

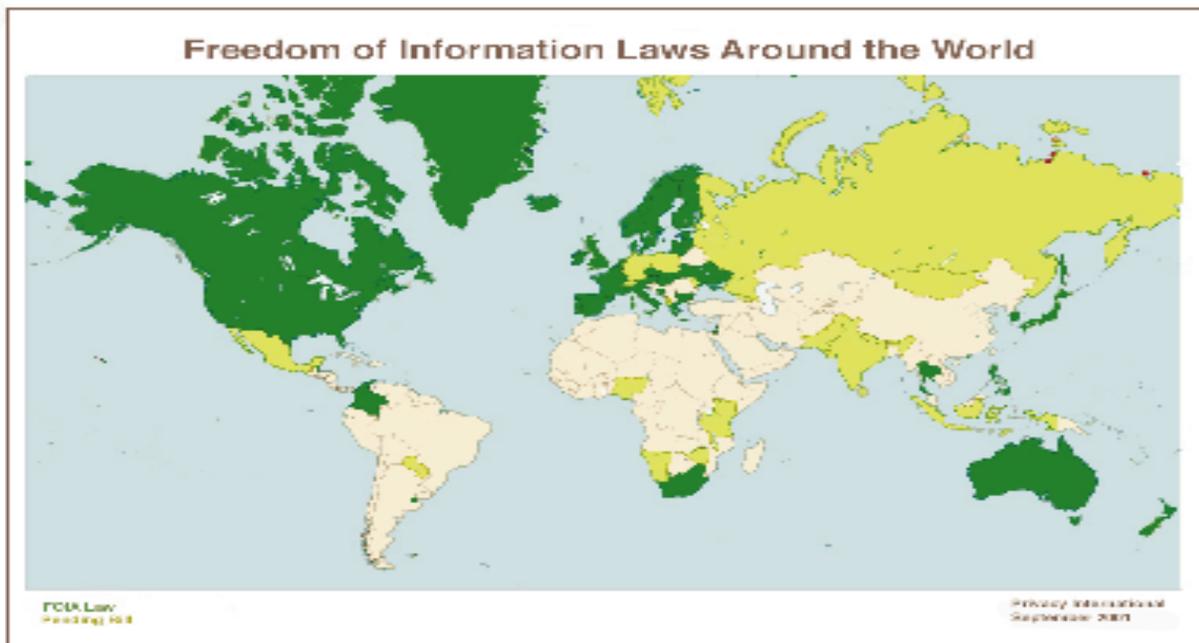
Increasing Information Access to Improve Political Accountability & Participation Mapping Future Actions in Asia Pacific

Dr. Gopakumar Krishnan, Public Affairs Centre, Bangalore

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

-- James Madison

Picture this...



Green/Dark areas represent countries enabled with Freedom of Information Laws. Yellow/Lightly shaded areas represent countries where laws are pending. Copyright Privacy International, September 2001.

The above depiction very vividly portrays the status of a very fundamental Right in democracy - **The Freedom (to) or Right (of) Information**. It is also interesting to note that the access to this highly enabling and empowering provision of democratic citizenship very often coincides with enclaves of economic prosperity and best profiles of good governance. The centrality of Information in facilitating, promoting and sustaining the core principles of democracy cannot be better illustrated.

Since the early nineties, academic interest and activist movements on this theme has gained tremendous momentum. Today, one can showcase an interesting and inspiring spectrum of models and initiatives that have used the key defining principles of this theme, either overtly in the form of legal provisions or subtly in the form of strategic campaigns.

This discussion paper builds on to an unique and concerted effort launched by the UNDP in association with Transparency International, the Organization for Economic Cooperation and Development (OECD) and the Asian Development Bank (ADB), with support from the UK Department for International Development (UK DfiD). This effort basically aims to provide a forum to share good practices and ideas to improve political accountability and transparency through access to information. Key lessons and learnings emanating from this initiative will be shared and discussed at a regional workshop organized under the auspices of the 10th International Anti Corruption Conference, to be held at Prague during October 7-11, 2001.

As a precursor to this workshop, an e-discussion was organized during the months of August and September 2001 to prepare the groundwork for analyzing the concepts of "access to information" and how it improves accountability and transparency. This discussion paper heavily draws upon these e-discussions. However, to sharpen the action component, selective secondary information has also been included, especially well-documented and authenticated cases and good practices. Subsequent sections in this paper are presented through three sections: **Section I** delineates some of the conceptual under pinning and definitional issues associated with the concept of 'access to information'. **Section II** provides a snapshot of the successful strategies and enabling experiences; the emphasis here would be flag up a wide range of approaches which have used either, the legal provisions associated with an Access to Information Act or, have creatively synergised public participation and civic engagement techniques to place critical information in the public domain. **Section III** will explore the terrain for future actions. As a companion resource kit to this discussion paper, two short annexes are attached. **Annex I** map out the status of the legal provisions associated with access to information in certain select countries in the region. **Annex II** documents a sample of a good Right to Information Act.

Section I: Conceptual Foundations & Definitional Issues

"While transparency and openness are in and of themselves desirable, the use of access to information is not neutral. It is an extremely powerful ideal/issue/process/tool. The "who frames" and the "what" of the questions asked, determine the defining of its contours"- Nikhil Dey of MKSS

The strategic contours of 'access to information' can be located within all contemporary discourses on good governance. At the core of these debates, lie the exalted triad of accountability, transparency and participation. Or, in short, the very basic tenets of democracy. As Dey observes:

Rooting out inefficiency and corruption is viewed as the principal objective of openness and transparency in government. Access to information renders the processes of government more open and makes those in power more accountable to their people. Transparency in government ensures that citizens' interests are pursued and protected by those in power. Access to information is extremely important to the control of corruption but equally important for "controlling the arbitrary exercise of power." This broader understanding allows access to information to be seen by citizens as a critical opening to their participation in democratic governance where they can not just ask questions but also have their opinions heard. Empowerment and participation will help ensure the involvement of ordinary people in decisions that affect their lives and enable them to build their strengths and assets.

Robert Klitgaard has provided an interesting equation to explain corruption; Corruption (C) = Monopoly (M)+Discretion (D) - Transparency (T). Klitgaard's simple arithmetic amplifies its distortionary and destructive potential in the umpteen cases of scams and scandals that inundate the public spaces. Secrecy, as repeatedly underscored by history, breeds corruption and violation of human rights. Control of information in the hands of a powerful few has led to marginalisation of vast majorities of the population who have been bypassed by the trajectories of development and governance. In this highly disabling environment, access to information translates into a powerful tool for ensuring good governance and the protection of human rights.

The Problem of Definition

History is replete with instances of many good concepts been weakened by the elasticity of definitional parameters and the concomitant blurring of focus. The case is well founded in the context of a highly potent anti-corruption instrument like 'access to information'. Commonly agreed upon conceptual signposts and modalities give operational strategies a much needed legitimacy and precision.

What does 'Access to Information' mean? A noted activist responds:

"Access to information is the ability citizens to obtain information about the past, present and future activities of the state. The phrase "freedom of

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

information" is also widely used when referring to the ability of individuals to gain access to information in the possession of the state. Access to information is fundamentally about the quality of information available from the state, not the quantity. It has been argued that access to information is an essential element of democratic government. That is, for democracy to flourish, citizens must be adequately informed about the operations and policies of their government (Nikhil Dey)"

Interestingly, the basic premise of all existing debates on the issue of right to information hinges around the transactions between the state and the citizens. Or, how the abusive discretion of a monopoly state can be controlled and contested by `voices' of an informed citizenry. However, Dey strongly argues for widening the ambit:

" The definition and scope of access to information should not be limited to the State. There are many non-state actors who are at least as powerful and their decisions have as much of an impact on people's lives as the State does. They also deal with public funds and their spheres of operations have a direct bearing on public interests. For instance- NGO's, political parties' trade unions etc., companies and corporations, multi-nationals, service institutions like hospitals, international institutions, and international financial institutions. This has been a major bone of contention with the governments (State and Central)and their various drafts in the country, where all non-state actors have been left out of the purview of the acts. The argument given is that the State would be in a position to access the requisite information and provide it to the citizen. However, this argument we believe has been rightly contested because of the collusion that exists between the State and non-state actors, and therefore we believe that both avenues should be open to citizens where they can access information directly from the organization concerned or through organs of the State.

It is a fact that most legislation on access to information covers only state entities. They leave out of their ambit critical non-state entities like NGOs, trans-national corporations, funding agencies and professional bodies. This is a glaring lacuna. As the world gets increasingly enmeshed, global actors are playing an increasingly active role in local economies and societies. The current range of polemical themes like bio-piracy, genomes, transgenic crops, hazardous dumping etc., need to be covered under the rubric of `access to information for any effective check and balance to function.

Dey also points to the need for a wider debate on the different "perspectives" of access to information. He points out that the concept means different things to different sets of people depending on their specific and broad objectives. It would be useful to start examining some of those differences and what the implications are.

Section II: Effective Strategies & Enabling Ideas

Despite the fact that the regional map profiling the implementation of effective access to information legislation presents a distressing scenario, there exist powerful ripples of innovative examples. Though most of these examples are context specific, the potency for effective cross-fertilization of ideas across borders remains high. Before we start assembling the cases, it may be worthwhile to briefly explore some nuances of an enabling environment as essential facilitatory catalysts.

Political commitment & Genuine intent: A formally democratic political system may not be a sufficient condition for openness and transparency in government. It is further necessary that those in power be willing to keep their citizens informed of what is happening. It must be understood that the exercise of this right will have to be taken. It is most often likely that when it is 'given' from above, it will be more symbolic than real. Also often arguments are given of open access leading to inefficiency and political instability- however the opposite is true.

Autonomy of Legal System: If access to information legislation is to be enacted and successfully implemented, there must be an independent judiciary. An independent judiciary may be more likely to make decisions that appear to go counter to government interests.

Infrastructure: There is both a personal and a state dimension. In relation to the individual, this involves aspects of personal development, most particularly, literacy. In terms of the state, a physical infrastructure needs to be established and maintained for travel and telecommunications. Effective library services within the context of information, accurate data collection, storage and publication are imperative.

Role of Media: The state of professionalism, ownership and financial health of a country's working press/media are critical contextual enablers. A sensationalizing and irresponsible media can be conduits of misinformation and mass manipulation.

A Menu of Strategies

Contributions to the e-discussions wove an interesting tapestry of regional initiatives and practices. To give these enabling ideas a coherent framework, it is proposed to organize and discuss the cases under two broad themes. **Theme A** will address the phenomenon of petty or retail corruption and attempts to chart out cases linking access to information to challenging the discretionary abuses of the state. **Theme B** focuses on 'grand' corruption and the listed examples explore how access to information measure up to political accountability and transparency.

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

A. Challenging Discretionary Abuses of the State

Handbooks on Government Services

A simple and effective way to place vital information on the general functioning of the state is to bring out handbooks on public services. A good lead in this regard can be located within the experiences of the Fellowship of Christians in Government (FOCIG) in Philippines. Since 1999, FOCIG has been in the forefront of disseminating government information to the public through Handbooks. A good example is the Basic Handbook of Government Standard Operating Procedures (GSOP) of 12 government agencies which have a large public interface like the Bureau of Trade Regulation & Consumer Protection, Bureau of Internal Revenue, Social Security System and the Local Civil registry Office. The handbooks are planned to be distributed widely in both English and Vernacular versions. FOCIG also runs a weekly radio program called Inter-Aksyon which features high-ranking officials of various agencies answering phone-in questions.

Strengthening Public Accountability through Public Feedback

Information barriers and asymmetry are often quoted as major contributing factors to the wide spread prevalence of systemic corruption. The situation is acute in the interface between monopoly services provided by the government and the service recipients (citizens). Where exit options do not exist, 'voice' mechanisms become the only viable and potent avenue to facilitate better response and demand more accountability. The Report Cards used by Public Affairs Centre, Bangalore and Transparency International Bangladesh confirm the value and potency of public feedback mechanisms both to enable citizens to signal service providers about their performance and to stimulate the latter to respond to these signals. A unique feature of the Report Card is the way in which it focuses attention on **corruption**, a phenomenon that has always been difficult to pinpoint and quantify. Getting the givers of bribes to identify the agencies involved achieves a measure of specificity and credibility. Comparison between agencies, locations, etc., attracts public attention and reflects the harsh glare of public scrutiny on the agencies. The Report Card on corruption gives organized citizen groups the kind of information they need to seek reform in specific agencies and to demand greater public accountability

Participatory Budgeting Processes

Increased citizen involvement in budgetary processes is an effective strategy to curb corruption and increase public accountability. When an active citizenry starts questioning and scrutinizing the budget provisions, accountability is bound to follow. Towards this end, there is no need for legislation. All it requires is collective committed action. Good case studies and examples of this can be found at the website of The International Budget Project (<http://www.internationalbudget.org/>).

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

E-Governance to Improve Accountability at the Cutting Edges

A new and promising set of tools, pulled under the rubric of e-governance, was highlighted by B. Shadrach from the Loughborough University. These initiatives show much promise in translating into an information-led anti-corruption strategy. There exist a good spectrum of regional initiatives which highlight the potency of this new tool. Some outstanding cases are quoted below:

- ▶▶ National ID system in Egypt which constitutes a comprehensive national database and aims to be the essential building block in the creation of public service planning and service delivery at the national level.
- ▶▶ The Info-Village project of MS Swaminathan Foundation in India which employs convergent technologies to create locale specific knowledge systems. Seeing the potential of this intervention, government authorities are willing to participate by providing government data.
- ▶▶ The Online Procedures Enhancement for Civil Applications (OPEN) system in metropolitan Seoul in South Korea is yet another excellent example of using IT for bringing in more responsive and transparent governance. OPEN provides a wonderful mode to inform the public and also enable them to monitor the status of a variety of procedures like applications for permits and licenses.
- ▶▶ The Gyandoot Program in Madhya Pradesh, India is yet another example of effective decentralized governance using IT enabled strategies.

These examples of ICT applications are easy to replicate and adaptable for any local context. However, to institutionalize and strengthen this process, a three-fold approach is necessary:

- A. Automating the existing laborious process of gathering, generating and disseminating the information meant for public consumption.
- B. Supporting the current process of using information for decision making through e-governance applications. A collaborative approach between and within government departments, between NGOs/citizens and government.
- C. Creating Information and Communication Technology (ICT) enabled technology processes by affecting changes in the public service delivery system. This may entail the development of legal frameworks for recognizing e-signatures and e-applications.

Experiences from Japan reinforced the potential of ICT to make government transactions more transparent. Many local governments in Japan today make use of the Internet to create a public debate on budgetary provisions. In some cases, the draft budget is put on the websites and the public is invited

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

to send in their comments. In other cases, bidding and procurement procedures are put on line.

Public Hearing as an Aid for Empowerment

The concept of `public hearings' as a potent mechanism to demand public accountability was highlighted through the experiences of Jan Sunwais (public hearings) pioneered by of a grassroots NGO from India - the Mazdoor Kisan Shakthi Sanghatan (MKSS). Jan Sunwais are essentially a public audit conducted by village residents of development expenditure in the area initiated with a four-fold objective:

- Transparency of development expenditure
- Accountability of officials
- Redress of grievances
- Legitimization of social audit or public audit

It is quite inspiring to note that this small experiment in a remote village in India ended up spearheading a national campaign for Right to Information all across the country. Several lessons can be drawn from this initiative. For the first time, the Right to Information issue emerged from the confines of an intellectual debate and be defined by the poor as an issue related to their survival: `The right to know; the right to live'. The impact of Public Hearings has been dramatic. Local heads of public offices and bureaucrats were forced to attend, and when forced with proof of corruption, several offered public apology and publicly returned stolen money. Apart from the effect this had in the concerned Panchayats (village councils), the effect this process had in a much wider area has been quite encouraging. The fear of potential public exposure has deterred the kinds of brazen corruption that were far more commonplace in the recent past.

Sustained Interventions: From Activism to Legal Literacy

There often exists a clear `disconnect' between the enactment of a law which guarantees access to information and the subsequent usage of the same. Quite often the legal provisions exist on paper with very weak impacts on the ground. A welcome departure from this disabling scenario is the work done by the Information Clearing House, Japan (ICJ). This non profit, non governmental and non partisan organization traces its' genesis to the Citizens' Movement for Information Disclosure which was established in 1981 to campaign for the enactment of an Information Disclosure Act. After 18 long years of struggle, the Japan's Information Disclosure Law became a reality in May 1999. The movement then got reorganized as ICJ. Since then ICJ has been actively educating the public on how to effectively use the provisions enshrined in the law through a series of steps like running an information center, survey research, bringing out publications and organizing training programs. A novel concept mooted by the ICJ was the setting up of a Fund for Information disclosure. The fund will cover fees for

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

filing information disclosure requests, costs for administrative and judicial appeals, and publication of materials.

B. Challenging Opaqueness of Political Party Financing

Political party financing is widely perceived to be the 'fountainhead' of corruption. And the root cause of all corruption epidemics in the region has been political corruption. A good case in point is the Philippines where, according to Mr. Gico Dayanghirang, Member, Coalition for Investment Promotion through Transparent Governance, political financing continues to come from personal wealth, special interest groups and illegal sources.

What has been the response to this? Are there any good examples of legal provisions to control this phenomenon? How effective are these legislative provisions? What has been the response from the civil society constituents to this?

Enabling Laws

In Thailand, parties are now required to disclose their financial accounts to the public, including the names of the donors. This new channel of information has facilitated a gradual increase in public awareness on the significance of transparency in politics. Mr. Khun Pokkrong Soontharasudth, Deputy Secretary General of Thailand's Election Commission, emphasizes the significance of this new legislation thus: "this new social character has made the politicians and persons who are holding position in the state organization realize that they need to improve their performance to be more transparent and fairer. This is a good trend of political reform in Thailand". However, John Coronel from CALD serves a note of caution "the peculiarities of Thai political culture appears to make any efforts to combat corruption, especially the corruption relating to electoral exercises, difficult, if not impossible, to gain ground".

Research & Documentation for Capacity Building

The National Democratic Institute for International Affairs (NDI) and the Council of Asian Liberals and Democrats (CALD) have recently launched a regional program in Asia on Political Party Strategies to Combat Corruption. The purpose of the program is to work with political parties in Asia to support their efforts to address 'money-politics' by promoting greater regional dialogue, sharing lessons learned, and identifying best practices. In the first phase of this program, NDI and CALD have been conducting comparative research on political party experiences with the problem of corruption. The research explores the challenges political parties' face in dealing with money-politics, gathers the specific strategies and tactics that parties have implemented to combat corruption, and ultimately will

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

attempt to identify best practices that other parties facing similar challenges might use as a model. The bulk of the research is being drawn from interviews with political party representatives from the major ruling and opposition parties in each of eight Asian countries: Cambodia, Indonesia, Malaysia, Nepal, the Philippines, South Korea, Taiwan and Thailand. Information will also be gathered from similar interviews with civic leaders, government officials, election commissions and independent bodies and from supporting documents supplied by the parties, such as organizational charts, internal election procedures, manifestos, codes of conduct and party education materials. The main objective of the research is to try to identify concrete, detailed mechanisms that parties have implemented to reduce corruption within their parties, and to describe the effectiveness of these mechanisms. Such tactics may include codes of conduct, financial disclosure procedures, fundraising guidelines, ethical standards, internal party education and training programs, financial audit systems and disciplinary procedures. In order to identify these mechanisms, the research investigates such aspects as the legal framework for political party financing and functioning; internal political party structure and decision-making practices; party fundraising strategies and accounting practices; party criteria or standards of ethical conduct for members and enforcement mechanisms; and platform development and party discipline. From this research, NDI and CALD will develop a manual for parties outlining anti-corruption strategies.

Civil Society Responses

Given the fact that enabling legal provisions are very few, one would have expected quite a strong response from various civil society constituents. Sadly, it doesn't seem to be so. Or, documentation is weak in this regard. To widen the menu of options possible, few cases not covered by the e-discussion are also included in this section.

A good illustration of using the legal provisions to effectively monitor the political processes was highlighted by Pauline Tamesis of UNDP. The People's Solidarity for Participatory Democracy (PSPD) - a Korean NGO, has used information garnered from MPs declaration of assets and liabilities in their advocacy campaigns.

Lok Satta (People Power), an NGO based in Hyderabad, India has a powerful forum called Election Watch to expose and curb electoral malpractice. Through an integrated approach starting with voter verification and registration, the forum uses a wide range of activist tools like screening of candidates, political debates and monitoring of polling. Under the leadership of Lok Satta, a network of civil society groups in India is today actively advocating for far-reaching electoral reforms including voluntary disclosure of assets and state funding of elections.

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

Public Affairs Centre, a non-profit society based in Bangalore, has pioneered an interesting experiment on electoral transparency to help voters cast an informed vote. This initiative collects a range of vital information on the candidates like value of assets owned and criminal records and then disseminates them to the voters.

The Fair Elections Monitoring Alliance (FEMA) in Bangladesh also carries out effective watch-dog activities with trained volunteers monitoring the polling process and reporting on the findings.

III. Ways Forward

Though the need for an access to information legislation has been articulated quite strongly across the region, the practical resonance has been quite weak. However, as the previous section highlighted, even within this highly disabling ambience one could locate an interesting array of initiatives and ideas which carry the seeds for change. The subsequent discussions will attempt to isolate some of these powerful strands to create a broad menu for action at the regional level. This discussion comes with a note of caution that the essence of the ideas was generated within a limited framework and it is hope that the larger 'real workshop' forum improves and broadens this agenda further.

Regional Campaign for Access to Information

A regional campaign can be launched to promote the concept of access to information as a fundamental right. A good starting point for this initiative would be to identify a model legislation which would capture within it's fold all critical themes that need to be addressed. Annex II could prove to be a good trigger for this initiative. The campaign can be followed up with workshops at the sub-regional levels involving a wide range of stakeholders like the government, civil society organisations, media, elected representatives, corporate entities and donor communities.

Research & Documentation

As many commentators noted during the e-discussions, there is a dearth of good research and documentation on the theme of 'access to information' in the regional context. Some pointers are discussed below:

» *Developing a position paper for the region*

A comprehensive position paper can be prepared discussing the current status and impediments in legislating and operationalising access to information provisions in various countries in Asia Pacific. The paper can pull in existing good practices and 'success stories'. This endeavor can be very useful to trigger off 'informed advocacy' interventions in the region. As Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

a precursor to this effort, country case studies can be developed to evaluate progress as well as problems encountered in the implementation and operation of access to information laws.

»» *Research on Empirical Linkages*

As Emiliano Bologatia very succinctly illustrated in the e-discussion, access to information by itself does not necessarily lead to corruption control. Much depends on how this enabling provision links with other institutional mechanisms. In this context, it will be worthwhile to explore empirical linkages between access to information and indices like CPI, Economic Freedom Index and Human Rights Index. A good case in point in the regional context is the work done by Yvonne T. Chua of the Philippines Center for Investigative Journalism on eight Southeast Asian Countries. Suggested linkages could be to explore factors like democratic and pluralistic political processes and structures, plurality of media ownership and political participation.

A virtual regional resource center can be a very useful idea to pool in diverse materials available and also to provide a live forum for discussions and sharing of experiences and ideas.

Capacity Building

Several approaches can be explored:

- a. ***Workshop for Parliamentarians:*** Ensuring Political will and commitment is sine qua non for an effective policy on access to information. Focussed workshops for parliamentarians and senior political representatives can be a very potent intervention. Experiences of the Parliamentary Centre, Ottawa bear ample testimony to this approach. The experiences can also be shared through a regional platform.
- b. ***Workshop for Media Representatives:*** As a critical link in the process, media need to be sensitized to the emergent concerns and applicable tools. The series of Media Workshops on fighting corruption organized by The World Bank can be a good model.
- c. ***Workshop for Civil Society Groups:*** Public interest groups and civil society organisations need to be sensitized to powerful demand mobilization techniques and tools like public hearings, social audit etc.

To sustain these capacity building initiatives, information kits and advocacy materials need to be prepared and made accessible to interested groups.

Networking & Coalitions

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

Coalitions can be powerful leverages for advocacy. A broad based multi stakeholder coalition can be a potent platform for regional policy dialogues and advocacy. The coalition can build on to existing forums like the UNDP's PARAGON regional governance program and the ADB-OECD Anti Corruption Initiative for Asia-Pacific. Apart from knowledge networking and dialogues, the coalition can also actively launch regional campaigns on pertinent themes like Electoral reforms.

Impact Evaluation

To evaluate the progress of various initiatives and programs and also to benchmark comparative statistics across the region, regional surveys can be undertaken. The surveys can focus on aspects like awareness among various stakeholders on the access to information provisions, practical relevance of these provisions and actual usage of the provisions. A new approach which can be tried out is the creation of an Index of Political Will which will measure and come out with communicative indices on the commitment of governments in the region to enact/implement access to information laws. A good reference point for this is the work done by Social Watch to monitor the commitments made by various governments at various UN Conferences.

ANNEX I

ACCESS TO INFORMATION IN SELECT COUNTRIES IN ASIA PACIFIC

[Adapted from: *Freedom of Information and Access to Government Records Around the World*. David Banisar, Privacy International, March 2001]

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

ACCESS TO INFORMATION IN ASIA - PACIFIC

Australia

The federal Freedom of Information Act 1982 provides for access to government records. The Commonwealth Ombudsman promotes the Act and handles complaints about procedural failures. Merits review (appeals) of adverse FOI decisions is provided by the Administrative Appeals Tribunal, with the possibility of further appeals on points of law to the Federal Court. Budget cuts have severely restricted the capacity of the Attorney General's Dept and Ombudsman to support the Act and there is now little central direction, guidance or monitoring. The government has announced an extension of the Act to cover contracted service providers, but a bill has not yet been introduced. All of the States and the ACT, but not the Northern Territory also have Freedom of Information laws which include rights for individuals to gain access to and to correct personal information about themselves.

Hong Kong

The Code on Access to Information requires civil servants to provide records held by government departments unless there are specific reasons for not doing so. Departments can withhold information if it relates to 16 different categories including defense, external affairs, law enforcement and personal privacy. Formal complaints of denials can be filed with the Ombudsman. It is not considered to be very effective.

India

The Supreme Court ruled in 1982 that access to government information was an essential part of the fundamental right to freedom of speech and expression. A draft Freedom of Information Act was introduced into the Parliament in July 2000. The bill would provide a general right to access information and create a National Council for Freedom of Information and State Councils. It contains seven broad categories of exemptions. The draft was heavily criticized by campaigners who said that the bill provided only limited access to government records. The National Centre for Advocacy Studies said, "Many of the aspects towards information availability have been left completely in the hands of bureaucrats, which defeats the very purpose of the bill." NGO representatives estimate that the bill will be approved in Summer 2001. In 1997, the state of Tamil Nadu adopted the Act for Right to Information and the states of Gujarat and Rajasthan have administratively provided access to records. The state of Madhya Pradesh enacted a Right to Information Bill in March 1998.

Indonesia

The Coalition for Information Freedom, a group of 17 NGOs, released a draft freedom of information act in February 2001. They are planning to present it to Parliament in the next month. The draft act sets broad rights for access by any person to information held by government agencies, legislative and judicial bodies, state owned companies, NGOs getting public funding for activities and private companies conducting government activities. Government bodies have an obligation to maintain and disseminate information. Information can be withheld

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

for reasons of law enforcement, intellectual property, national defense and security, health and safety of a person or the public or for protecting private confidentiality. It creates a Central Information Commission and regional information commissions to oversee the act. The Commission can overrule a withholding of information if there is a greater public interest to disclose the information.

Japan

The Disclosure of Information Act was approved by the Diet in May 1999 after 20 years of debate. The law allows any individual or company to request government information in electronic or printed form. A nine-person committee in the Office of the Prime Minister will receive complaints about information which the government refuses to make public and will examine whether the decisions made by the ministries and agencies were appropriate. Government officials will still have broad discretion to refuse requests but requestors will be able to appeal decisions to withhold documents to one of eight different district courts. The law went into effect in 2001. A survey by Kyodo News in May 1999 found that 31 city and prefectural governments are in the process of adopting legislation consistent with the new law. Sixteen of them are including a principle of "right to know."

South Korea

The Supreme Court ruled in 1989 that there is a constitutional right to information "as an aspect of the right of freedom of expression, and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement." The Act on Disclosure of Information by Public Agencies is a freedom of information act that allows Koreans to demand access to government records. It was enacted in 1996 and went into effect in 1998.

Nepal

In June 2000, a delegation of journalists presented Jaya Prakash Prasad Gupta, Nepal's Information and Communication minister, a draft freedom of information bill, and asked him to present it to Parliament. The bill provides for a broad right of access to official information and also information on performance of political parties, NGOs and companies. The bill also requires officials to periodically disclose information and keep systematic records. Officials who refuse to comply with requests can be fined \$75.00.

New Zealand

The Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987 are freedom of information legislation governing the public sector. Enforcement is supervised by the Office of the Ombudsman. There are significant interconnections between this freedom of information legislation and the Privacy Act in subject matter, administration, and jurisprudence, so much so that the three enactments may be viewed, in relation to access to information, as complementary components of one overall statutory scheme.

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

Pakistan

The Federal Minister for Information released a draft Freedom of Information Ordinance in August 2000. The draft, which is based on a 1997 ordinance that was never adopted, provides for broad exemptions including the notes officials put on files, minutes of meetings, interim orders, classified records (with no limits on classification), and records relating to the personal privacy of any individual. Government officials have broad discretion to determine if the requestor is "fit" to obtain the record and there are no penalties for refusing to comply. The draft has been heavily criticized by commentators. Council of Pakistan Newspaper Editors President Arif Nizami said that the revisions make the already weak 1997 ordinance even weaker. The International Press Institute wrote that, "the Ordinance is a lack-lustre attempt at providing a freedom of information law in Pakistan and displays little commitment on the part of the ruling authorities to practice open and honest government."

Philippines

Article 3, Section 7 of the 1987 Constitution, states: "The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law." The Code of Conduct and Ethical Standards for Public Officials and Employees mandates disclosure of public transactions and guarantees access to official information, records or documents. Agencies must act on a request within 15 working days from receipt of the request. Complaints against public officials and employees who fail to act on request can be filed with the Civil Service Commission or the Office of the Ombudsman.

Thailand

Section 48 (bis) of the Constitution states: "Persons shall have the right to receive information or news from the government agency or state agency or public enterprise in order to check the performance of the government official or state official when such matter have or may have affects on the living of such person as the law provided." The Official Information Act was approved in July 1997 and went into effect in December 1997. The Act allows for citizens to obtain government information such as the result of consideration or a decision which has a direct effect on a private individual, work-plan, project and annual expenditure estimates, and manuals or order relating to work procedure of State officials which affects the rights and duties of private individuals. The Official Information Commission oversees the act. Individuals can appeal denials to the Commission. According to the OIC, in 1999, there were 113 complaints, 80 of which were solved while the remaining 33 are under processing. There were 32 cases in 1998. According to the OIC, they have found a number of problems with implementing the new act. These include:

- Most people neither understand key elements of the Act nor realize their own right. Most people do not know how to utilize the law in compliance with their demand to have access to the State information. People cannot exercise their right, as they do not know the procedures.

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

- As for government agencies, the high-ranking officials do not understand the law and do not know how to implement the Act. More than this, as they lack adequate knowledge of the law and the main principles of information disclosure service in order to achieve people's right to know, they thus cannot administer the office in accordance with the Act. Another significant aspect is they have less skill in exercising the matter of discretion.
- The servicing level of the government agencies still also has deficient knowledge about the Information Act. They are not used to the very new principles of information disclosure as a crucial part of servicing. They have negative attitudes towards the Act. Some feel that the Act puts more burden to them, and like the executive level, they have less experience in implementing the law, in terms of servicing procedures, information disclosure and judgment practices on the kind of information.

In October 2000, the Supreme Court ruled upheld an order by the Official Information Commission to disclose school entrance exam results demanded by parents of children who were rejected by an elite elementary school. According to media reports, in November, the Cabinet approved a measure that prohibits confidentiality clauses in government contracts.

ANNEX II

MODEL FREEDOM OF INFORMATION LAW: THE FRAMEWORK

[Adapted from: ***A Model Freedom of Information Law***. Article 19, Centre for Policy Alternatives, Commonwealth Human Rights Initiative & Human Rights Commission of Pakistan, July 2001. The whole document can be accessed at <http://www.article19.org>]

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

A MODEL FREEDOM OF INFORMATION LAW

ARRANGEMENT OF SECTIONS

PART I: DEFINITIONS AND PURPOSE

Section:

1. Definitions
2. Purpose

PART II: THE RIGHT TO ACCESS INFORMATION HELD BY PUBLIC BODIES

3. Freedom of Information
4. General Right of Access
5. Legislation Prohibiting or Restricting Disclosure
6. Public and Private Bodies
7. Records
8. Request for Information
9. Time Limits for Responding to Requests
10. Notice of Response
11. Fees
12. Means of Communicating Information
13. If a Record is Not Held
14. Vexatious, Repetitive or Unreasonable Requests

PART III: MEASURES TO PROMOTE OPENNESS

15. Guide to Using the Act
16. Information Officer
17. Duty to Publish
18. Guidance on Duty to Publish
19. Maintenance of Records
20. Training of Officials
21. Reports to the Information Commissioner

PART IV: EXCEPTIONS

22. Public Interest Override
23. Information Already Publicly Available
24. Severability
25. Personal Information
26. Legal Privilege
27. Commercial and Confidential Information
28. Health and Safety
29. Law Enforcement
30. Defence and Security
31. Public Economic Interests
32. Policy Making and Operations of Public Bodies
33. Time Limits

Dr. Gopakumar Krishnan, *Mapping Future Actions in Asia Pacific*. Discussion Paper presented at the Asia Pacific Regional Workshop, 10th IACC, Prague October 10, 2001

PART V: THE INFORMATION COMMISSIONER

- 34. Appointment of the Information Commissioner**
- 35. Independence and Powers**
- 36. Salary and Expenses**
- 37. Staff**
- 38. General Activities**
- 39. Reports**
- 40. Protection of the Commissioner**

PART VI: ENFORCEMENT BY THE COMMISSIONER

- 41. Complaint to the Commissioner**
- 42. Complaint Decision**
- 43. Direct Implementation of Decision**
- 44. Commissioner's Powers to Investigate**
- 45. Appeal from Commissioner's Decisions and Orders**
- 46. Binding Nature of Commissioner's Decisions and Orders**

PART VII: WHISTLEBLOWERS

- 47. Whistleblowers**

PART VIII: CRIMINAL AND CIVIL RESPONSIBILITY

- 48. Good Faith Disclosures**
- 49. Criminal Offences**

PART IX: MISCELLANEOUS PROVISIONS

- 50. Regulations**
- 51. Interpretation**
- 52. Short Title and Commencement**