

Introduction

In April 2010 the World Bank and the Indian Institute of Public Administration (IIPA) organized a regional workshop titled 'Towards More Open and Transparent Governance in South Asia' in New Delhi. As part of the preparation for that workshop, assessments were carried out of the state of right to information (RTI) in each country in the region. The Pakistan Country Paper detailed the federal Freedom of Information (FOI) Ordinance 2002, the role of key stakeholders such as civil society organizations and the media, and made recommendations for how the country's FOI regime could be strengthened.¹

This paper is an update of the 2010 paper; it reviews significant developments in relation to FOI in Pakistan since 2010, and goes further by examining the role of key stakeholders and the wider Pakistan context (notably the political and security situation). The aim is to provide a sound understanding of the challenges and opportunities for establishment of an effective FOI regime in Pakistan, thereby helping identify the steps and interventions needed to move forward on this.

Background

Pakistan was the first country in South Asia to pass RTI legislation, in the form of the 2002 Freedom of Information Ordinance. However, the fact that it was introduced by a military ruler (President Musharraf), at a time when elected assemblies had not been restored, undermined its legitimacy and credibility. It also suffered from numerous shortcomings in design, diverging significantly from accepted best practice with regard to RTI/FOI legislation. It was limited in scope, had numerous exemptions, did not over-ride other legislation (such as the Official Secrets Act), and had a weak enforcement mechanism (the Federal Ombudsman). The application procedure was also difficult.

The combination of lack of legitimacy and poor design meant the FOI Ordinance 2002 was widely rejected by civil society. Only a few civil society organizations have persistently tried to obtain information under the Ordinance: the total number of FOI requests made in Pakistan is a few hundred. Even for that limited number, compliance by government entities has been weak. Requirements for proactive disclosure, designation of FOI officers, awareness-raising among the public, automated record management systems and other measures called for in the law, have not been implemented. The Federal Ombudsman has largely proven ineffective in enforcing the Ordinance's provisions.

Of the provinces, Sindh and Balochistan have 'copycat' FOI legislation, which suffers from the same shortcomings and has been equally ineffective, while Khyber Pakhtunkhwa (KP) and Punjab do not have FOI legislation.

¹Paper published as part of *Transparent Governance in South Asia*, (New Delhi, Indian Institute of Public Administration, 2011).

A. MAJOR FOI DEVELOPMENTS SINCE 2010

Federal Legislation

As seen above, the FOI Ordinance 2002 is widely considered to be fundamentally flawed and in need of reform. The Pakistan People's Party (PPP)-led government, which took office in 2008, promised to introduce new FOI legislation within its first one hundred days in power. That commitment was not followed through. Within the government, Sherry Rehman was the main driving force for new FOI legislation. She introduced RTI Bills both in her capacity as Minister of Information and Broadcasting (in 2009), and later as a Private Member (in 2011). Interestingly, the two drafts differ somewhat with the latter complying more closely with accepted best practice. Sherry Rehman was later appointed as Pakistan's Ambassador to the United States, and was thus no longer actively engaged on the FOI issue in Pakistan.

An RTI Bill was also tabled by Senator Nuzhat Sadiq of the Pakistan Muslim League (Nawaz) (PML-N) party. This and an RTI Bill submitted by MNA Doniya Aziz were rejected by the Speaker of the National Assembly, on the grounds that a bill of the same name had already been submitted by Sherry Rehman; the speaker suggested the three bills be merged. The Sherry Rehman Bill was placed before the Senate Standing Committee on Information and Broadcasting; in July 2012 the Committee established a Sub-committee under Senator Farhatullah Babar to develop FOI legislation. However, the tenure of the PPP federal government came to an end in April 2013, when an interim government was appointed to oversee elections scheduled for May 2013. No progress has therefore been made on reforming FOI legislation at federal level.

18th Constitutional Amendment

The 18th Constitutional Amendment was passed by the National Assembly on 8 April 2010, the Senate on 15 April 2010, and was signed into law by President Zardari on 19 April 2010. The 18th Amendment has several significant measures including: it abolishes the concurrent legislative list and increases the powers and responsibilities of the provincial governments; removes the power of the President to declare emergency rule in any province unilaterally; provides for the appointment of the Chief Election Commissioner through consensus between the government and opposition; and means that the courts can no longer endorse any suspension of the constitution.

The insertion of Article 19-A under the 18th Constitutional Amendment makes access to information a fundamental right of all citizens. Article 19-A states: 'Right to Information - Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.'

Over three years on from passage of the 18th Amendment, a number of its provisions are still not being fully implemented. Specifically, the insertion of Article 19-A has not led to any major change with regard to Pakistan's FOI regime. As seen, new federal legislation has stalled. None of the provincial governments have passed FOI legislation in response to Article 19-A (see below). The only significant impact of Article 19-A to date is that it provides a strong foundation for civil society organizations to demand establishment of FOI/RTI regimes by federal and provincial governments.

Provincial Situation Analysis

The situation with regard to FOI varies considerably from province to province. As a result of the devolution of powers under the 18th Constitutional Amendment, responsibility for implementation of Article 19-A rests to a large extent with the provinces. It is relevant to note here that all the provinces are currently revising local government legislation. One CSO² reported that provisions for proactive disclosure of information under the 2001 Local Government Ordinance have been removed from the revised legislation.

Punjab

The last Government of Punjab headed by Chief Minister Shahbaz Sharif engaged in a drive to improve efficiency and effectiveness of government functioning, with the goal of improving service delivery and generating economic growth. Promotion of open and transparent government was an important component of this strategy. Innovative use was made of ICT, e.g. mobile phone based citizen feedback mechanisms to solicit citizens' views on the quality of public services they had received, and thereby identify areas for improvement.

As part of this wider open-efficient government effort, the Punjab Government engaged in drafting of FOI legislation for the province. This was a protracted process, with extensive stakeholder consultation with civil society, the media, lawyers, parliamentarians [– a marked contrast from the 'overnight, top-down' introduction of the federal law]. Inputs from local groups and international experts culminated in a draft that was broadly consistent with international best practice on RTI legislation. The draft Punjab FOI Act was approved by the Punjab cabinet in March 2013, a few weeks before handover of power to an interim government.

The main features of the draft Punjab bill are given in **Box 1**. The draft Punjab FOI Act is a huge improvement on the federal FOI Ordinance 2002. The latter scored just 66 points out of a possible 150 in global RTI legislation rankings, placing it in 75th position out of some 90 countries.³ An indicative ranking of the draft Punjab FOI Act gave it a score of 105 points, placing it in joint 18th position. The strong provisions in the draft bill are reflected in the very positive media coverage it has received.

Box 1: Main Features of draft Punjab FOI Act

- a) It extends to all citizens of Pakistan;
- b) It applies to all public bodies in Punjab (including all departments, autonomous organizations, district and lower governments, courts, the legislature), as well as publicly funded private entities;
- c) It has an extensive proactive disclosure requirement list for public bodies, which includes a directory of officers and employees and their respective remuneration, perks and privileges; the budget (proposed and actual expenditures); description of its decision-making processes; recipients of concessions, permits or authorizations; details of any subsidies;

² Zafarullah Khan, Centre for Civic Education, Islamabad.

³ Centre for Law and Democracy/AccessInfo Europe RTI Rating (see <http://www.rti-rating.org/index.html>).

- d) Public bodies have to ensure that information covered under the Act is properly maintained in easily accessible form, and have to endeavour, within reasonable time, to computerize such information to ensure easy access;
- e) The exceptions regime is limited, based on application of the harm test, e.g. if release of information would harm national security, legitimate privacy interests, relates to privileged information;
- f) There is a 'public interest over-ride' provision for exceptions, i.e. if the public interest in disclosure outweighs the harm caused by this;
- g) The applications procedure specifies that applicants will not have to provide a reason for making a request, no fee will be charged (only expenses incurred, e.g. on photocopying), requests must be responded to within 21 working days;
- h) It sets up an independent 3-member Information Commission to monitor implementation of the FOI Act and hear complaints. One member is to be drawn from civil society, one a retired judge and one a retired government servant. The Commission's decisions will be binding;
- i) Penalties of a fine and/or imprisonment for up to two years, can be imposed if anyone wilfully destroys information subject to an FOI request or otherwise blocks disclosure;
- j) The Punjab FOI bill over-rides other legislation.

The draft Act was prepared by the Information Department but, in terms of scope and required actions, would perhaps be more appropriately housed within the Services and General Administration (S&GAD) Department – the so-called 'government of the government'. S&GAD would also have the necessary clout to ensure implementation of the Punjab FOI Act provisions by other departments. One reason for it being with the Information Department is that a former Secretary was a strong champion of the law – while he later moved on, the law remained with Information. [A second is the common misperception that freedom of *information* or right to *information* must relate to the work of the Information Department.]

The interim government in Punjab was headed by Najam Sethi, editor-in-chief of the *Friday Times* and a regular – and popular – analyst on a current affairs programme.⁴ In television interviews subsequent to his appointment as Chief Minister, Najam Sethi pledged to get the FOI Act promulgated as an Ordinance. It would still need to be ratified by the new Punjab Assembly (post-elections) but as an Ordinance this would be more straightforward than getting a bill through. More importantly, promulgating it as an Ordinance would place the law on a stronger footing, and make it harder to reject – especially given its many positive features. Unfortunately, Najam Sethi's efforts were blocked by the Law Department (it needed more time to improve the drafting/language of the law), and then by the Governor – to whom the Ordinance was sent to sign. The Governor refused on the grounds that the decision should be taken by the new government and assembly.

Nonetheless, there is a strong likelihood that the draft bill will become law. The PML-N party of Shahbaz Sharif secured a majority of seats in Punjab, and will form the next government with Shahbaz Sharif taking up his old post of Chief Minister. Given this continuity, it is highly likely that the Punjab FOI Act will be passed soon after the new assembly is in place. While there is scope for

⁴ *Aapas ki baath*, weekly current affairs discussion programme on Geo TV. Najam Sethi is the analyst who is questioned on current events by host Muneeb Farooq. The popularity of the show is attributed to the frank and accurate analysis of events by Najam Sethi, but this has also led to him facing death threats. So much so that often the show is recorded from his heavily guarded home rather than the studio.

the legislative assembly to amend the provisions in the draft bill, again, the strong provisions in the cabinet approved draft give a very solid foundation from which to move forward.

It should also be noted that assessments of the situation with regard to FOI in Pakistan, notably challenges and opportunities, consistently identify the bureaucracy – and *not* politicians – as a major obstacle.⁵ A number of interviewees for this paper commented that there is lack of awareness among politicians about FOI, but once the importance of FOI is explained to them, they are generally in favour of FOI reforms.⁶

Balochistan and Sindh

Both Balochistan and Sindh have FOI legislation in place, based on the federal FOI Ordinance 2002. Implementation of this in the provinces has been correspondingly weak. With regard to reform, the general consensus within both provincial governments appears to be to wait and see what happens with federal FOI legislation. However, one minister⁷ in the interim government in Sindh expressed strong interest in reforming the Sindh FOI Act 2006 to bring it into line with global best practice. With support from international experts a draft law was prepared, but the minister was subsequently replaced and his successor did not take up the FOI issue.

Khyber Pakhtunkhwa

Khyber Pakhtunkhwa (KP) does not have any FOI legislation. The last KP Government, headed by the ANP, carried out a number of governance reforms⁸ but showed little interest in freedom of information. Among both the civil service and politicians in the province, there is little awareness or drive to promote freedom of information.

However, an entry point for KP FOI legislation is provided by the Post-Crisis Needs Assessment, conducted by the World Bank and other donors to identify a strategy to promote long-term peace building in conflict affected areas of KP and the Federally Administered Tribal Areas (FATA). One of the strategic objectives outlined in the PCNA is to ‘Build responsiveness and effectiveness of the state to restore citizen trust’.

A further opportunity emerged under the interim government. Musarrat Qadeem, the Information and Education Minister, with a strong civil society background, expressed her determination to get an FOI Ordinance promulgated. Discussion about the draft Punjab FOI Act, approved by the outgoing Punjab cabinet, spurred efforts in KP to produce an even better law – and a strong draft was prepared. However, concerns were raised by the interim Chief Minister (a retired judge) about establishment of an independent Information Commission – he suggested this role be assigned to

⁵ In interviews for this paper, both Najam Sethi and Zafarullah Khan identified the bureaucracy as the real obstacle to transparency in Pakistan.

⁶ This opinion was expressed by Mohsin Syed (Director Law, Punjab Government), Amer Ijaz Butt (CPDI) and Siddique al-Farooq (PML-N MNA).

⁷ Shabbar Zaidi, Sindh Finance Minister in the interim government.

⁸ Governance reforms in KP include: strengthening Monitoring and Evaluation (M & E) systems; establishment of the Office of Provincial Ombudsman (2010); enactment of Khyber Pakhtunkhwa Public Procurement Regulatory Authority (2012); conduct of pre-budget consultations with citizens - a pioneering initiative enhancing transparency.

the Ombudsman office. No Ordinance was promulgated, but a very good draft is in place for the next government to consider.

B. ROLE OF KEY STAKEHOLDERS

Political Parties

The depth of commitment of the two leading political parties in Pakistan – the PPP and PML-N – to passage of effective (consistent with international good practice) FOI legislation can be gauged from the fact that both completed their terms (leading the federal and Punjab governments respectively) without passing new FOI legislation. Yes, the Punjab cabinet approved a draft law, but this happened just weeks before the handover to an interim government – hardly proof of strong commitment to FOI. In the 2013 elections the manifestoes of all three leading political parties – the PPP, PML-N and Pakistan Tehreek-i-Insaaf (PTI) contained commitments to FOI. While this is progress, it would be wrong to assume that this reflects deep party-wide commitment to FOI (except perhaps in the case of PTI).

There are two possible explanations for the general political apathy on FOI: one, political parties/politicians oppose FOI on principle because they fear the increased transparency and accountability that it will bring; two, lack of awareness. Both are probably valid to some extent. Different views were offered by people interviewed for this paper. A number highlighted the fact that politicians have a direct connection with their constituents; as such, they recognize that anything that benefits ordinary people is a good thing. ‘If politicians can be convinced of the benefits of FOI they will support it.’⁹ They identified the bureaucracy rather than politicians as the ‘basic stumbling block’ to FOI in Pakistan. This would suggest that lack of awareness rather than opposition to transparency per se is the main problem – in turn implying that there is potential in Pakistan to bring politicians on board simply by explaining the importance of FOI to them. But other interviewees asserted that: ‘Nobody wants transparency.’¹⁰

On lack of awareness, one official pointed out that none of the political parties have a ‘professional secretariat’ which can provide legislators with technical support and guide them on various issues. [The only exception is Jama’at-i-Islami, whose representatives are thus relatively much better versed on issues.] It should also be noted that Pakistan often times appears to be a country in crisis; as such, politicians have many other – arguably more pressing – issues to address (see Part C).

Pakistan Tehreek-i-Insaaf was founded by former cricketer Imran Khan in 1996, but has only recently begun to attract significant support.¹¹ PTI has consistently taken a strong stand against corruption and for transparency and accountability. Unlike other parties, in which there are individual

⁹ Mohsin Syed, Director Law, Government of Punjab; also the view expressed by Amer Ejaz Butt, Executive Director, CPDI, and Siddique Farooq, MNA with PML-N.

¹⁰ Umar Cheema, *The News*; this view was shared by Najam Sethi, Geo TV and *The Friday Times*.

¹¹ Evidence for the party’s growing popularity comes from its mass rallies (the larger ones attended by tens of thousands of people), the media coverage it gets, and the fact that several ‘established’ politicians from other parties have joined PTI (e.g. Shah Mehmood Qureshi, former PPP Foreign Minister and Javed Hashmi, a senior politician formerly with PML-N). The party secured around 30 seats in the National Assembly, making it the second largest opposition party – a huge increase from just one seat in the previous assembly.

champions for FOI but little party-wide commitment to this issue, PTI appears to be committed to this *as a party*: ‘You can’t have transparency and accountability without FOI.’¹² Following its success in the 2013 elections, PTI will be heading a coalition government in KP, and thus will have the opportunity to translate commitment into action. However, it should be noted that the party has no experience of government so it is unclear how effective it will be in power.

With regard to individual champions for FOI among politicians, a number of those identified in the 2010 paper are no longer actively engaged on the issue. As already noted, Sherry Rehman was appointed Pakistan’s Ambassador to the United States. Dr Doniya Aziz, who tabled a Private Member’s Bill for FOI, was forced to relinquish her parliamentary seat because of holding dual nationality.¹³ Ahsan Iqbal headed the Institutional Reform Group of the Government of Punjab, which put together a governance reform agenda for the province that included transparency and accountability. However, as one of the leading figures in PML-N he looks set for a senior ministerial post in the federal government. Senator Raza Rabbani, as Chairperson of the Parliamentary Committee on Constitutional Reform, oversaw the drafting and passage of the 18th Constitutional Amendment. His commitment to FOI is strong and proven, but aside from his multiple responsibilities as a senior PPP leader, his ability to push FOI is limited by the lack of wider party interest. Other or comparatively newer faces campaigning for FOI include Siddique Farooq and Khurram Dastagir Khan of PML-N, and Asad Umar of PTI. The overall number of FOI champions in Pakistan’s legislative bodies remains very small.

Civil Service

Current FOI provisions in Pakistan relate exclusively to the public sector. [The draft Punjab FOI Act would apply to publicly funded private entities and those delivering public services.] Effective implementation of FOI by the civil service requires both the right mindset and the right systems and procedures. With regard to mindset, the 2010 Pakistan paper highlighted the various factors that contribute to opposition to FOI among civil servants: a traditional culture of secrecy; fear of punitive action if information is released; and the ‘us and them’ (‘them’ being ordinary citizens) mentality inherited from the colonial era, whereby the public are to be kept at a distance.

Primary research conducted for this paper showed that very little has changed with regard to mindset. ‘The Civil Service Rules state that every document not made public by the government is secret.’¹⁴ Several people identified the bureaucracy as the real problem with regard to establishment of FOI in Pakistan. Najam Sethi cited his experience many years ago as Accountability Minister: he asked for some files and found them to be blank with regard to how decisions were reached – civil servants had used yellow slips of paper to make decisions and then taken these off and thrown them away. ‘RTI will never be implemented in Pakistan unless you do civil service

¹² Omar Cheema, Vice President PTI.

¹³ Article 63-1 (c) of the Constitution states that a person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (parliament), if “he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign state”. A number of MPs were disqualified by the Election Commission of Pakistan on the basis of this constitutional provision, including Dr Aziz. However, she appealed the disqualification on the grounds that she was born abroad and therefore did not seek foreign nationality; the ECP referred the case to the Supreme Court.

¹⁴ Mohsin Syed, Director Law, Government of Punjab.

reform: it is not a political issue but a bureaucratic issue.’¹⁵ ‘For FOI you need a 180 degree change.’¹⁶

On systems and procedures, perhaps the most pressing requirement for FOI implementation is proper records management systems, which will allow officials to find information in response to FOI requests. Very little has changed on this front. The Establishment Division has apparently published a manual on indexing of records, but this has not been followed through because of resource constraints. ‘The culture of government and record keeping are not conducive to enforce such sunshine laws.’ The extent of the problem can be gauged from the Supreme Court ruling in the Asghar Khan case,¹⁷ ordering the government to submit certain documents before the Court (see **Box 2**). It was eventually told that these could not be traced. This illustrates the mindset as well as systems challenges faced in implementing FOI in the public sector in Pakistan.

Box 2: Supreme Court Struggles to Get Documents Out of Ministries¹⁸

The Supreme Court asked the government to provide three documents: notification for the creation of a political cell in the ISI, official material relating to the political cell under the late President Ghulam Ishaq Khan, and the report of the Mehran Bank Commission.

a) *ISI Political Cell Notification* – On 4 June 2012 the Attorney General told the Supreme Court this would be produced at the next hearing, but on that occasion said he could not trace it. The Director Law, Ministry of Defence, said the notification was issued by the Cabinet Division and he would try to get a copy but, at the next hearing on 16 July, he too said he could not trace it and that the Ministry of Defence had no such notification.

b) *Mehran Bank Commission Report* – The Ministry of Law told the Supreme Court that the report was not available. Hamid Mir, a well-known anchorperson with Geo TV, produced a copy of the report, but on being asked to authenticate this by the Supreme Court, the Law Ministry refused to do so on the grounds that it did not have the original.

c) *Political Cell under President Ghulam Ishaq Khan* – A notice was issued to the Secretary to the President on 4 October 2012. At the next hearing (15 October), he requested more time. On 17 October he stated that no concrete information was available about any such cell, but efforts were being made to trace any such file and he would be consulting the Military Secretary to the President in this regard. On 18 October, the Director Legal, President House, filed a statement on behalf of the Military Secretary to the effect that the records available in the President’s Secretariat (Personal) had been searched and no such documents found.

However, a ruling at the beginning of the year by the Federal Tax Ombudsman in response to an FOI complaint made against the Federal Bureau of Revenue (FBR), resulted in the FTO issuing an order for the requested information to be provided, and for the FBR to implement the provisions of the FOI Ordinance ‘in letter and spirit’ (see **Box 3**). This is a (rare) positive example of action being taken to enforce FOI provisions.

¹⁵ Zafarullah Khan, Centre for Civic Education.

¹⁶ Mohsin Syed, Director Law, Government of Punjab.

¹⁷ In October 2012, in response to a petition filed by Air Marshal (retired) Asghar Khan in 1996, the Supreme Court ruled that ‘the general election held in the year 1990 was subjected to corruption and corrupt practices’. Moreover, ‘it has been established that an “Election Cell” had been created in the Presidency, which was functioning to provide financial assistance to the favoured candidates, or a group of political parties to achieve desired result by polluting election process and to deprive the people of Pakistan from being represented by their chosen representatives.’ See <http://dawn.com/2012/10/19/asghar-khan-case-sc-resumes-hearing-3/>.

¹⁸ <http://www.thenews.com.pk/Todays-News-13-18712-Three-crucial-documents-not-presented-by-government-in-SC>

Box 3: Federal Tax Ombudsman orders Federal Bureau of Revenue to provide information under FOI Ordinance¹⁹

For cases related to the Revenue Division, complaints in relation to FOI requests are to be made to the Federal Tax Ombudsman. Waheed Shahzad Butt filed a complaint with the FTO against the Federal Board of Revenue (FBR), after it refused his FOI request to provide information related to its functioning.

Mr Butt had asked the FBR to provide details about the total number of cases in which appeals were filed before the first appellate authority (from July 2011 to date); revenue involved in the cases; the number of appeals cases (in the same period) in which written arguments/comments were furnished. The FBR refused to provide this information. Upon the complaint being taken up by the Federal Tax Ombudsman, the FBR filed a reply stating that the data requisitioned pertained to privileged/confidential information regarding taxpayers. The words 'Not admitted' were recorded against the Requestor's contentions.

Federal Tax Ombudsman (FTO), Dr Shoaib Suddle ordered the Federal Board of Revenue (FBR) to implement provisions of Freedom of Information Ordinance 2002 in letter and spirit for providing information to the people. The FTO asked the FBR to appoint an official to ensure its compliance and submit compliance report within 30 days.

Other key points noted by the FTO in its order included:

- The Departmental contention that access to information requested by the Requester was denied as it was confidential/privileged has been examined and found to be misconceived. The information sought does not relate to any taxpayer's declared/assessed income or his wealth statement. It simply relates to an assessment's fate generally while it is in appeal before the first appellate authority with and without a Departmental representative.
- Freedom of Information (FOI) enables citizens to ask for publicly-held information as a matter of right. Its purpose is to ensure transparency and promote good governance by making government more accountable and open.
- It is abundantly clear that as per Freedom of Information Act and the Constitution the respondents are bound to disclose information requested by the requester. The disclosure of the requested information cannot be denied without being in violation of the law and the Constitution.
- The routine business of a public functionary cannot be allowed to be cloaked in the veil of secrecy or privilege. As a rule, information of public interest must be disclosed with minimum delay when a valid reason for its disclosure is given. Only as an exception should privilege be claimed on justifiable grounds permissible under the law.
- When an exemption is claimed from making a disclosure, the scales of justice have to tilt a bit towards permitting disclosures in order to balance the public right to information against narrowly construed interests of a government agency. No doubt where there are two competing interests involved, the Federal Tax Ombudsman is expected to perform a balancing act by weighing both interests and deciding how much and when to tilt.
- In the present case, the data/documents requested by the Requester do not fall within any of the exemptions provided under the FOI Ordinance. No exemption can be claimed on the basis of any other law. The provisions of the Freedom of Information Ordinance 2002 also have overriding effect over the provisions of the Income Tax Ordinance, 2001 as given in Section 3 of the FOI Ordinance (a non-obstante provision).
- Finally, Article 19-A of the Constitution of Pakistan enshrines the right to information as a Fundamental Right, subject to regulation and reasonable restriction.

Civil Society Organizations

The 2010 paper noted that freedom of information has not been an issue that has galvanized mainstream civil society in the country. This is due to a combination of its association with President Musharraf, the weak provisions in the FOI Ordinance 2002 and lack of awareness of the importance

¹⁹ *The News*, 9 January 2013.

of FOI. Activism on FOI has been confined to a handful of CSOs, who believe that use of the FOI Ordinance 2002 will generate the momentum for reform and effective implementation.

Three years on, very little has changed. The same handful of CSOs – notably the Centre for Peace and Development Initiatives (CPDI), the Centre for Civic Education (CCE) and the Consumer Rights Commission of Pakistan (CRCP) – are engaged on FOI. Their activities range from submitting FOI requests and monitoring compliance to holding awareness-raising seminars and preparing model FOI legislation.²⁰ During the course of research for this paper, it was possible to detect a marked scepticism on the part of some CSOs long active on the FOI issue, about the chances of an effective FOI regime ever being established in Pakistan. A few new entities have emerged, e.g. FOI Act Network Pakistan (Sindh), and RTI Research Centre Pakistan, which runs a website (www.rtipakistan.com) providing information about political parties and politicians, and conducting online polls on various issues – it does not appear to be focused on RTI per se.

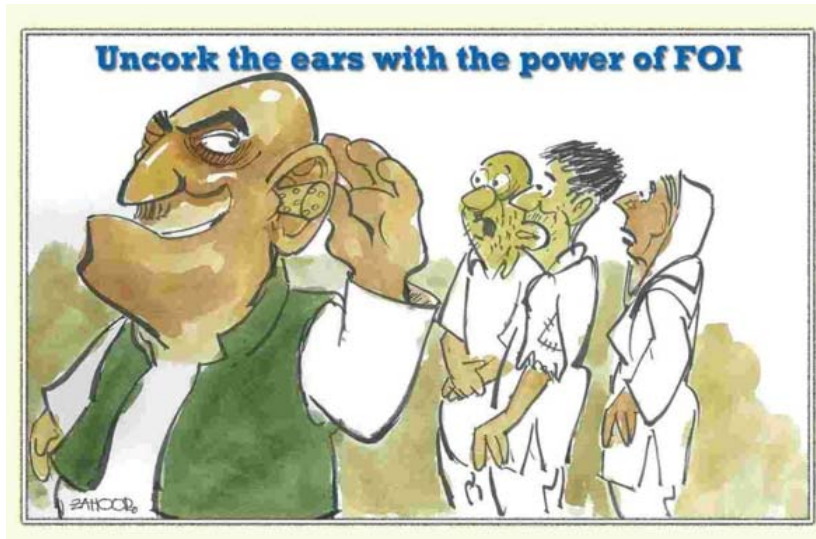
In terms of strategy, there have been two new developments. Firstly, under an extension of the Free and Fair Election Network (FAFEN) initiative, district level groups are being supported to carry out monitoring of government operations, e.g. functioning of a school, a police station, implementation of a construction project. This includes technical support (by CPDI) in making freedom of information requests. The program is designed to build local demand and capacity for freedom of information. CPDI is also carrying out a sustained engagement with small district RTI groups, aimed again at building local capacity. This marks a change from the ‘traditional’ approach of conducting (usually one-off) orientation workshops on FOI for large numbers of people.

Secondly, there have been moves towards combined action by civil society organizations on FOI. The 2010 paper noted the obvious ‘competition’ between different CSOs engaged on the FOI issue, something that prevented them working in a united manner and undermined their effectiveness. In December 2012, a large number of CSOs engaged on FOI (either directly or indirectly) joined together to form the Coalition for RTI (see **Box 4**). The first CRTI Steering Committee meeting, on 24 December 2012, agreed that the coalition would adopt one Model RTI Law and advocate the enactment of right to information laws in line with the model law.

Box 4: Members of Coalition for Right to Information

Centre for Civic Education	Centre for Governance and Public Accountability
Centre for Investigative Reporting in Pakistan	Centre for Peace and Development Initiatives
FOSI	Individual Land
Intermedia	Liberal Forum Pakistan
Lok Sujag	Pakistan Foundation Fighting Blindness
Shehry	Society for Alternative Media and Research
Society for Human Rights and Prisoners Aid	The Network for Consumer Rights Protection
Civil Action Research	Institute for Research, Advocacy and Development
Sustainable Education and Environmental Development	

²⁰ A separate report on FOI case studies in Pakistan is currently being prepared for the South Asia Transparency Advisory Group. This will assess the types of FOI requests made in Pakistan – by whom, to which bodies, on which issues, responses and any resultant action, and so on. Though still in the draft stage, the report is expected to confirm that to date FOI has not really been a tool for citizen empowerment in Pakistan (i.e. helping achieve entitlements, improve service delivery, curb corruption, etc).



Cartoon by Zahoor on FOI, featured on 'Our Right to Know' website²¹

Media

The 2010 Pakistan RTI paper listed a number of reasons for lack of media interest in FOI: lack of awareness; a weak tradition of investigative journalism among the media in Pakistan; reliance on personal contacts and other sources for information; and a perception that FOI was not really relevant to the interests and concerns of ordinary citizens. These factors are all still relevant. While there is a stronger tradition of investigative journalism (stoked by the highly competitive nature of the media in Pakistan), this is still dependent on contacts, paid sources and the like. The MPs' income tax returns case study (see **Box 5**) highlights how FOI can be useful in investigative journalism, but also the limitations faced in this. Journalists are also reluctant to use FOI requests because these take time, involve considerable effort and expense, and because this will disclose whatever investigation they are engaged on.

Box 5: Use of FOI in Investigation into MPs' Income Tax Returns²²

Umar Cheema, an investigative reporter with The News and founder of the Centre for Investigative Reporting in Pakistan (CIRP) conducted an investigation into the income tax returns of Members of Parliament filed in September 2011. In the report he details the research methodology used:

'The major challenge in undertaking this study was to access relevant data about taxpayers, which is still treated as confidential, despite the recognition of the right to information as a fundamental right under Article 19-A of the Constitution. In view of this, efforts were made to obtain information and insights through multiple formal and informal sources.

'Firstly letters were sent to all MPs at their postal addresses....Each addressee was asked six questions (*related to possession of an NTN, filing of income tax*)

'Secondly, an information request was submitted to the Election Commission of Pakistan for the nomination papers of MPs, in order to collect details of their NTNs and CNICs essential for accessing the tax record.....*The ECP did grant access to nomination papers.*

'Thirdly, information was collected from the Federal Board of Revenue website, which hosts Taxpayers Facilitation Portal.... and PRAL that hosts computerized tax return details of all the filers.

²¹ <http://www.ourrighttoknow.org/zahoors-cartoons/>

²² Excerpts taken from *Representation without Taxation: An Analysis of MPs' Income Tax Returns for 2011* (CPDI, CIRP).

'Fourthly, an information request was submitted to the FBR under Freedom of Information Ordinance 2002. The objective was to verify whether the MPs whose record was not found in PRAL and Taxpayer Facilitation Portal were registered with the tax authorities or not... The FBR did not respond to the request.

The significant information was accessed through informal sources in the FBR who volunteered to support this research in view of its potential to promote a fair and just tax system in Pakistan.

In the acknowledgements the author expresses gratitude to the Secretary ECP Ishtiaq Ahmed Khan: 'He is one of the few bureaucrats who acknowledge and encourage the citizens to exercise their Right to Information under Article 19-A of the Constitution of Pakistan.'

A handful of journalists are active on the FOI issue, including Umar Cheema, an investigative journalist with *The News*, Adnan Rehmat of Intermedia, Intikhab Hanif, a Lahore-based journalist with *Dawn*, and Mazhar Abbas.

Donors

A few donors are specifically working on promotion of FOI in Pakistan. These include the World Bank, The Asia Foundation and Open Society Initiative. The Bank has supported a number of conferences and policy dialogues on FOI (e.g. the RTI Conference held by CPDI in September 2011), as well as the FAFEN initiative to build district level demand and capacity for RTI. It is also supporting a number of governance related programs at provincial level, e.g. Governance Support Projects in FATA/KP and Balochistan, and the forthcoming Punjab Governance Reforms for Service Delivery program. Specific interventions vary, but overall the Bank's strategy is to identify and avail opportunities to strengthen both supply and demand sides for FOI. The Asia Foundation has supported a project for sensitization of media personnel on RTI; in the past it has also provided support to CPDI.

The relative dearth of donor interest in FOI reflects both a general shift away from governance programs among most donors (as compared to the early 2000s when governance was a donor priority), and the numerous other problems in Pakistan demanding donor attention, not least repeated large-scale natural disasters and on-going conflict in parts of KP, FATA and Balochistan.

C. PAKISTAN CONTEXT

When assessing the status of FOI/RTI in Pakistan and any progress/change in this since 2010, it is important to bear in mind the wider country context. This will greatly determine the prioritization of issues by decision-makers, as well as help identify the opportunities and challenges to establishment of an effective FOI/RTI regime.

Political Situation

Pakistan's political history is marked by repeated periods of military rule, interspersed by elected civilian governments. The last period of military rule under General Musharraf began with a coup in October 1998. As with previous military rulers, Musharraf made increasingly desperate efforts to stay in power. In 2007 he attempted to dismiss the Chief Justice of Pakistan Iftikhar Chaudhry. The move backfired, triggering a popular lawyers'-led movement against the President, forcing him to restore the Chief Justice, and eventually leading to his own resignation in August 2008. Benazir Bhutto, leader of the PPP, was assassinated in December 2007. Elections in February 2008 saw her party gain power at the centre, with Yusuf Raza Gilani becoming Prime Minister. Ms Bhutto's widow, Asif Ali Zardari, succeeded Musharraf to the post of President. Yusuf Raza Gilani was removed from office by the Supreme Court in 2012 on contempt charges.

Even this cursory review of the shifts in power in Pakistan over the past decade gives an indication of how turbulent the political situation is in the country. Nonetheless, there have been a number of very significant developments in this period strengthening democratic governance. The lawyers' movement has continued to push for the independence of the judiciary. It was a major factor in President Zardari's decision in March 2009 to restore Supreme Court judges who had been dismissed by Musharraf. Charismatic and respected lawyers' leaders such as Asma Jehangir serve as an 'outside voice' - sometimes questioning, sometimes criticizing - both in relation to the government/politicians and, increasingly, the judiciary.

A second is the on-going exponential growth of the media, in particular electronic media. News reporting in Pakistan has been transformed over the past decade: in place of this being wholly state-controlled and heavily censored, there is now live footage of news developments, hard-hitting interviews with leaders and politicians, and vigorous debate. The media has been a powerful force for transparency and accountability. It was the media which showed the last Chief Minister of Punjab's daughter harassing a bakery employee; the man was later picked up by police and elite forces and beaten up. The scandal led to the Chief Minister's son-in-law having to present himself for arrest at a police station – a true first for Pakistan.²³ Numerous other scandals and abuses of power have been exposed by the media (e.g. Pakistan Steel Mills case, Hajj corruption scandal, ephedrine pharmaceuticals case involving then PM Yusuf Raza Gilani's son).

It should be stressed that the media is also a powerful harbinger of public opinion; it played a critical role, for example, in turning the public against the Pakistani Taliban (e.g. by showing footage of the Taliban beating a 17-year old girl in public in Swat).

²³ <http://dawn.com/2012/11/20/bakery-torture-case-shahbaz-sharifs-son-in-law-indicted/>

There are issues with the media: it is not always objective and does not always operate in a manner consistent with internationally accepted good practice. It can also be influenced by powerful groups, including the government: '70 percent is establishment media dependent on government advertising'.²⁴ The weaknesses of the Pakistani media were highlighted in an interview conducted by two of the country's leading anchors, Mehar Bukhari and Mubashir Lucman, of controversial property developer Riaz Malik. In leaked footage shot during the commercial breaks, the two were clearly heard consulting with Riaz Malik and taking instructions from political figures on what they should – and should not – ask.²⁵ As one interviewee for this paper observed, 'The media in Pakistan is now in a transitional phase; it has not reached full maturity yet.'

'Judicial activism' is a term frequently heard in Pakistan in recent years. It refers to the proactive approach taken by the superior judiciary in relation to the government/military and to challenging abuses. Examples include the Supreme Court's demand from the army/ISI²⁶ that it provide details of so-called 'missing persons'; its hearing cases related to the privatization of state entities and award of rental power contracts; its repeal of the National Reconciliation Ordinance (NRO) promulgated under President Musharraf; its repeated demand that the government write to the Swiss authorities in relation to corruption charges against President Zardari, and its subsequent dismissal of Prime Minister Yusuf Gilani; its ruling in the Asghar Khan case; and its recent action against former Army Chief and President Pervez Musharraf following his return to Pakistan.²⁷ There is criticism that the Supreme Court is becoming too active and failing to focus on its primary function of providing access to justice for ordinary citizens. This can be debated, but what is clear is that the current Supreme Court has asserted its independence.

Despite these, the problem of corruption remains serious in Pakistan. Transparency International's Corruption Perceptions Index ranked Pakistan 134th out of 176 countries in 2011; its ranking dropped to 139th in 2012. The National Accountability Chairman claimed that daily losses to the Pakistan economy due to corruption were in the order of Rs. 8 billion per day.²⁸

Security is discussed below, but there are many other pressing problems facing the country, notably protracted power cuts, high food inflation, and poor economic growth. Pakistan's energy crisis – the growing gap between supply and demand – is already having a massive negative impact on productivity and economic growth. Massive floods in 2010 and (on a smaller scale) in 2011 took their toll on infrastructure, livelihoods and development. With each successive disaster the task of recovery and reconstruction becomes that much harder. The last government was widely considered to have failed to address the major challenges facing Pakistan – this was reflected in its resounding defeat in the 2013 elections.

The 2013 elections were historic in Pakistan. They came after a civilian elected government completed its full term in office – the first time this has happened in the country's history. The election process – a Chief Election Commissioner appointed through government-opposition

²⁴ Najam Sethi.

²⁵ <http://tribune.com.pk/story/393636/video-leak-lucman-bukhari-run-planted-show-with-malik-riaz/>

²⁶ Inter Services Intelligence.

²⁷ The Supreme Court ordered Musharraf's arrest following his return to Pakistan in April 2013, on charges of treason in relation to his attempt to dismiss the senior judiciary in 2007 and imposition of emergency rule.

²⁸ <http://www.thenews.com.pk/Todays-News-13-15732-NAB-chief-exceeds-Transparency-claims-on-corruption-figures>

consensus, handover to caretaker interim governments at federal and provincial level to oversee free and fair elections, watched by an active media plus social media – generally worked well. Sadly, many people lost their lives in terrorist attacks/election-related violence during the election period. There were also allegations of electoral malpractice and in some constituencies re-polling was ordered. But voter turnout was high (around 60%) and the overall election results – victory for PML-N at federal level and in Punjab – was accepted by everyone. As of mid-May 2013, the new governments were preparing to assume office. For Pakistan, this is major progress on the path to democracy.

Moreover, with PML-N forming both federal and Punjab governments – that too without having to resort to unwieldy coalitions - it has a clear hand to make and implement policies to address the many pressing issues facing the country. PTI, with around 30 seats in the National Assembly, is in a position to form an active and questioning opposition – checking potential abuses of power. PTI will be leading a coalition government in KP, while the same PPP-MQM coalition looks set to form the government in Sindh.

Security Situation

For many decades the main national security threat to Pakistan was considered to be external – India. Today the major threats facing Pakistan are all internal: increased religious militancy, armed insurgency movements, and crime.

The roots of Islamic militancy in Pakistan can be traced back to the Zia-ul-Haq era and Pakistan's support for the Afghan jihad. In the 1990s it was bolstered by Pakistan's attempts to take advantage of the insurgency in Indian Administered Kashmir. More recently, it is the 'war on terror' that has greatly contributed to the spread of extremist ideology in parts of Pakistan, strengthened militant groups and led to a massive increase in terrorist attacks across the country. President Musharraf's initial decision to support the US after the 9/11 attacks, the subsequent military operations in the Federally Administered Tribal Areas (FATA) - for the first time in Pakistan's history, and US drone attacks on civilian targets led to an escalating backlash in the form of assassinations (including attempts on Musharraf), suicide bombings and armed assaults by militants.

The Lal Masjid siege in the heart of Islamabad was a significant event in the rise of Islamic militancy: the government was forced to order military action, but the resultant deaths (notably of women) antagonized many. Following the Lal Masjid assault, extremist attacks became more aggressive and ambitious. In 2008 Taliban took over much of the Swat Valley (and other areas) and enforced their interpretation of Islamic law there. In early 2009 the PPP-led government signed an accord with the Taliban agreeing to the imposition of *Nizam-e-Adl* (Islamic justice) in the Valley. The move was strongly criticized and seen as state capitulation to the radicals. However, by mid-2009 there was consensus among federal and provincial governments and the military that decisive action was needed. A number of military campaigns were undertaken in 2009 which eventually led to the defeat of the Taliban and the restoration of state control over Swat.

As seen, government responses have varied from capitulation to offensive military action. There is still a lack of consistency about strategy to tackle Islamic militancy. More worrying, military defeat of the Taliban has not been followed by substantial measures to address the underlying factors that facilitated the Taliban's success (contributed to their initial popularity). Some legislative reforms

have been initiated in FATA, notably abolition of the Frontier Crimes Rules, but much more needs to be done to provide basic services and promote development and jobs creation. Without such measures, a resurgence of militancy in the region is highly likely. Evidence for this is sadly too easy to find: the assassination attempt on Malala Yousufzai, a schoolgirl who pressed for girls' education in Swat; the assassination of ANP senior leader Bashir Bilour; killings of polio workers in Karachi and NGO workers in Swabi; successive (sectarian) attacks on the Hazara Shia community in Quetta leading to dozens killed; and targeting of the MQM, ANP and other 'secular' parties in the May 2013 election campaign. The terrorist threat in Pakistan is far from over.

The incoming PML-N government has signalled its desire to talk to Tehreek-e-Taliban Pakistan (TTP). The forthcoming withdrawal of US forces from Afghanistan in 2014 – and the resulting drop/cessation of drone attacks in Pakistan's tribal belt which fuel so much anger in the country – also offer the hope of reduced extremist violence. However, the danger of increased instability in Afghanistan following the US pullout also poses a major threat to Pakistan.

The second – arguably lesser - internal threat facing Pakistan is the Balochistan insurgency. Baloch grievances centre on the perceived exploitation of their province's resources (notably gas) by the centre, the lack of development in the province, the influx of non-Baloch peoples, and historical as well as on-going human rights abuses. On-going military action, civilian casualties, and the disappearance of thousands of Balochis (allegedly at the hands of the ISI), are important factors in sustaining the secessionist movement. However, the 18th Constitutional Amendment and revised NFC Award have led to greater power and resources for Balochistan. If properly implemented, and effectively utilized to promote development in the province, these could dilute support for the insurgency.

Finally, the law and order situation in Pakistan is deteriorating. Karachi is particularly bad, with rampant crime, ethnic and sectarian violence. But even in traditionally 'safe' parts of the country, crime is on the rise. Kidnappings for ransom are becoming increasingly common. The dire condition of the country's police and judicial system offers little hope of perpetrators being caught and punished, while the rising poverty and economic hardship make further increases in crime levels certain.

CONCLUSION

Summary Analysis

Pakistan presents a challenging environment with its long history of military rule and political instability, the rapidly escalating energy crisis (even the capital is experiencing power cuts of 10-12 hours in every 24 hours), weak economy, poor human development indicators, serious security situation and persistent terrorist attacks. Given this context, it is unrealistic to expect that FOI/RTI will become an issue that galvanizes the masses and leads to a wide populist campaign for effective FOI in Pakistan – there are simply too many other pressing issues demanding attention.

It is also true that, on paper at least, there has been very little progress on moving the FOI agenda forward in Pakistan over the past three years. There has been no reform of federal or provincial (Sindh-Balochistan) legislation, and Punjab and KP still have no FOI laws. Implementation and enforcement of the federal FOI Ordinance 2002, Balochistan FOI Act 2005 and Sindh FOI Act 2006 remain extremely weak. FOI has not become a mainstream civil society issue, or one that has captured the attention of mainstream political parties (except PTI): in practice interest in this remains confined to the same handful of CSOs and a few individual political champions.

However, it would be wrong to conclude from this that nothing has changed. Quite the contrary: in terms of *potential* there has been a huge sea change with regard to FOI in Pakistan. Unlike three years ago, there is now real momentum and real opportunities in Pakistan to move forward on FOI. This stems from the following factors:

- Article 19-A of the Constitution gives every citizen the right to access information from public bodies;
- Approval of the very sound (as in consistent with international best practice) draft Punjab FOI Act by the outgoing Punjab cabinet;
- The return of PML-N to power in Punjab, making passage of the Punjab law very likely;
- Election of PML-N to power at federal level, increasing the chances of 'knock-on' legislative reform there;
- The traditional strong competition between the provinces (esp. in relation to Punjab) and Punjab's 'role model' position in the country – these factors create huge potential for a 'multiplier effect' on FOI legislation in KP, Sindh and Balochistan;
- The strong record of governance reform in KP, and the fact that PTI will be heading the new coalition government there – it has a long-standing commitment to FOI;
- Ever increasing citizen activism and engagement on political-social issues: people are no longer prepared to just accept injustice, abuses and corruption (– as seen in the numerous 'sit-ins' (*dharnas*) in protest at alleged electoral rigging).

The question is: How to realize this potential?

Recommendations

The 2010 Pakistan paper included a long list of recommendations to strengthen both demand and supply sides (see **Box 6**). Those recommendations are very much still valid – they should be considered as the recommendations of this paper as well.

Box 6: 'Long List' of Recommendations made in 2010 Pakistan RTI Paper

Establishment of a national committee on reform and implementation of FOI, with representation by government, opposition parties, the media, civil society groups;

Setting of standards for information disclosure, including clear definitions of concepts like 'public interest', 'national security' and 'confidential';

Conduct of a public awareness campaign in Urdu and local languages, explaining in simple terms what FOI is, how it will help citizens and how they can make information requests;

Identification of strategic entry points for FOI, e.g. access to land ownership records, that can effectively demonstrate its relevance and utility, and encourage people to use it;

Identification and cultivation of 'champions' for FOI among politicians and parliamentarians;

Capacity building of media persons to understand the significance of FOI and encourage its use in investigative (and other) journalism;

Efforts by politicians, civil society and the media to 'reposition' the FOI issue in the context of enhanced transparency and accountability, AND strengthening of democracy;

Capacity building of Designated Officials in government ministries and departments to enable them to handle information requests sympathetically and efficiently;

Investment in improved record-keeping systems (notably automation) across the public sector;

Promotion of proactive disclosure by public bodies, e.g. annual reports, rules, notifications, and implementation of measures to ensure ready accessibility of such information;

Efforts by civil society groups to promote networking and coordinated action to promote FOI. Greater interaction between CSOs would be a necessary condition for this.

While all the above are valid, the following are priority actions that can ensure the current momentum on FOI in Pakistan is continued and delivers positive results:

- Civil society groups, the media, political parties and others should maintain pressure on the incoming Punjab government of Chief Minister Shahbaz Sharif to quickly pass the Punjab FOI Act;
- Effective implementation of the Punjab FOI Act should be promoted from day one in Punjab, and efforts should be made to ensure that the Punjab Information Commission is established quickly and has strong leadership and the necessary resources to function;
- A good entry point for implementation is proactive disclosure of information by public bodies. This is comparatively more straightforward to do than setting up FOI systems to handle FOI requests, it saves citizens having to submit requests for key information about public bodies, and it greatly helps promote culture/mindset change in civil servants;
 - In KP the incoming PTI government is committed to FOI and should be encouraged to take action on this quickly. A very good draft KP RTI Act exists, and this can be used as the basis for new legislation in the province. As with Punjab, passage of legislation should be followed by effective implementation from day one.
 - In Sindh and Balochistan, advocacy for FOI legislative reform could be framed in the context of the 18th Constitutional Amendment which both places greater responsibilities on provincial governments (matched by greater resources under the NFC Award) *and* gives citizens the right to access information. This could be used as the premise to push for change – in legislation and implementation.

- Close coordination should be promoted between provinces so that the experience of Punjab – currently most ahead on FOI in Pakistan – is shared with the other provinces, encouraging them to move forward on it as well.

On the demand side:

- Public awareness and pressure for FOI needs to be raised by making FOI relevant to the needs and concerns of ordinary citizens – they should be encouraged to see it as a tool that can empower them and help them secure their rights and entitlements;
- The media need to be sensitized about the significance of FOI and its potential applications. The growing electronic media channels need programming content. By making FOI relevant to the interests of ordinary citizens, the media can be encouraged to make it a regular topic in discussion programmes;
- Civil society organizations have begun to formulate a collective stance on FOI. This positive development needs to be fostered, and CSOs supported to build the demand side;
- Judicial activism can be mobilized in the cause of FOI – Article 19-A provides an excellent window for judicial engagement on the issue.

For all the above, it will be useful to share lessons and experiences from other countries, and particularly from other countries in the region.

In conclusion, despite the many challenges facing Pakistan, there is significant potential to move forward on FOI/RTI in the country and there are clear steps that can be taken to turn this potential into reality.

Annex

Primary Sources

Interviews were conducted with the following in December 2012:

1. Amer Ejaz Butt, Executive Director, Centre for Peace and Development Initiatives
2. Umar Cheema, Geo investigative journalist
3. Zafarullah Khan, Centre for Civic Education
4. Siddique Farooq, PML-N MNA and Secretary Manifesto Committee
5. Omar Cheema, Vice President Pakistan Tehreek-i-Insaaf
6. Mohsin Syed, Director Law, Government of Punjab
7. Najam Sethi, Geo TV and Editor-in-Chief Friday Times
8. Mohyuddin Wani, Secretary Information, Government of Punjab
9. Anjum Rashid, South Asia Free Media Association