–citizen compact, and this experience shapes their sense of trust in and expectations of government.

However, in practice, the value and reliability of basic services are often very poor. Massive investments have not led to achievement of outcomes. Many people, particularly the poor, are forced to fend for themselves as schools go without adequate books, teachers and learning, dispensaries lack medical supplies and trained personnel, and water points cease to function or cost too much. Large disparities among populations persist, further eroding the social fabric and undermining popular aspirations. In the face of these difficulties, local governance and oversight mechanisms tend not to function well, leaving citizens without practical recourse to remedy. Promoting greater transparency and imaginative opportunities for citizen engagement may help trigger better use of public funds, greater responsiveness and improved service delivery.

Initial steps

Goal
Governments make key information on basic service delivery policies, entitlements, budgets and performance meaningfully accessible to all people.

Justification
Most citizens do not know what their basic entitlements and responsibilities are, or the expected performance of service providers, and are therefore unable to follow up, assess value or play their roles effectively. The lack of information also makes it easier for unscrupulous local officials and service providers to divert public resources for illicit gain.

Recommendations
1. Governments should make public citizen entitlements/responsibilities, funds released and actual performance levels related to education, health and water (and any other basic services). The commitment should be specific: e.g. ‘At least 80% of all citizens will be easily able to access this information’.
2. The information should be disaggregated to the lowest level (e.g. ‘x and y services are free for pregnant women, z dollars per student will be sent to each school per student, x out of y students passed the examinations, there are x water points in your ward per population, and y of them are functioning,’ etc.) and presented in a user-friendly (visual) manner so as to be relevant and meaningful to ordinary people.
3. The ‘retail’ popularisation of information can often be best done by professional communication companies or civil society organisations (CSOs); therefore governments should make such information (in raw data) available to these third parties and foster its dissemination to the lowest levels, including through radio, TV, internet (e.g. Facebook) and mobile phone platforms.
4. Governments should commit to post information on public noticeboards at all public schools, dispensaries, water points, libraries and local government offices.
5. Governments should foster easy feedback mechanisms and provide cooperation to independent monitoring efforts that seek to assess the reach and quality (meaningfulness, value) of the public dissemination of information, and should commit to specify and take swift measures to remedy problems.

Country examples
Capitation grant disbursements have been made episodically in Uganda, Kenya and Tanzania. Some countries have created client service charters, but these need to be compiled at the citizen level, rather than for central ministries.
More substantial steps

Goal

Governments make key information on the execution of policies, attainment of results and independent audits meaningfully accessible to all people, and in a manner that allows comparisons.

Justification

In many countries, the key challenge is not the need for better policies, but implementation of existing policies and the translation of funding and inputs into meaningful results. Particular emphasis should be placed on two aspects – procurement and achievement of outcomes – because these areas tend to be rife with problems and/or tend to be neglected, and can often enable tangible citizen engagement. In the information they provide, governments should explicitly disseminate and enable comparisons of different sorts (actual vs. policy; this year vs. previous years, our school vs. other schools, the average monthly salary of a health worker vs. monthly expenditures on travel allowances), because it is in comparing that data achieves meaning. Comparisons also allow citizens (and authorities) to more effectively compare performance, assess value for money and exercise choice and accountability.

Recommendations

1. Governments should commit to tracking and making publicly accessible a specific set of (quantitative and qualitative) measures to assess execution of policies and attainment of progress.

2. The underlying data used to assess progress should be made publicly available, in formats that can be easily crunched by third parties. Information should be provided to the lowest disaggregated facility or community level (e.g. school, health facility, village) and to unit prices (per textbook, per water well constructed), so as to be meaningful and relevant to citizens.

3. The information should be available on user-friendly interactive online platforms that allow users to tailor searches and queries, and in particular to make comparisons across time, geographies, sectors and against policy commitments. In particular, information from different sources should be presented side by side (e.g. administrative data, survey data, reports of the auditor general, reports of the public procurement authorities).

4. Because computer-based internet access, while growing, is still constrained in developing countries, explicit efforts should be made to make information available on public noticeboards and on popular mobile phone platforms and to foster synergies with other mass media (e.g. FM radio) and mass institutions (e.g. faith bodies, fast-moving consumer goods companies).

5. Governments should foster easy feedback mechanisms and provide cooperation to truly independent monitoring efforts that seek to assess execution of public services and quantity/quality of attainment, and should commit to specify and take swift measures to remedy problems. While ad hoc monitoring as need arises can be helpful, establishing systematic monitoring mechanisms that monitor what is happening at the lowest levels, and involving impartial academics and CSOs who produce credible ‘report cards’ to the nation, would be more valuable. Because the quality/integrity of underlying data used by governments can be uneven, independent monitoring should also assess the reliability of data used.

Country examples

Initiatives include Education Public Expenditure Tracking Surveys (PETS) in Uganda and Tanzania, medical stock-outs (Ushahidi, Huduma) in Kenya, data searchable to facility level (UBOS, Uganda), popularising audit reports (various), Data.gov (US, UK) and right to information/government documents surrounding essential services to a very detailed level (Sweden).
Most ambitious steps

Goal
Governments foster wide civil society and direct citizen participation in information sharing, problem solving, innovation and practical accountability so as to improve service delivery.

Justification
The constituency most affected by and often most knowledgeable about the realities, constraints and opportunities regarding service delivery are the millions of citizens and grounded CSOs (including local faith and business groupings), and yet this constituency is often the least consulted or involved in solving persistent service delivery challenges. Creating serious and practical opportunities for citizen involvement may provide a huge untapped reservoir of knowledge and good will, align incentives effectively and create greater trust, all of which are essential to solve service delivery challenges. New technologies and decreasing costs of communication, particularly the mobile phone and fast-growing social media platforms such as Facebook, enable unprecedented avenues for information sharing and demand-driven, contingent collaboration.

Recommendations

1. Governments should establish a set of clear principles, regulations and tools to foster an enabling open environment for the engagement of multiple state and independent actors (including individual citizens) to provide feedback and ideas.
   a. The key here is not only to establish a defined set of activities that are managed or coordinated by government, but rather to set the conditions in which interested parties can access and generate information and ideas easily, undertake their own analyses and communication, innovate new tools (for example, apps) and help catalyse an exciting ‘ecosystem’ of ideas and actions.
   b. The role of governments should be to support third party (or autonomous government) bodies to facilitate such an environment, to encourage easier exchange and critique, to take feedback seriously and respond to it reliably, and to set incentives right within government to tap into new ideas, experiment and rigorously evaluate and adopt them at scale.

2. Funding and awards can be set up to spur innovations and problem solving, and in a manner that allows comparison and rewards those in government who exercise bold leadership.

3. Feedback mechanisms should be set up that are built around what people already use and like (e.g. mobile phones, markets, prayer groups, schools) and multiple opportunities should be provided so as to cater for different tastes and to mitigate against some channels not working.
   a. A critical element of this approach is not only providing data, but documenting and telling (and challenging) stories (or enabling people to tell their stories) of how they have brought about change.

Country examples
Daraja (Tanzania), Huduma (Kenya), social audits, checkmyschool (India, Philippines, etc.), Friends of Education, Apps for Africa, MakerFaire, wananchi.go.tz and numerous developed country examples such as seeclickfix.com or open311.com.
Annex
Annex 1. Guiding principles and emerging best practice

The types of information needed

Public and private bodies engaged in funding and delivering aid, and those who deliver aid on their behalf, should proactively disseminate information on their aid and aid-related activities. They should develop the necessary systems to collect, generate and ensure the automatic and timely disclosure of (at a minimum) information on:

- **Aid policies and procedures**, including clear criteria for the allocation of aid;
- **Aid strategies** at the regional, country and local levels, and at the programmatic, sectoral and project levels;
- **Aid flows** (including financial flows, in-kind aid and administrative costs), including data on aid planned, pledged, committed and disbursed, disaggregated according to internationally agreed schema by region, country, geographic area, sector, (disbursement/delivery) modality and spending agency;
- **Terms of aid**, including aid agreements, contracts and related documents – for example, information on all conditions, prior and agreed actions, benchmarks, triggers and interim evaluation criteria, and details of any decisions to suspend, withdraw or reallocate aid resources;
- **Procurement procedures**, criteria, tenders and decisions, contracts and reporting on contracts, including information about and from contractors and sub-contracting agents;
- **Assessments of aid and aid effectiveness**, including monitoring, evaluation, financial, audit and annual reporting;
- **Integrity procedures**, including corruption risk assessments, declarations of gifts and assets, complaint policies and mechanisms and protection of whistle-blowers;
- **Public participation**: opportunities for public engagement in decision-making and evaluation, consultative/draft documentation, copies of submissions to the consultation processes and reports on how inputs have been taken into account;
- **Access to information**: organisational structure, contact information and disclosure mechanisms and policies.

All aid agencies should ensure that the presumption of disclosure is made in the application of exemptions on aid information. The only restrictions on the proactive publication of this information should be based on limited exceptions consistent with international law and subject to consideration of the public interest in the disclosure of information.

All agencies and organisations engaged in aid should publish and register the types of information that they hold, and wherever possible these should be organised so that all the documents linked to a particular country, programme or project can be identified.

Aid transparency principles

The following four principles should be applied by all public and private bodies engaged in the funding and delivery of aid, including donors, contractors and NGOs.

1. **Information on aid should be published proactively**: Aid agencies and organisations should tell people what they are doing, for whom, when and how.

2. **Information on aid should be comprehensive, timely, accessible and comparable**: The information should be provided in a format that is useful and meaningful.

3. **Everyone can request and receive information on aid processes**: Ensure that everyone is able to access the information as and when they wish.

4. **The right of access to information about aid should be promoted**: Aid agencies and organisations should actively promote this right.

The development of a common standard

Research on the possible benefits of greater aid transparency has found that they fall into two broad categories: (1) efficiency gains (such as reduced administration costs, less duplicate reporting, better planning of aid programmes); and (2) effectiveness gains (such as improvements in services resulting from greater accountability, and microeconomic and macroeconomic improvements from greater predictability).\(^{75}\) A series of less tangible benefits have also been identified: the possibility of enhanced aid allocation, between countries, donors and sectors; better research, monitoring, evaluation and possible impact benchmarking; and supporting a greater willingness to give aid.

Consequently donors have started to invest in building a common standard to get the most out of increases in proactive disclosure of aid information, making it possible to deliver on the potential of greater transparency and yield the greatest efficiency and effectiveness gains that this offers.

A common standard is essential for transforming more information into better information. This makes information mappable, useable and searchable. The principle underlying a common format is that it allows aid agencies to publish once but to use many times – both themselves and for other stakeholders.

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Ensuring that the common standard delivers for everyone

The common standard needs to deliver in a number of crucial areas:

- Organisations need to ensure that the agreed standard is based on and fits with the reality and practice of donors’ and recipient governments’ internal systems – from accounting to project management to monitoring and evaluation systems. Without this grounding in actual practice, there are serious risks that organisations will struggle to disclose to the standard, instead of it making things easier and streamlining information availability.

- The format agreed needs to deliver also on major external reporting formats required from aid agencies such as the Development Assistance Committee (DAC) Creditor Reporting System (DAC CRS), the IMF’s functional classification of government financial statistics and the UN’s Financial Tracking System, in order to ensure that savings of time and resources are attained.

- In the run-up to the next High Level Forum on Aid Effectiveness in Korea in November 2011, it is essential that publishing information in a common standard assists donors to deliver on the Paris Declaration and the Accra Agenda for Action aspirations and commitments. Transparency to recipient governments is closely linked to the Paris alignment targets for aid on budget and predictability. If information is not comparable and timely between donors and aid agencies, coordination conversations that lead to greater harmonisation cannot progress to actual improvements in the division of labour. For highly aid-dependent recipients, discussions of their ownership of the development process remain hollow without usable information on aid. Accountability cannot occur without the ability to identify and track what is happening or not.

- A particularly important area is information comparability – which means ensuring the compatibility of aid data classifications with recipient country accountability and budget systems. Without this element, the Paris agenda is hard to achieve as noted above. More fundamentally, the common standard needs to ensure that the critical link between improving donor aid and building the accountability of recipient governments to their citizens can be made. If recipients do not know what donors are doing, it is hard for them to optimise the use of their own tax resources and to be accountable to their taxpayers. Ensuring that the agreed standard maps to national budgets is a prerequisite for improving use of national resources in highly aid-dependent countries.76

In the medium term, a time-series dataset needs to be constructed to allow for aid information availability country by country and programme by programme. A central premise for such an approach would be collecting information by recipient country, and for centrally allocated sectoral spending by programme. Aid transparency could thus be assessed much more practically, in each recipient country or for each ‘vertical’ programme. This would give a much more powerful analysis and the ability for aid agencies and recipients to learn and change more rapidly, making it possible for accuracy to be monitored both by the aid agencies operating in that country as well as by the citizens of countries receiving aid and citizens of donor countries. This is a large-scale project, depending on the evolution of a common standard, and would need investment.
