



Commonwealth Human Rights Initiative

The Right to Information (RTI) in the Developing World

- Venkatesh Nayak



Evolution of RTI on the Planet

Myth I : RTI is a product of the developed world

Reality check

- First RTI law passed in **Sweden in the 18th century**
(India was economically more developed than Sweden)
- Second RTI law passed in Colombia in the 19th century
(Colombia continues to be in the developing world in the 21st century)

Myth II : RTI is for the educated middle class

Reality check

- First recognition of RTI as a human right in France in 1789
(majority of the French revolutionaries had never been to school)
- RTI movement in India mainly launched by the unlettered
(eg. people's movements in Rajasthan, Maharashtra)



Legal recognition for RTI



Freedom of the Press Act, 1766 – in Sweden



- Finnish clergyman introduced the Bill in the Parliament of Sweden
- Chydenius influenced by good practices of Tang China in 7th century A.D.
- Act guarantees access to information to every 'subject'
- Covers government, parliament, & assemblies of church & local government
- Obligation on government to give information free of cost and quickly

Rev. Anders Chydenius
(1729 – 1803)



Chydenius on RTI and Free Press



“No proof should be necessary that a modicum of freedom for writing and printing is one of the strongest Pillars of support for free Government, for in the absence of such, the Estates would not dispose of sufficient knowledge to make good Laws, nor Practitioners of Law have control in their vocation, nor Subjects have knowledge of the requirements laid down in Law, the limits of Authority and their own duties. Learning and good manners would be suppressed, coarseness in thought, speech and customs would flourish, and a sinister gloom would within a few years darken our entire Sky of Freedom.” [emphasis supplied]

(Memorandum of the Freedom of the Press, 1765)



and Colombia came in second, 122 yrs later



Code of Political and Municipal Organisation, 1888 – in Colombia

- Permitted access to records held by government agencies and archives
- Access was to be granted unless forbidden by any other law



Law Ordering the Publicity of Official Acts and Documents adopted – in 1985

Right of access to official documents guaranteed by the Constitution – in 1991



Right to know and the French Revolution

“All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection, and duration.”

“Society has the right to ask a public official for an accounting of his administration.”



(Articles 14 & 15, Declaration of the Rights of Man and of the Citizen, 26 August, 1789)

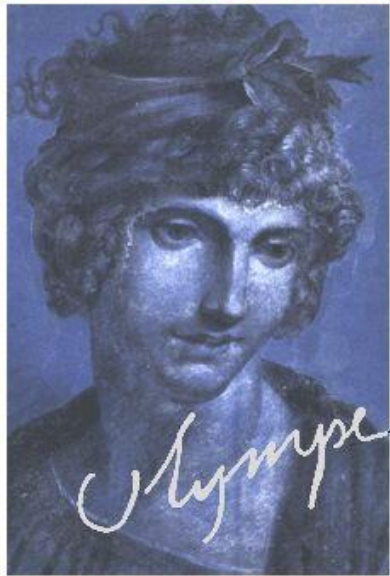


Right to know and the French Revolution

“Female and male citizens have the right to verify, either by themselves or through their representatives, the necessity of the public contribution...

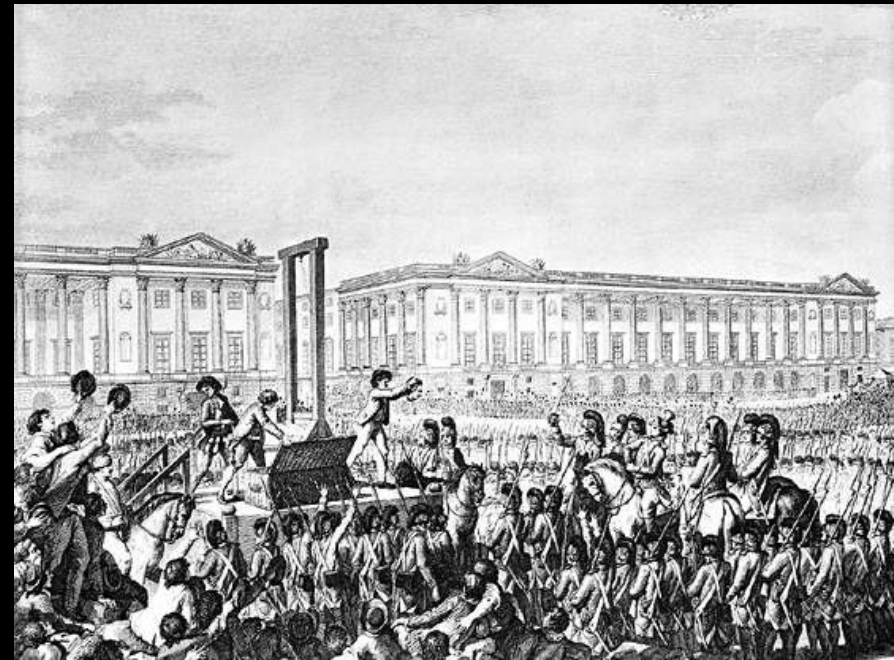
“The collectivity of women, joined for tax purposes to the aggregate of men, has the right to demand an accounting of his administration from any public agent.”

ÉGALITÉ • DIVERSITÉ • RÉUSSITE



*Olympe de
gouges*

Olympe de Gouges



(Article 14 & 15 Declaration of the Rights of Woman and the Female Citizen, 1789)



First Generation of RTI Laws

- France conceptualised 'right to know' as part of 'human rights' for every 'citizen' (as opposed to privileges & entitlements)
- Sweden and Colombia were the foremost to have specific laws – known as the first of three generations of RTI laws
- Swedish law informed by principles of maximum disclosure, minimum exemptions, quick and cost-free access, grievance redress in courts against unreasonable denial of access
- 3 generations of RTI laws – an academic construct – features of Swedish law can be found in RTI laws of 21st century also
- *Indian Evidence Act, 1872* (s.76) gives right to obtain certified copies of public documents – **right to inspect must be proved**
- Not much information in English on Columbia's old RTI law



Developments up to 1989



Finland



1951

Australia



1982



USA



1966

Canada



1982



Denmark



1970

New Zealand



1982



Norway



1970

Greece



1986



Netherlands



1978

Austria



1987



France



1978

Total = 11 countries

[Courtesy: Roger Vleugels, Fringe Special, Sep. '09]



Second Generation of RTI Laws

- 11 countries in the Americas, Europe & the Pacific adopted Freedom of Information laws (FOI laws) – **all in the developed world**
(based on the freedom to seek and receive information & part of freedom of speech & expression – See Art. 19 Universal Declaration of Human Rights)
- FOI laws cover the executive – elected offices & judiciary often left out. Access to official documents only (**not information**)
- No duty to confirm/deny existence of documents
- Ministerial vetoes on disclosure of sensitive information
- No penalties for violation of the FOI law
- No implementation-monitoring or reporting duties
- Canada – first to have independent Information Commissioner



1990s – More countries adopt access laws



Italy



1990

Belgium



1994



Hungary



1992

Belize



1994



Spain



1992

Greenland



1994



Ukraine



1992

Iceland



1996



Kazakhstan



1993

Thailand



1997



Portugal



1993

Uzbekistan



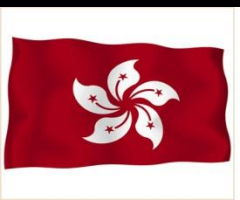
1997



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '09]



1990s – More countries adopt access laws



Hong Kong → 1995/8

Aruba → 1999



Ireland → 1997/8

Dutch Antilles → 1999



Latvia → 1998



South Korea → 1996/8

Total = 20 countries



Albania → 1999

[Courtesy: Roger Vleugels, Fringe Special, Sep. '09]



Israel → 1998/9



Third Generation of RTI Laws

- 9 of 20 countries are in the developing world
- Some are overseas territories of larger countries
- East European countries passed RTI laws to overcome decades of official secrecy under Communist regimes
- Most laws cover all three organs of the State
- Principles of maximum disclosure, minimum exemptions, public interest override, independent appellate mechanism
- Independent Information Commissioners increasingly preferred for adjudication of access disputes



Transparency in Political Dealings

Shalit case in Israel

Meshulam Shalit Adv. V Shimon Peres, M.K., 1990 (HCJ 1601/90)

- Four cases filed by advocates seeking copies of coalition agreements entered into by political parties
- Petitioners wanted to know the contents of the agreements
- Knesset (Israel's parliament) is the depository of these agreements
- No party opposed access but wanted the Court to declare the law regards public's right to know
- Supreme Court declared that people have the right to know:
 - ❖ MPs are trustees of the public interest; they must make full disclosure of information they possess from work-related context
 - ❖ Disclosure of agreements is required for public scrutiny



Transparency in Political Dealings

Shalit case in Israel

Meshulam Shalit Adv. V Shimon Peres, M.K., 1990 (HCJ 1601/90)

- Supreme Court declared further:
 - ❖ Coalition agreements between opposition parties must also be disclosed
 - ❖ Parliamentarians also have right to know the contents of coalition agreements of other parties
 - ❖ Information about security and foreign relations contained in agreements may be withheld in specific circumstances
 - ❖ Law must be made to regulate disclosure of such agreements
- Israel passed Freedom of Information law in 1998 and operationalised it in 1999



RTI in the 21st century



Bulgaria



2000

Estonia



2000/1



Czech Republic



1999/00

Japan



1999/1



Georgia



1999/00

Romania



2001



Liechtenstein



1999/00

Slovak Republic



2000/1



Lithuania



2000

South Africa



2000/1



Moldova



2000

Trinidad & Tobago



1997



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '12]



RTI in the 21st century



Angola



2002

Zimbabwe



2002



Bosnia
Herzegovina



2001/2

Argentina



2003



Pakistan



2002

Armenia



2003



Panama



2002

Croatia



2003



Poland



2001/2

Kosovo



2003



Tajikistan



2002

Mexico



2002/3



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '12]



RTI in the 21st century



Peru

→ 2002/3

Jamaica

→ 2002/4



Slovenia

→ 2003

Serbia

→ 2004



St. Vincent &
the Grenadines

→ 2003

Turkey

→ 2003/4



Antigua &
Barbuda

→ 2004

Azerbaijan

→ 2004

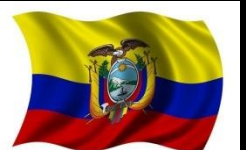


Dominican
Republic

→ 2004

India

→ 2005



Ecuador

→ 2004

Monte-
negro

→ 2005



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '12]



RTI in the 21st century



Taiwan

→ 2005

Switzerland

→ 2004/6



United Kingdom

→ 2000/5

Jordan

→ 2007



Germany

→ 2005

Kyrgyzstan

→ 2007



Uganda

→ 2005

Nepal

→ 2007



Honduras

→ 2006

Nicaragua

→ 2007



Macedonia

→ 2006

China

→ 2007/8



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '12]



RTI in the 21st century



Bangladesh → 2008/9



Chile → 2008



Cook Islands → 2009



Guatemala → 2008/9



Cayman Islands → 2006



Uruguay → 2008/9



Malta → 2008

Ethiopia → 2008



Indonesia → 2009



Liberia → 2010



Republic of Guinea → 2010



El Salvador → 2010



Niger → 2011



[Courtesy: Roger Vleugels, *Fringe Special*, Sep. '12]



RTI in the 21st century



Nigeria



2011

Sierra Leone



2013



Tunisia



2011

Maldives



2013



Mongolia



2011

South Sudan



2013



Guyana



2011

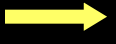
Mozambique



2014



Yemen



2012

Afghanistan



2015



Brazil



2012

Up to the 20th century = 31



Rwanda



2013

21st century total = 73

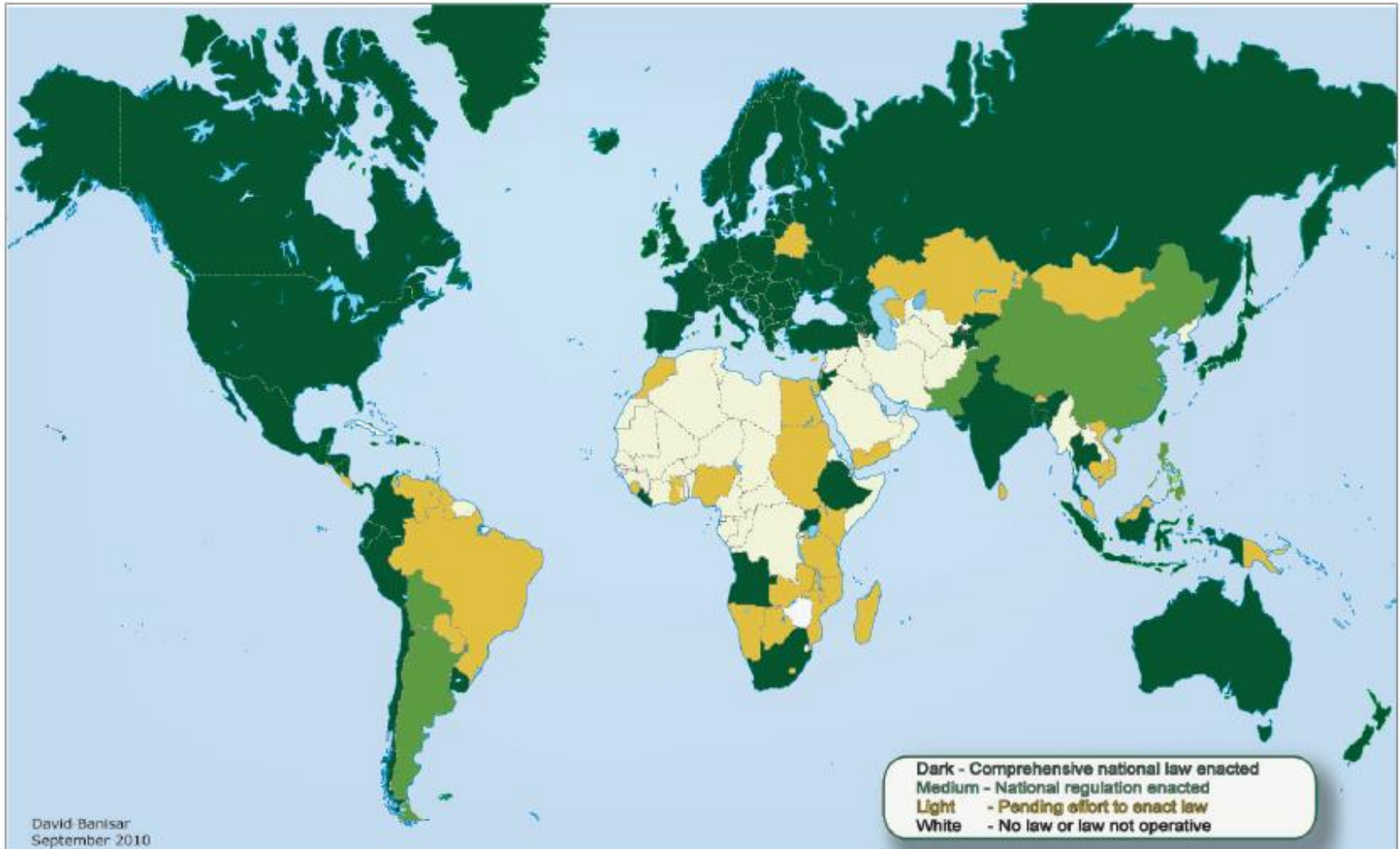
Others = 4+

(Overseas territories & autonomous provinces)



RTI in the 21st century

National Freedom of Information Laws, Regulations and Bills 2010



*Not all national laws have been implemented or are effective. See www.privacyinternational.org/foisurvey for reviews of the laws and practices

[Courtesy: David Banisar]

[Disclaimer: Boundaries of countries may not be accurately depicted on this map]



RTI in the Americas and the Caribbean



- American Convention on Human Rights guarantees RTI as part of freedom of speech, thought & expression (Art. 13)
- 22 countries have RTI laws
- **Oldest = USA (1966)**
- **Latest = Brazil (2012)**
- **OAS Model RTI law in 2010**
- Bolivia, Costa Rica, Paraguay, Suriname, Barbados, Bahamas, Dominica & several island nations & territories do not have RTI laws



Chile & the Inter-American Court of Human Rights Case

Claude Reyes et. al. v Chile, 2007

- Chilean govt. denied access to environmental assessment reports to NGO Terram relating to logging contract given to American MNC in Rio Condor valley
- Terram's plea rejected by the Supreme Court after 8 yr. struggle
- Terram appealed to Inter-American Court of Human Rights (IACHR)
- According to IACHR, Chilean Govt. had violated Art. 13 of the American Convention
- According to IACHR RTI, is part of right to free speech
- According to IACHR, Chilean govt. has an obligation to provide information to its people & make laws guaranteeing RTI
- Chile included RTI in its Constitution (2005); passed RTI law in 2008/9



RTI in Africa



- African Charter on Human and People's Rights recognises RTI [Art. 9(1)]
- ECOWAS Treaty obligates W. African States to ensure information flows to rural people, women, youth & media
- 13 of 54 countries have RTI laws: Angola, Ethiopia, Guinea, Liberia, Niger, Nigeria, Rwanda, South Africa, Tunisia, Uganda, Zimbabwe, Sierra Leone
- **Best = South Africa** **Model ATI law drafted in 2012**
- **Worst = Zimbabwe**
- RTI Bills pending in Ghana, Kenya, Malawi, Mozambique, Swaziland, Tanzania and Zambia.

*Map courtesy: www.bugbog.com
[Disclaimer: Boundaries of countries may not be accurately depicted on this map]*



RTI in Asia

- No regional human rights mechanism in place yet
- SAARC Social Charter recognises the value of transparent & accountable administration in public & private spheres [Art. 2(xvi)]
- 22 countries have RTI laws
- **Oldest = Hong Kong and South Korea (1995 & 1996 resp.)**
- **Latest = Afghanistan (2015)**
- No RTI laws in Cambodia, Laos, Malaysia, Myanmar, N. Korea, Singapore, Vietnam. Bill being drafted in Bhutan and Sri Lanka.



Map courtesy: www.bugbog.com
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RTI in the MENA Region



*: Map courtesy
<http://www.max-security.com/>*

*[Disclaimer: Boundaries of
countries may not be accurately
depicted on this map]*

- No regional human rights mechanism in place yet
- 5 countries have RTI laws (Israel, Turkey, Jordan, Tunisia and Yemen)
- **Latest = Yemen (2012)**
- No RTI laws in Algeria, Egypt, Iran, Iraq, Lebanon, Libya, Morocco, Oman, Palestine, Saudi Arabia, Syria, Tunis and UAE



RTI in the Pacific



Map courtesy:
www.nationsonline.org

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- No regional human rights mechanism in place yet
- Pacific Plan of Action for Sustainable Development recognises the value of transparency
- 3 countries have RTI laws
- **Oldest = Australia (1982)**
- **Latest = Cook Islands (2009)**
- RTI Bills languishing in Fiji, Tonga, Papua New Guinea. RTI Bill drafted in Nauru in 2009



RTI in Europe

- European Convention for the Protection of Human Rights recognises RTI (Art. 10)
- Treaty on Access to Official Documents - 2009
- 40+ countries have RTI laws
- **Oldest = Sweden (1982)**
- **Latest = Malta (2008)**
- No RTI laws in Cyprus, Luxembourg, Monaco, Spain, the Vatican and several overseas territories



*Map courtesy: www.bugbog.com
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Thank you