

# TRANSPARENCY ADVISORY GROUP (TAG) – SOUTH ASIA

## Work Plan for 2012-13

In pursuit of the objectives of TAG, it is proposed to systematically examine and discuss the challenges and opportunities relating to existing or potential RTI regimes in countries of the region, and to robustly share ideas, experiences, innovations and solutions from across the world that might help identify and operationalize opportunities and creative solutions to these and other challenges.

*Towards this end, TAG members have interacted with ministers and officials of Government of Bhutan on two occasions and discussed the proposed Bhutan RTI bill. Detailed comments on a revised version of the RTI Bill were also conveyed to the government.*

*TAG members have also helped design RTI assessment studies in Bangladesh, Pakistan, Nepal and Sri Lanka (Neilson study, Asia Foundation study). There has also been interaction with the Government of India on various aspects relating to the strengthening of the RTI regime.*

Apart from these broad, ongoing, activities four specific tasks have been identified for initiation in 2012-13.

### **1. RTI related case studies**

It is proposed to identify, collect, collate, edit, classify and publish case studies pertaining to the use (or abuse) of transparency laws and practices from each of the countries in the region. These case studies would capture the best and the worst of the RTI experiences and collectively typify the state of RTI in the country and the region. It is hoped that an edited collection, with at least one section containing case studies from countries outside the region, would be published and widely disseminated.

As a start, it is expected to identify at least five types of case studies.

- i. The first type would include those that demonstrate some unusual use of the RTI Act. For example the use could be innovative showing some uncommon way of filing an application; or it could demonstrate some human interest angle such as if the Act was used to save a life or provide food or shelter to the poor. Any cases that are funny or satirical are of interest to us also, as are those that involve some identifiable groups such as women, backward communities, minorities, children, old people, and so on.

Additionally, we are searching for cases where the very filing an RTI application and/or the information received has led to a large impact of some kind; perhaps even to some legal or policy level change. If the case exposes the misuse of public resources or the arbitrary use of power by an authority, we would like to see it as well. Finally, cases that involve surprisingly big or small quantities of input or output in terms of time, resources, or effort. For instance those that involve a large or small amount of money or those applications that result in a large amount of information.

- ii. For the second category of cases, we are looking for unusual users of the Act. Persons who have filed more than 50 applications or those who have originated interesting applications, as described above.
- iii. The third category of cases are those that describe specific issues for which RTI has been used. Issues such as human rights, survival of the poor and the destitute, or conservation of the environment, which are of public interest and welfare, involve transparency and accountability in a critical way, or affect a particularly vulnerable or large group of people.
- iv. Next, using case studies we would like to highlight the work of organizations, unofficial groups, movements, and campaigns working to support the RTI Act. For example groups promoting awareness of the Act or using the Act extensively. If you have cases which describe your own organization or others that fit this fourth category, do let us know.
- v. Finally, for our last category we are searching for cases which would illustrate the work of information giving institutions or other RTI related groups (including the individuals within them). For instance, information officers or Information Commissioners who have been particularly good or bad about providing information or passing orders. Or government agencies which have done an extraordinary job of complying with the requirement under the Act of pro active (*suo moto*) disclosure.

*This work has already been initiated and case studies from Bangladesh are being compiled by TAG members Shaheen Anam and Shamsul Bari. TAG member Taranath Dahal is collecting the case studies from Nepal, and Shekhar Singh and Bincy Thomas, from India. Presentations on each of these would be made during the Bangkok meeting.*

*It is expected to also initiate similar work in Pakistan and also to compile some good international case studies.*

## **2. State of the RTI Regime report for each country of the region**

It is proposed to bring out a bi-annual edited report on *The State of the Transparency Regime*, covering each of the countries of the region, with an essay contrasting the region with other regions of the world.

The specific objective would be to try and capture, both through a narrative and through statistical analysis, the status of transparency in governance, for each of the eight countries of South Asia. For countries that already have a transparency law, this would involve assessing the implementation of this law and the efficacy of related institutions and processes, also focussing on the response of the public. For those countries that do not yet have a transparency law, it would capture the progress that governments and civil society groups have made in setting up a formal transparency regime, and also assess how far existing transparency provisions in other laws are being effectively used to promote open governance.

For the narratives, experts from different countries would be invited to summarise the major events, challenges, achievements and setbacks of the transparency regimes, and where such regimes do not yet exist, of efforts to establish such regimes.

Statistical analysis would be based on statistics compiled from secondary sources, including reports of various empirical studies conducted or being conducted in many of these countries.<sup>1</sup> No primary collection of data would be undertaken.

A list of the sorts of issues that would be covered in the proposed State of the RTI Regime report is given below.

- i. What proportion of the people are aware of the RTI Act/transparency provisions in other laws?
- ii. How many people are using the act/provisions?
- iii. What types of information are they asking for?
- iv. How often do they get full/partial information – on time/late?
- v. How many go in appeal – first/second/third?
- vi. What is the success rate of each level of appeal – and how long does each take?
- vii. Are there any threats/threat perceptions by the applicants, and if so, from whom and how severe?
- viii. How easy/difficult is the process, how expensive, and how time consuming?
- ix. How often does the asking for/getting information solve the problem for which the information was being sought?
- x. Are things getting better/worse/remaining the same?

*Initial findings of studies currently underway in Bangladesh (Neilsons) and India (RaaG) would be presented at the Bangkok meeting.*

### **3. Evolution of the Transparency Regime: Broadening National Dominant Narratives**

The objective is to try and capture, through a series of narratives, the “story” of the evolution of the transparency regime, its impact and predictions for the future, for each of the participating countries. Efforts would be made to record voices of diverse stakeholders and observers and focus on those that might represent a perspective other than those highlighted in the dominant narrative. For countries that do not yet have a transparency law, the narratives would attempt to capture the progress that governments, civil society groups, and other stakeholders have made in setting up a formal transparency regime, and also assess how far existing transparency provisions in other laws are being effectively used to promote open governance.

The effort is not to discredit or challenge the dominant narrative but to capture the reality more completely, adding to the richness of the prevailing dominant narrative while making it truer to reality.

It is important to properly understand the conditions under which RTI regimes come into existence and thrive, without being distracted by sentiment, folklore, or even politically correct though inaccurate accounts of what happened or what is happening. An incomplete understanding not only misleads other aspirants but inhibits a proper analysis of the critical

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<sup>1</sup>Bangladesh- World bank sponsored study being conducted by Nielsons; Study being conducted by Asia Foundation for Bangladesh, Nepal, Sri Lanka and Pakistan; Study conducted by RaaG, and another by Pricewaterhouse Coopers, for India. Studies conducted by CHRI and by the World Bank for Bhutan and for Nepal. Others?

factors responsible for success and failure, and makes it more difficult to find effective solutions to challenges.

Narratives could be built up by conducting structured interviews with various categories of people, specifically:

- i. Members of the public representing special interest categories (eg. the very poor, members of minority groups, disadvantaged groups, illiterate and semi-literate, women, those accused or prosecuted by law enforcement agencies, litigants, etc.).
- ii. Users of the RTI Act/ of transparency provisions in other laws – both satisfied and dissatisfied users from middle and lower economic classes, also from different age groups, including university students, and both women and men.
- iii. Representatives of NGOs/people's movements, working in transparency and governance related issues and in other social sectors.
- iv. Journalists.
- v. Civil servants, both from the traditionally open (social) sectors and traditionally closed sectors (police, military, security agencies, economic departments, vigilance, etc).
- vi. Academics, especially those from political science, public administration, and sociology – with interest in governance and public empowerment issues.
- vii. Information officers and information commissioners (where such exist).
- viii. Judges, especially those who hear appeals in RTI related cases.
- ix. Representatives of political parties, including elected representatives at various levels of government.
- x. International/donor agency representatives.

Where required, identity of the interviewee can be protected.

Some suggested questions around which the interview could be structured are given below.

- i. How important do you think a strong and effective transparency law is for ensuring honest, efficient and just governance in your country?
- ii. What are the factors that have promoted transparency and the evolution of the regime, and what have inhibited it?
- iii. Do you think the existing/proposed law is too strong/just right/too weak? Give reasons?
- iv. Do you think the transparency regime has negative effects? If so, what are these and how important are they /could they be in your country? Please give an example of what you think typifies the worst type of negative impact.
- v. What, in your opinion, are the most significant achievements/possible achievements of the transparency regime in your country? Please narrate any incident/ effect that you think typifies the achievement.
- vi. What do you see as the future of the transparency regime in the country?

These are the generic questions. Questions, specific to each category of interviewee, need to be separately developed.

Each interview should be recorded and transcribed and, where required, translated into English. Based on these interviews, an editor would weave a common national narrative putting the different points of view in a common perspective, around a predetermined structure, so that the narrative of each of the countries is to a great extent comparable with each other.

There would a synthesis narrative, trying to capture the essence of the region, and experts from other regions of the World (especially Africa, South America and SE Asia) would be invited to contrast the South Asia narrative with the reality in their own regions.

The proposed narrator must be:

- A public intellectual (preferably an academic or a journalist) with interest in, and knowledge of, governance issues.
- NOT someone who has been, or is, an active participant in the transparency movement, or an active subscriber to the dominant narrative.
- Is senior and distinguished and would, therefore, have access to senior politicians, academics, journalists and civil servants.
- Has the ability to appreciate diverse points of views and weave them together into a coherent narrative.

*Work on broadening the dominant narratives has already been initiated in Bangladesh, Nepal and India, and short presentations would be made, on the progress, at the Bangkok meeting.*

#### **4. TAG meetings**

It is also hoped to organise at least two regional meeting, the first in Bangkok, Thailand in the beginning of 2013, and another later in the year in some other suitable location. Meanwhile, there will be continuing efforts to identify other regional and global meetings where some of the TAG members are invited and can meet on the side-lines to discuss regional transparency issues. Efforts will also be made to explore the possibility of organising periodic discussion based on video conferencing.

#### **5. Deepening the Transparency Debate through an Ongoing Dialogue Platform**

##### *Background*

The idea of creating a regional grouping or institution was first mooted during the regional workshop entitled 'Towards More Open and Transparent Governance in South Asia' held in Delhi on 27-29 April, 2010. An informal regional advisory committee on RTI began to take shape during the winter of 2010. The first formal meeting took place in Kathmandu, on the sidelines of the 'First National Convention on the RTI in Nepal', 28-29 March 2011. A comprehensive document on a possible work programme for the group was discussed at the meeting. Participants also briefed the group on the status of the RTI in their respective

countries. The Group reconvened in Patna a year later (1-3 March 2012), where further discussions led to the development of specific objectives for the group.<sup>2</sup>

A key objective of group was defined as “to develop and promote cutting-edge thinking on issues related to the RTI specifically, and transparency and accountability more generally”. It is in response to this objective that the following output-oriented activity is being proposed.

#### *Deepening the Transparency Debate: Developing an ongoing dialogue platform for TAG*

In the first instance, it should be noted that the platform being proposed is *not* an email discussion group. This is for several reasons. First, it is well understood that members of the group are already engaged in very demanding tasks, both in terms of time as well as intellectual intensity. Therefore any activity must *not* barrage members with large volumes of emails which may or may not have relevance to their work. Second, an email discussion group has its attendant expectations of frequent and substantive interventions by members. This, as was articulated severally during the meetings in Patna, is an unrealistic expectation given that members are already overwhelmed with the demands of their primary responsibilities. And finally, there are several discussion groups ‘out there’ that serve the purpose of information sharing and dissemination, a task that is not a core activity of TAG.

At the same time, organising frequent meetings to take the thinking forward is unsustainable given the limitation of resources that are currently available. While such meetings are essential in re-energising the group, specific output-oriented activities need to be carried out between meetings to deepen the transparency debate.

It is as a response to this context that an ‘ongoing dialogue platform’ is being proposed.<sup>3</sup> While it will use email as the primary tool of communication, the design of the activity will ensure no undue pressures or expectations are placed on members, even as their contributions are sought in specific, relevant and well-defined contexts.

#### *How Will It Work?*

Several thematic concerns based on country and regional priorities were identified during the Patna meetings. In the first instance, 12 such themes (one theme each month) are being circulated for endorsement within the group (for example, the relationship between the judiciary and accountability mechanisms such as the RTI, see below).

Once these themes have been endorsed, the Chair and facilitators of the group will identify a resource person (suggestions of names from TAG members will be very welcome) for each of the themes, who will conduct a survey and write a brief two-page summary of the current thinking and practices on the issue. S/he will also propose knowledge and policy gaps that have emerged on the theme. An honorarium will be paid to this resource person for his/her efforts.

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<sup>2</sup> See summary of proceedings of the Patna meetings. Final document circulated by Prashant Sharma by email dated 1 May 2012. File name ‘2012-03-summary-of-proceedings-final.pdf’.

<sup>3</sup> The phrase ‘ongoing dialogue platform’ is indeed clunky. The nomenclature may need to be revisited at the meetings in Bangkok in January 2013.

This brief background note will be circulated within the group for their input. Input could range from specific suggestions, experiences, questions, case studies, or directing the resource person and facilitators to other individuals, networks, and other resources that are relevant to the theme. These interventions would take place off-list so that members are not overwhelmed by emails. If the theme is irrelevant to the work of a specific member, s/he of course would not need to respond.

It would then be the task of the resource person and facilitators to bring together all the input received from TAG members and develop outputs that could then be disseminated widely. These outputs could take the form of policy briefs or position papers. At the end of the 12-month cycle, a published volume could also be brought out, encompassing all the themes worked upon in the year. Such a volume, it is hoped, will contribute substantially to developing and directing the international debate on the RTI specifically, and transparency generally.

It should be noted that this activity thus places very limited and specific expectations on members of TAG. We estimate that members will need to contribute *no more than one hour per month* to this activity. However, given the intellectual calibre and rich experience of the members, this small contribution (in terms of time) would translate into huge and significant gains for the global RTI community.

As observed in the summary of proceedings of the Patna meetings, “the collective knowledge brought into this exercise would provide important intellectual energy and direction to the movement for greater transparency and accountability, both through the choice of the themes being brought to the fore, as well as in the quality of the thinking that would inform the process”.

### *First Step*

As an immediate first step, it is proposed that the first theme is launched in conjunction with the meetings to be held in Bangkok on 17-18 January 2013. While TAG members from shores further than Asia may not be able to attend these meetings, their input in the process over email would be deeply appreciated.

In this context, a theme that has assumed important overtones at least in the South Asian context relates to the role and relationship of the judiciary with a given transparency regime. Key types of questions may include:

- In which countries do RTI-related appellate authorities necessarily belong to the legal community? Is this mandated by law, or is it a practice? What are the arguments for and against either of these approaches?
- What has been the experience in different countries where the judiciary itself is directly under the ambit of an RTI law? What has been the response of the judiciary when attempts have been made to hold it to account? What are the pros and cons of the judiciary being directly under the ambit of an RTI law? Can a case be made in specific circumstances where the judiciary should be outside the purview of such laws?
- What has been the experience of countries where the judiciary itself is the appellate authority for a given RTI law? What are the arguments for and against the creation of an

independent and parallel appellate mechanism, especially in situations where recourse to the courts could be taken after an appeal has gone through an independent appellate authority?

While these are only indicative questions that may guide the debate, it is also being proposed that a discussion on this issue be held with TAG members present in Bangkok in January 2013, which could then serve as a launch pad for this activity as a whole.