

Transparency and the Natural Environment

The efforts made by different social movements to secure for every citizen freedom and access to information has had, thus far, its most efficacious impact on ensuring environmental transparency. In recent decades, most governments around the world, bowing to sustained pressure from civil society organisations, have either legislated on or signed up to a broader universal convention promising access and transparency on environmental matters. These struggles have been varied, and in some instances, the laws enacted come couched with restrictive clauses; notwithstanding this, the struggle for assuring freedom of information has had the added benefit of raising awareness levels, even of those considered illiterate. For the future, as environmental deterioration threatens the very future of the world, what is required is global action that could facilitate the free flow of information across borders and nations.

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It has been a little over 50 years since environmental degradation was acknowledged to have joined the ranks of hunger, poverty, disease, war and injustice as one of the main threats confronting humanity. Since then, the news has been mostly bad; not only has the threat become more severe but new dimensions, like global warming, depletion of the ozone layer, space litter, electronic waste, and genetically modified organisms, have presented themselves as challenges for the future. Environmental degradation has also come to be recognised, along with injustice, as an underlying cause behind much of the hunger, poverty and disease, and also for some of the wars, that afflict the world.

This article attempts to describe the growth of environmental consciousness and its relation with transparency. It describes the current state of legal instrumentalities and traces the evolution of access to environmental information movements and laws and their relationship with more general transparency laws and struggles. It finally lists out some of the environmental areas and issues where access to information is especially critical.

Growth of Environmental Consciousness

The last 150 years has seen an unprecedented growth in human population, rapid changes in human lifestyles and consumption patterns, and growth of technologies that has facilitated an unlimited exploitation of natural resources. As more and more people needed and wanted more and more goods and resources, and also acquired the capacity to extract these from nature, the natural environment began to degrade.

Unfortunately, the process of extraction of natural resources and their conversion into goods for human use also produced by-products that polluted the environment. This started the second cycle of environmental degradation. Finally, as these objects became obsolete or lived out their lives, they were discarded and their "carcasses" became pollutants and caused the third cycle of environmental degradation.

Interestingly, it became obvious almost as soon as environmental concerns were first publicly voiced, that access to environmental information was critical if these concerns were to be addressed. For one, environmental degradation was taking place at a scale impossible to comprehend without aggregated information of the sort

usually available with governments and scientific institutions. Second, many of the pollutants that threatened human health or the environment could not be identified without the sort of scientific instrumentation usually not available to common citizens. Third, adverse environmental effects were often a result of activities that were geographically (and sometimes temporally) far removed from the impact. Therefore, the sources of pollutants flowing down a river were not always obvious to those affected downstream and institutional assistance was required. Similarly, many pollutants (like heavy metals) had long-term effects that only became obvious many years after they were ingested; thus information about the source and nature were not easily discernible by the public.

There is also the paradox that, often people do not even know that they are living in polluted conditions or being poisoned and, consequently, they do not feel the need to seek information till it is too late. Therefore, the government has a responsibility to keep the public informed on environmental matters so they can be alert to threats. However, historically most governments have failed to fulfil this responsibility. The consequent human and environmental disasters have sown the seeds of proactive environmentalism. Also, in the absence of adequate government accountability even after such disasters, it became all the more important for civil society groups to proactively seek out pertinent environmental information. Environmental movements have, consequently, been historically significant in ensuring that a large number of countries today have laws enabling access to information.

Current State of Environmental Transparency

According to David Banisar's global survey, as of May 2004, 57 countries had adopted access to information laws. None of these countries seem to have explicitly excluded access to environmental information and so it can be safely assumed that in all these countries varying degrees of access to environmental information is available. However, in some countries any information, the release of which would adversely affect the environment, has been specifically exempted from disclosure. For example, in Jamaica, "Documents are

exempt from disclosure if they...could be expected to result in damage, destruction, or interference with...endangered species." In Sweden "there are discretionary exemptions to protect...preservation of plant or animal species".¹

In a number of countries, including many that have access to information laws, varying levels of transparency have been provided for in their constitution, in some cases with specific reference to environmental information. In other countries, though there are no general transparency laws, laws specifically allowing access to environmental information operate. There are a few countries that have both general transparency laws and specific access to environmental information laws, or have special provisions for environmental information in their general access to information laws. Apart from national laws and constitutions, public access to information has also been the subject of various international treaties and conventions.

Constitutional clauses: Article 74 of the Colombian constitution (Banisar Survey 2004) states "Every person has a right to access to public documents except in cases established by law" and Article 78 builds on this right by regulating consumer product information. Constitutional access to information usually needs to be supplemented with an enabling information act, which allows citizens to use their rights more effectively. In India, the Supreme Court has held, on more than one occasion, the public right to information is a fundamental right granted under the constitution.² Another example is Albania (Banisar Survey 2004). Article 56 of the Albanian constitution states that "Everyone has the right to be informed of the status of the environment and its protection..." Albania adopted specific access to information laws in 1999. Article 38 of the Croatian constitution provides a right to information to journalists. In the Czech Republic, the 1993 Charter of Fundamental Rights and Freedom provides for a right to information (ibid). In Finland, section 12 of its constitution of 2000 states that documents and recordings in the possession of the authorities are public (ibid). Georgia's constitution includes rights of individuals to complete, objective and timely information on their working and living conditions (ibid). In Peru, article 2 (V) states that all persons have the right to solicit, without disclosing the reason, and receive information from any public entity (ibid). Article 39(1) of the Nigerian constitution includes the right to receive and impart ideas and information without interference as part of the right to freedom of expression.³

Article 41 of Uganda's constitution provides for access to information in the possession of public bodies.⁴ Article III(7) of the 1987 constitution of the Philippines states that the right of the people to information of matters of public concern shall be recognised (Sobotta FOI document). Article 61(1) of the Hungarian constitution gives everyone the right to access and distribute information of public interest (ibid). Article 115 of the Latvian constitution makes it obligatory for the state to provide information about environmental conditions, and article 104 states that everyone has the right to address submissions to state or local government institutions and to receive a materially responsive reply (ibid). The Lithuanian constitution provides access to all information that concerns the citizen (ibid). In Mexico, article 6 of the 1997 constitution says that the right of information is guaranteed by the state (Banisar Survey 2004). In Argentina, sections 41 and 42 of the constitution enshrine the right to environmental and consumer information (Sobotta FOI document). Article 37 of Moldova's constitution provides for the right to "truthful" information on, among other things, the state of the natural environment (Banisar Survey 2004). In the Ukraine, article 50 of the constitution guarantees the right of free access to information about the environmental situation, among other things. In the Netherlands, article 110 of the constitution safeguards the public's right to access information from the government (ibid). In Romania, article 31 of the constitution provides citizens with access to information of public interest (Sobotta FOI document). In Slovakia, article 45 of the constitution states that every one has the right to timely and complete information about the state of the environment and the causes and consequences of its condition (Banisar Survey 2004). Other countries with constitutional provisions for transparency include Belarus, Romania, Brazil, Estonia, Uzbekistan, Tajikistan, South Africa, Poland, Spain, Portugal, Austria, Bulgaria, Belgium, Slovenia, Thailand (ibid), Papua New Guinea, Seychelles, Sierra Leone, Antigua and Barbuda, the Bahamas, Barbados, Botswana, Cameroon, Cyprus, Dominica, Fiji Islands, Grenada, Guyana, Kenya, Kiribati, Lesotho, Malta, Mauritius, Solomon Islands, Sri Lanka, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Tuvalu, Zambia, Ghana, Malawi and Mozambique (HRI document), Macedonia and the Czech Republic (Sobotta FOI document).

Transparency under general access to information laws: Countries with specific

laws on access to information do not always mention the environment outright, but on the whole these laws are broad enough to provide access to information on environmental issues. In Israel, for example, environmental groups are some of the most prolific users of the country's transparency laws. In other countries, like in Moldova, the general access to information law is believed to adequately cover environmental transparency (Banisar Survey 2004).

However, there are other countries where, in their general transparency laws, there is a special mention about access to environmental information. The Armenian law on Freedom of Information specifies that information on the environment that can affect public health cannot be classified. The Access to Public Administration Files Act, of Denmark, requires public authorities to release information if there is a danger to life, health, property or the environment (ibid).

Transparency laws independent of access to information laws: Some countries enact transparency laws specific to the environment, which are parallel to their general laws on transparency. These laws ensure that no aspect of environmental information can be hidden behind any ambiguity in a general law. In Slovakia, the Act on Free Access amended the Environmental Protection Act to provide access to environmental information. The ministry of environment began developing a separate Access to Environmental Information Act, which would eventually supersede the general legislation. The Environmental Register Act in Estonia requires the collection in a database of detailed information regarding the environment including pollution, waste and radioactive waste, genetically modified organisms, natural environmental factors, permits and other materials. The information is public unless its release would endanger public safety, cause environmental damage, or contains intellectual property secrets (ibid). The US implemented the Emergency Planning and Community Right to Know Act in 1986, which committed the government to actively disclose information that would affect the environment and public health, and to annually collect data on releases and transfers of certain toxic chemicals from industrial facilities and report in the Toxic Release Inventory (TRI). In 1990, the US Congress passed the Pollution Prevention Act, which required that additional data on waste management and source reduction to be made available to the public in the TRI.⁵

Access in the absence of general transparency laws: There are some countries that

provide access to environmental information either through laws specifically meant for this or through specific clauses in other non-transparency laws. These countries are different because they do not have any general law providing for transparency in other matters. Brazil, for example, has enacted the Access to Environmental Information Law in 2004.⁶ The Liberian government signed the MoU with a coalition of NGOs, promising transparency in issues concerning Liberia's forestry laws.⁷ The Environmental Impact Assessment Law enacted in China, in 2003, mandates that assessments should be "impartial, open and just".⁸ According to article 55 of the Russian constitution, information related to ecology cannot be classified.⁹ Further, clause 7 of the law "On State Secrets" states that any information pertaining to ecological conditions should be made available to the public and is forbidden from classification.¹⁰ However, none of these countries have a general transparency law.

Environmental arising out of international agreements: Countries that joined the European Union had to implement EU directives on environmental transparency, issued in the 1990s. The countries that have conformed include Greece (1995), United Kingdom (1992), Portugal (2000), Ireland (1992), Austria (1993), Spain (1992), Norway (1998) and Belgium (2000) (Banisar Survey 2004).

The countries that in 1998 signed the Aarhus convention (discussed in greater detail elsewhere) were all members of either the United Nations Economic Commission for Europe or the EU. All the countries that ratified the Aarhus convention enacted transparency laws.¹¹ For instance, France signed the Aarhus convention in June 1998 and ratified and implemented it in July 2002. This included a declaration that, "The French government will see to the dissemination of relevant information for the protection of the environment while, at the same time, ensuring protection of industrial and commercial secrets, with reference to established legal practice applicable in France." Lithuania signed the Aarhus convention in June 1998 and ratified it in 2002. Access to environmental information is based on a 1999 order on public access to environmental information. Tajikistan acceded to the Aarhus convention in June 2001. An Aarhus centre sponsored by the OSCE was opened in Dushanbe in 2003 (Banisar Survey 2004).

The Protocol on Pollutant Release and Transfer Registers¹² was adopted by 36 states and the European community at a meeting of the parties to the Aarhus

convention on May 21, 2003 in Kiev. The protocol was the first legally binding international instrument on pollutant release and transfer registers. Its objective was "to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers..."

Historically, public access to information has been provided for through various types of instrumentalities, including laws, constitutional rights and even international treaties. However, even where the constitution or an international treaty commits a country to transparency, unless there are corresponding and appropriate, enabling laws and related rules and procedures in practice, universal public access to information remains elusive. There are very few countries like the Philippines (Banisar Survey 2004), where there is no freedom of information act per se, but a combination of the constitutional rights and various other legal provisions ensure public access to information.

History of Environmental Transparency

Transparency has become the warcry of environmental groups around the world. In fact, some of the earliest demands for transparency were related to the environment. Even today, environmental movements are voracious users of transparency laws, as can be seen from the many examples in Asia, Europe, North America, South America and, to a more limited extent, in Africa.

Asia

One such instance relates to the controversial Nujiang dam in China. The Chinese government had passed an Environmental Impact Assessment Law in 2003, which stipulated that all projects must undergo an environmental impact assessment before approval, using an "impartial, open and just" process. Accordingly, details of the assessment done on the Nujiang dam were made public, resulting in demonstrations against its construction.¹³ Finally, in 2004 the project was suspended, awaiting a fresh scientific review. Premier Wen Jiabao was quoted as saying that such a controversial large dam plan should be "seriously reviewed and decided scientifically, given the enormous contradictions between both proponents and opponents in terms of environmental protection".¹⁴

In India, among the first examples of a legal demand for the right to information can be found in an intervention filed in

1984 by an NGO called Kalpavriksh, in the Supreme Court, relating to the storage of hazardous chemicals without proper safety regulations. The NGO demanded that the court lay down the right to information as a fundamental right. The Bombay Environment Action Group (BEAG) raised this demand again in the Bombay High Court, in 1986, regarding building by-laws.

Consumer and citizen groups first made the demand for an information disclosure law in Japan in the 1960s.¹⁵ Some years later, in 1977, the Japan Consumers Federation asked for the release of information about the approval of Olt Phenil Phenol (OPP) for use as an additive to food products. OPP was used to prevent the growth of fungus on imported citrus fruits, and at that time a warning had been issued that OPP may contain synthesised bacteria, and could cause cancer. The Japanese Consumer Federation requested test data and locations of the Food Hygiene Investigation Committee meetings so that they could deliver written appeals requesting rejection of the use of OPP. Both requests were denied, and the Japanese people were never told the reasons behind the approval of OPP. Demands for the release of information intensified after the government's tragic decision to keep information regarding the side effects of the drug, thalidomide, secret. A warning about the drug's effect on the unborn foetus had been released in Europe, and European countries immediately began recalling the drug. Japan received the same warning but only recalled the drug ten months later, after newspapers began printing articles about the drug. As a result of this delay, many pregnant women ingested the drug and gave birth to so-called "thalidomide" babies, who suffered from deformities brought on by the drug. Even after this tragedy, the government continued to hide information that would affect public health, as in the case of the chloroquine incident, where the health ministry received information indicating that the use of chloroquine caused retinopathy, yet did not make it public. Such incidents sparked widespread demands for transparency, and disclosure laws began appearing regionally.

The first information disclosure suit concerned application of the Saitama prefecture disclosure regulations. A housewife who lived in Fujimi city filed the suit. On June 1, 1983 (the same day the new information disclosure regulations took effect), she requested examination of the minutes of the Urban Regional Planning Committee of Saitama prefecture. She wanted to learn how the committee had deliberated on the construction of a

garbage incinerator in Fujimi city. The site of the planned garbage incinerator was next to the Katase middle school. The incinerator would be located in the centre of a school zone where a nursery school, two elementary schools, and a high school were located. The smoke from the incinerator contained mercury and dioxins that threatened the health of the children. The petitioner had opposed the building of the incinerator and had submitted her opinion on the issue to Fujimi city. Wanting to know how the committee discussed her opinion letter, she requested for the minutes of the committee's meeting.

The Prefectural Archives Centre, however, rejected her request, citing provisions of the Saitama prefecture administrative information disclosure regulations, with no further explanation. She filed a suit to overturn the centre's decision. The court's decision rendered on June 11, 1984, went in her favour and was the first court judgment in the history of Japan's information disclosure system (*ibid*).

In Israel, the Israel Union for Environmental Defence (IUED)¹⁶ demanded transparency in highway planning as early as 1994. In 2005 they proposed the Clean Air Act that would ensure "increased public transparency of air quality data and mandate release of information regarding industrial polluters and other violators". In May of 2005 the high court of justice ordered the state of Israel to freeze its programme for the privatisation of water, in response to a petition filed by the IUED, which claimed that the state had violated transparency laws enacted in 1998.

Europe

Freedom of information has older roots in parts of Europe, with Sweden passing transparency laws as early as 1766. In Russia, however, the changes in attitude toward the freedom of information are recent, and contrast against the preceding era of secrecy. The case of Alexander Nikitin,¹⁷ a former officer on a Russian submarine and a nuclear safety inspector turned environmentalist, is a good example. Article 55 of Russia's constitution prohibits classification of ecological information. Nikitin took advantage of this article and released information about the radioactive pollution emanating from Russia's Northern Fleet. The Russian government, however, viewed this disclosure as treason and arrested Nikitin in 1996, on charges of espionage. He was acquitted in 1999, because it was clear that he had not broken any laws, the secret information he was accused of revealing was legally public

information so there was no question of espionage. The prosecution's final appeal was denied in 2000. This was an important victory for environmental transparency against a government that has historically been viewed as one of the most paranoid about state secrets. Nikitin was affiliated with an NGO called the Bellona Foundation, which continues to agitate for freedom of information in Russia. In 2003, they filed an official complaint against the ministry of defence,¹⁸ insisting that the ministry declassify information about the radiological accidents and technical failures that took place aboard Soviet submarines between 1961 and 1985. They assert that these accidents resulted in radioactive contamination of the environment, and according to the constitution, Russian citizens have the right to know if their health and safety is in danger.

In a similar trend in Bulgaria, in the 1980s, the NGO Ecoglastnost began to demand information about environmental issues from the communist regime that held power at the time, and their demonstrations and protests eventually helped topple the government. In 1986, the panic triggered by the Chernobyl disaster in Russia strengthened demands for transparency, and the Environment Protection Act was passed in 1991. The NGO Za Zemyata Environmental Association¹⁹ demanded information on various environmental issues in the late 1990s, and after the Access to Public Information Act was passed in July 2000, Ecoglastnost filed several information demands,²⁰ among them information about measurements of noise pollution, and the chemical analyses of water samples taken from the Izvora River. The Green Balkans Association used the Bulgarian Access to Public Information Act to demand the Environment Impact Assessment (EIA) carried out for the construction of the Struma highway.

In Hungary,²¹ the award winning NGO, Danube Circle, significantly contributed to the formation of public demand for access to environmental information through their publicised fight against the building of a system of dams and hydroelectric power plants on the Hungarian-Slovakian riverbed of the Danube. This project involved serious environmental risks. The Clean Air Action Group²² furthered this process when the press campaign it launched in 1993, to arouse public opinion, played an important role in preventing the government from classifying environmental data as state secrets. In 1997, a group of Hungarian citizens exercised their right to know about the state of the environment when they asked

the regional environmental protection inspectorates for the names of companies that had been fined for polluting the environment.²³

In Ukraine, the NGO Ecopravo-Lviv filed a suit, in 1998, challenging the construction of a port facility on the South Bug River to transport fertiliser that would cause the fugitive release of fertiliser chemicals, and jeopardise the river's ecosystem.²⁴ The high arbitration court of Ukraine found that the company was in violation of Ukraine's EIA law, and ruled in favour of Ecopravo-Lviv. The company had not published the impact assessment immediately, and thus had deprived the citizens of Ukraine of their right to be informed and participate in the EIA process.

In Italy, in the late 1990s, the case of Guerra vs Italy revolved around a violation of citizen's right to information that related to the impact of pollution on public health and safety.²⁵ In violation of several laws on human rights and transparency, the state had neglected to inform residents of Manfredonia of the health and environmental risks a chemical factory posed to their community. Further, though the factory had been classified as high risk in 1988, after malfunctions had resulted in the acute arsenic poisoning of 150 people, the emergency procedures developed in case of a repeat of the incident were never made available to residents. The residents subsequently filed a case against the authorities in the European Court of Human Rights, and were awarded compensation.

In March 2001, Friends of the Earth (FoE) forced the Brussels Commission to release the full details of Britain and Gibraltar's compliance with EU Environmental Laws.²⁶ The commission had refused to give FoE the information in an effort to hide Britain's laxity in preserving its natural habitat and dealing with waste and hazardous material disposal. The commission was found guilty of maladministration by the citizen's watchdog, the European Ombudsman, for failing to comply with FoE's demands.

Australia

Australia's federal Freedom of Information Act (FoIA) was enacted in 1982, and after the self-governing Northern Territory adopted its own Freedom of Information act in 2003, all six states and two territories had freedom of information laws. Some of the earliest demands for information under the FoIA concerned environmental issues. For example, in July 1983, Robert Paterson,²⁷ chairman of the Litter Research Association had sought access to

a range of documents relating to submissions by the state of South Australia on beverage container deposit legislations, and by the state of New South Wales on their litter reduction programme. In another case, in November 1984, Jeffrey Angel,²⁸ a member of the Total Environment Centre in Sydney, lodged a request under the FoIA, for information with the department of primary industry. The centre demanded documents pertaining to woodchip production/consumption companies in regard to the Tasmanian woodchip industry, including details about environmental assessment of woodchip and integrated logging schemes, and environmental protection provisions.

More recently, in 1999, documents obtained by Greenpeace, Australia,²⁹ under the FoIA revealed that Southern Pacific Petroleum was determined to mine oil shale in the Great Barrier Reef World Heritage Area, despite recommendations against doing so, because of the significant negative impacts this would have on the environment, by the Great Barrier Reef Marine Park Authority (GBRMPA), the prime minister and the environment minister. The information was acquired through the use of FoIA, and has been widely used to campaign against the development of the oil industry in the region. Greenpeace runs a "Keep the Reef Great – No New Oil" boat tour of the Queensland Coast, in an effort to engage the Queensland public in the campaign to stop the development of the oil shale industry.

North America

One of the interesting examples of the use of the US Freedom of Information Act was during the Love Canal crisis.³⁰ The Love Canal was an unfinished waterway that had once been connected to the Niagara River. It was part of William T Love's aborted 19th century plan to build a navigable waterway for ships to bypass the Niagara Falls. After being abandoned, the unfinished Love Canal was used by the Hooker Chemical Corporation as a chemical disposal site till the early 1950s, after which it was turned into a housing colony. Almost immediately, strange substances began surfacing in the lawns and playgrounds of the colony and residents started suffering from repeated illnesses. Nevertheless, the residents were kept ignorant of the area's noxious history and it was only in 1978 that an article on the history of the site was published in a local paper. It was then that the residents began to suspect that their illnesses were related to leakages from the dumpsite. Fired by this

suspicion, they used the FOI Act to demand information about the chemicals buried under their homes, and the information that emerged caused the Love Canal crisis to be declared a federal emergency. Consequently, Love Canal residents began to agitate for greater transparency in environmental issues, especially in relation to those that affected human health. Their efforts played a significant role in the creation of the Environmental Protection Agency, which was established to supervise environmental regulations in the country.

In Mexico, there is a strong movement among NGOs for accessing environmental information. *Presencia Ciudadana* or Citizen's Presence, and the Mexican Centre of Environmental Law CEMDA (Mexico), PARTICIPA and the Centre for Environment Research and Planning – CIPMA (Chile) have developed, with support from the Interamerican Democracy Network (RID), a project with the goal to encourage a behavioural change of governments and propose legal and institutional reforms in Mexico (and Chile) so as to improve access to information and public participation in environmental issues.³¹ Similarly, in Tijuana, in 2001, grassroots organisations have pushed through a legislation that gives them the right to know what toxic substances are released into their environment from factories that are situated in the US – Mexico border area. Also created is the Toxic Pollutant Release Registry, and federal laws that require companies to comply with the registry.³² Since the Right to Government Information Act came into effect in Mexico in July 2003, the environment and natural resources ministry is one of the federal agencies that has received the highest number of requests.³³

South America

In Brazil, 26 NGOs came together in 2002 to combat deforestation and the related problem of climate change. One of their demands to the Brazilian government, as raised by the research institute IPAM, was greater transparency in the government's calculations of national emission estimates.³⁴ In March 2004, the Brazilian Congress approved, and the president sanctioned, the Brazilian Access to Environmental Information Law, which had first been presented to Congress in 1998.³⁵ Interestingly, Brazil still does not have a general access to information law.

The Centro Austral de Derecho Ambiental (CEADA) won Chile's first ever freedom of information battle in January 2002.³⁶ CEADA had demanded informa-

tion about the location and ownership of farmlands planted with transgenic crops from the Cattle and Agricultural Service (CAS), on behalf of organic farmers and other NGOs. The request had first been made in 1994, and the case was finally resolved when a Santiago court ordered the CAS to release the information demanded.

Again, in June 2003, CEADA, in conjunction with Diego Portales University Public Interest Clinic and the Chilean Organisation of Consumers and Users (ODECU), filed a complaint against the state of Chile before the Inter-American Commission on Human Rights. The petition demanded access to information and public participation regarding issues of biotechnology, bio-safety, and the release of transgenic organisms. The government of Chile had denied their request in violation of the American Convention regarding Freedom of Thought and Expression and the right to participation in public affairs. More recently, in April 2005, CEADA and advocates from E-law won a major victory when the Chilean government decided to close the loophole in the CITES regulations that allowed the export of the endangered alerce trees.³⁷ The move was precipitated by evidence of misuse of CITES, uncovered using the FOI Act of US to gather information concerning import of alerce into the US. The mayor of a small community near Puerte Montt, Chile, was later arrested for his part in the illegal trade.

Two cases demanding environmentally sensitive information were filed in Peru in 1996 (Banisar Survey 2004). The constitutional tribunal, citing the constitution, ordered the ministry of energy and mines to release surveys of a private mining operation to the Peruvian Society of Environmental Rights. In the same year, the Supreme Court supported the Civil Labour Association's demand for the release of an environmental impact study, submitted by the Southern Peru Copper Corporation, and ordered the general director of mining to comply with the request.

Africa

In 1998, in Cape Town, South Africa, the Legal Resources Centre (LRC) filed requests with the ministry of environmental affairs for information about four oil refineries. They asked for information regarding the refining processes and pollutant emissions, in order to initiate negotiations with the refineries to lower their emission levels.³⁸ Though initially denied, LRC eventually received the information they requested. Two years later, the Promotion of Access to Information Act (PAIA) was

passed, and an NGO called the South African Historical Archive used it to access information relating to the use of animals in experiments, and to the breeding, hunting, trapping, transport, import and export of wild animals, and more recently the culling of elephants in the Kruger National Park.³⁹ In 2000-01, the Biowatch Trust used the PAIA to request information regarding GMO permits, risk assessment data, the exact coordinates of field trials and the crops that had been approved for commercial release (among other things).⁴⁰

In Liberia, a historical MoU was signed in May 2004 between the government,⁴¹ represented by the Forest Development Authority, and the NGO coalition of Liberia. The memorandum states that the coalition will be fully involved in reforms of the forest sector, and will be empowered to monitor and verify the implementation of reforms through access to information and full participation in management. The coalition also submitted a draft forest regulation that proposed greater transparency for the public at large, in an attempt to strengthen the implementation of environmental laws.

In some other countries in Africa, like Kenya,⁴² Nigeria,⁴³ Gambia,⁴⁴ Zambia,⁴⁵ and Congo-Brazzaville,⁴⁶ efforts seem to be on, though progress varies, to enact a transparency law. Though Zimbabwe⁴⁷ enacted a freedom of information law in 2002, the law is widely thought to have actually made access to information more difficult!

As would be evident from the examples given above, in many countries requests for environmental information started almost as soon as the access laws became operational. In some countries, notably Mexico, requests for environmental information are among the ones most frequently made. The examples above also indicate the wide variety of environmental issues that attract public attention and regarding which there is public demand for information. Some of the environmental areas and issues where access to information is particularly critical are described below.

Critical Categories of Environmental Information

Transparency and EIA: In many countries (and for most donor and funding agencies) there is a requirement to get prior environmental clearance for projects (and activities) that could have an adverse impact on the environment. These include industrial, power and mining projects, dams, roads, housing colonies, ports, harbours and jetties, and chemical and nuclear storage facilities. The designated regulatory

authorities give environmental clearances usually on the basis of an environment impact assessment (EIA).

Past experience (some of which has been described earlier) dictates that it is critical to conduct EIAs in a transparent manner, proactively sharing data, and details about the process and methods, with concerned people and civil society experts. This is partly because members of the public, especially local residents of affected areas, can often provide valuable local information and put scientific data and trends into perspective. However, it is also important because most often there are powerful commercial and other vested interests supporting the proposed projects and activities. To ensure that social and environmental concerns are not compromised, the processes of decision-making must be transparent and accessible to stakeholders.

Many countries (and agencies) have made it mandatory to have public hearings, with prior distribution of relevant data, as a part of the EIA process. This has proved to be a very important methodology especially in the poorer parts of the world where literacy rates are low and modern methods of communication have not spread.

Transparency and pollution control: It is important to monitor ambient levels of water, air and noise pollution. It is equally important to make these readings public, especially in areas where levels are above the maximum permissible standards. Along with the levels of pollution, it is also important to publicise the possible adverse impact of the pollutants and details of protective measures that people can adopt. Not only would this allow people to protect themselves but would also raise public awareness about pollution and motivate them to demand its control.

It is even more critical to make public details about pollutants emanating from specific sources, like industries, mines, power plants, or other production and service units. In most countries there are laws that regulate point pollution from specific sources, and making emission statistics public would not only help in identifying the violating units but would also build up public pressure, and even market pressure, against them. The *suo motu* publication of pollution statistics, on a daily basis, could be a good way of ensuring regulation through disclosure where a potential polluter desists because there is a constant threat of public disclosure.

Transparency and chemical/nuclear hazards: Where hazardous substances are being used, stored or transported, it is important to inform the public, especially those who might be affected if there is a

leak or an accident, of the nature and location of the substances and their possible impact on human health and the environment. Details of the preventive steps being taken by the government and the preventive, mitigative or curative steps that can be taken by the people must also be communicated. A lesson learnt from the Union Carbide (UCC) gas leak in Bhopal, was that local hospitals and doctors are often unaware of the best way to treat those exposed to specific toxic substances. Such information should be proactively provided to the civil authorities and other concerned government agencies, including to hospitals and doctors.

Transparency and biodiversity conservation: In much of the world the conservation of wild biodiversity is primarily attempted through the setting up of national parks and wildlife protected-areas where human presence is totally prohibited or seriously restricted. Also, the hunting, trapping, injuring or even domesticating of endangered species is regulated or banned under law.

Though these measures are mostly effective, they take a heavy toll on local communities that have historically been dependent on these areas or species. Therefore, it is important that there be prior information and consultation about areas to be closed up or areas and species for which restrictions are to be imposed. The proposal to close up areas or protect species must make clear the scientific basis for doing so and spell out the measures that need to be taken to conserve the site or species.

Many of these protected areas face huge pressures from populations looking for cultivable land, from real estate developers and tourist operators, from hoteliers and even from logging and mining interests. The remoteness of most of these areas and the paucity of staff and resources often makes the task of policing very difficult. To counteract the various commercial pressures and to ensure that the areas are properly managed, it is important to share information with the public, especially the local communities, about the management objectives and the status of each protected area. The disclosure of aerial photographs and remote sensing imagery, showing the extent of deforestation, has in many countries significantly raised public support for conservation measures.

Similarly, many endangered animal species have high commercial value. Protecting these species is only possible with the active participation of local communities and civil society groups, and their involvement requires transparency and the active sharing of information.

Future Directions

As pressure on land and other natural resources grows, so does the opportunity cost of conserving wilderness areas. In this era of liberalisation and globalisation, governments are joining hands with national and multinational commercial interests, often in violation of the spirit of national policies and laws, to open up natural areas and resources for commercial exploitation. The one thing that constrains unlimited access to these resources is public opinion, expressed through the media, through court cases and even through mass public demonstrations. But for public opinion to be effective, people need continuing access to information, and often there is growing pressure to curtail access. Transparency movements around the world would have to ensure that access to environmental information is not compromised.

Environmental and medical sciences are rapidly becoming more sophisticated and complex. If informed and democratic decision-making has to take place, information regarding the environment has to be demystified and made accessible to the people. This, then, is the next challenge facing transparency movements across the world.

Environmental impacts cannot be confined to the political boundaries of nation states. Pollutants from one country often travel to others, activities within a country can affect the environment of another, and the depletion of the ozone layer or changes in climate due to the release of green house gases affect us all. Therefore, in environmental matters, access to information must be global. Yet, there is currently a tendency to focus on national laws. It is the challenge of the future to develop a global protocol that binds all nations to openly share information about the environment with every citizen of the earth. **EPW**

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Notes

- 1 Thefreedominfo.org, Global Survey, 'Freedom of Information and Access to Government Record Laws around the World', David Banisar, May 2004, hereon, Banisar Survey 2004.
- 2 *Social Mobilisation and Transparency: The Indian Experience* by Shekhar Singh, forthcoming.
- 3 http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm#32, hereon, HRI document.
- 4 'Freedom of Information in the European Union and Elsewhere' by Christoph Sobotta, in http://user.uni-frankfurt.de/~sobotta/FOI_Elsewhere.htm, hereon, Sobotta FOI document.
- 5 <http://www.epa.gov/tri/whatis.htm>
- 6 E-LAW Impact: Access to Information in Brazil in <http://www.elaw.org/news/impact/text.asp?id=2519>

- 7 Progress for Liberia Forest Reform, 2004 in <http://www.elaw.org/news/press/text.asp?id=2452>
- 8 The Battle of the Dambusters: Saving China's Virgin Rivers by Xinhua in <http://english.eastday.com/epublish/gb/paper1/1256/class00100006/hwz193248.htm>
- 9 Thomas Nilsen, 1997, 'Constitutional Court Judge: New Law on State Secrets May Violate the Constitution' in <http://www.bellona.no/en/12172.html>
- 10 Rashid Alimov, 2003, 'Bellona Demands Declassification of Accidents Aboard Soviet Submarines' in http://www.bellona.no/en/international/russia/envirorights/info_access/30672.html
- 11 'Convention On Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters', done at Aarhus, Denmark, on June 25, 1998 in <http://www.unece.org/env/pp/documents/cep43e.pdf>
- 12 <http://www.unece.org/env/pp/prtr.htm>
- 13 'The Battle of the Dambusters: Saving China's Virgin Rivers' by Xinhua in <http://english.eastday.com/epublish/gb/paper1/1256/class00100006/hwz193248.htm>
- 14 Ta Kung Pao, Hong Kong, April 1, 2004, in http://www.irn.org/programs/nujiang/index.php?id=0404_takungpao.html
- 15 'Japan's Information Disclosure Law and the Future' by Hiroshi Miyake, in http://www.foi-asia.org/Japan/Conf_keynotespeech.html
- 16 Clean Air Act: Legislative Proposal, May 2005 in <http://www.iued.org.il/page.aspx?pid=65&cid=0&menu=7>
- 17 Strasbourg Court examines Nikitin case, by Jon Gauslaa, 2002, in <http://www.bellona.no/en/international/russia/envirorights/nikitin/26657.html>
- 18 'Bellona Demands Declassification of Accidents Aboard Soviet Submarines' by Rashid Alimov, 2003 in http://www.bellona.no/en/international/russia/envirorights/info_access/30672.html
- 19 'Bulgaria, the Access to Information Programme: Fight for Transparency during Democratic Transition' by Gergana Jouleva, 2002 in <http://www.freedominfo.org/case/bulgaria1.htm>
- 20 *Access to Information Litigation in Bulgaria*, Volume II, *Selected Cases* by Alexander Kashumov and Kiril Terziiski in http://www.aip-bg.org/pdf/aip_court2.pdf
- 21 'The Hungarian-Slovakian Conflict over the Gabčíkovo-Nagymaros Dams: An Analysis' by Heiko Fürst, in <http://www.columbia.edu/cu/sipa/REGIONAL/ECE/vol6no2/furst3.pdf>
- 22 www.levego.hu
- 23 'Recommendation concerning the handling of data pertaining to environmental protection fines levied by Environmental Protection Inspectorates' (778/A/1997), the first three years of the Parliamentary Commissioner for Data Protection and Freedom of Information, Budapest 1998, pp 333-38, available at <http://www.obh.hu>
- 24 'E-Law Impact: Ukraine Lawyers Secure Citizens' Voice in Decisions about the Environment', March 31, 1998 in <http://www.elaw.org/news/impact/text.asp?id=322>
- 25 <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/0/68e9c66dc7a7c911c1256640004c37ef?OpenDocument>
- 26 Campaigners Claim Victory in Battle for EU 'Transparency' by Geoff Meade, PA News in <http://www.elaw.org/news/ebulletin/text.asp?id=392>
- 27 'Re: Ribert Paterson (No 2) and Department of Arts, Heritage and Environment' (formerly department of home affairs and environment) No N 85/927 Freedom of Information in <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/aat/unrep2050.html?query=environment>
- 28 'Re: Jeffrey Samuel Angel and Department of Arts, Heritage and Environment': HC Sleight Resources and the State of Tasmania No. N85/121 Freedom of Information in <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/aat/unrep2089.html?query=angel>
- 29 Oil companies determined to mine Reef World Heritage area in http://www.greenpeace.org.au/media/climate_details.php?site_id=12&news_id=273
- 30 Ecumenical Task Force of the Niagara Frontier, Love Canal Collection in <http://ublib.buffalo.edu/libraries/projects/lovecanal/>
- 31 <http://www.presenciaciudadana.org.mx/english/english.htm>
- 32 E-Law Impact: 'Right-to-Know' Takes Hold in México, May 2002 in <http://www.elaw.org/news/impact/text.asp?id=1191>
- 33 'The Mexican Transparency Law: Design and Implementation Experiences' by Commissioner Juan Pablo Guerrero Amparan, Federal Institute for Access to Public Information (IFAI), Mexico, 2005, presented at the conference on 'Effective Implementation: Preparing to Operationalise the Right to Information Act 2005', May 24-26, 2005, New Delhi.
- 34 Brazilian NGOs establish network to influence climate change policies, by Lars Otto Naess and Ane Schjolden, Cicerone, 2002 in <http://www.cicerone.uio.no/cicerone/02/4/brazilian.asp>
- 35 'E-Law Impact: Access to Information in Brazil' in <http://www.elaw.org/news/impact/text.asp?id=2519>
- 36 'E-Law Partners in the News: Chilean Activists Win Freedom of Information Case' in <http://www.elaw.org/news/partners/text.asp?id=2074>
- 37 'Chile Drops Reservation to CITES Trade Ban on Endangered Trees' in <http://www.ens-newswire.com/ens/apr2005/2005-04-12-03.asp>
- 38 'E-Law Impact: Exercising South Africa's New Constitution to Reduce Pollution' in <http://www.elaw.org/news/impact/text.asp?id=318>
- 39 http://www.wits.ac.za/saha/programmes/foip_04.htm
- 40 Draft of Annual Report of the South African Human Rights Commission to Parliament (PAIA Unit) 09/03/04 - 08/03/05
- 41 'Progress for Liberia Forest Reform, 2004' in <http://www.elaw.org/news/press/text.asp?id=2452>
- 42 'Catholic Information Service for Africa' in <http://www.spinwatch.org/modules.php?name=News&file=article&sid=1036>
- 43 'Forum on Information Bill Holds Today' from 'This Day', Lagos, May 24, 2005, in <http://allafrica.com/stories/200505240628.html>
- 44 'Gambian Opposition Party Alliance Launched' from *Gambia Daily News*, Banjul, June 2, 2005, in <http://allafrica.com/stories/200506020027.html>
- 45 'Sata Accuses Mwaanga of Introducing Bad Media Laws' from *The Post*, Lusaka, May 30, 2005 in <http://allafrica.com/stories/200505311014.html>
- 46 'JED Launches Transparency Campaign' from 'The International Freedom of Expression Exchange Clearinghouse', Toronto, May 15, 2005 in <http://allafrica.com/stories/200505160609.html>
- 47 'Mugabe Signs Repressive Media Bill into Law', March 16, 2002 in <http://allafrica.com/stories/200203160002.html>