

Heightening access to information in Vietnam

The challenge of monitoring implementation

JAIRO ACUÑA-ALFARO¹

Policy Advisor, Public Administration
Reform and Anti-Corruption
UNDP Vietnam

The current process of drafting and discussing a draft “Access to Information Law” in Vietnam can be seen as a positive indication of the goodwill and determination of the Vietnamese government to improve transparency and reduce the “culture of secrecy” in the public sector. At least it can be seen in line with the current efforts to reduce corruption (Anti-Corruption Strategy towards 2020), the need to modernize and improve the public administration system (Public Administration Reform Master Plan 2001-2020), and international commitments (including for example the Universal Declaration of Human Rights, article 19 and the recently ratified UN Convention against Corruption, article 10 on public reporting).

The very well-known Vietnamese phrase of “People know, people discuss, people do, and people verify” (*dan biet, dan ban, dan lam, dan kiem tra*) summarizes the importance of access to information in modern societies as it is only with information that people can fulfill these key four developmental tasks. In that regard, access to information is becoming increasingly and widely recognized in international law, and a large number of countries have recently issued

this type of national legislation. For example, in 1990 only 13 countries had access to information laws, yet in 2007 more than 70 countries have.

In addition, Vietnam’s transition from a low-income to middle-income status implies a shift in the relationship between government agencies, the private sector and citizens in the way they interact to each other. The better fed and better educated citizens are, the better and more efficient administrative services they demand from the government agencies. Nowadays, citizens increasingly demand public administration systems free of bureaucratic and administrative corruption, patronage, nepotism, diversion and stealing of public funds. They demand public administration systems that promote development and equity, more participation in the decision-making processes of public policies, as well as on their implementation and monitoring.

Therefore, “information” needs to be understood as a right, as stipulated in Vietnam’s 1992 Constitution (article 69 states that “Citizens are entitled to freedom of speech and freedom of the press, they **have the right to receive information** and the right of assembly, association and demonstration in accordance with the law”). To confront the new social, economic and institutional challenges,

policy makers and citizens are required to be informed and granted with the right and appropriate information to make decisions and policies to support and increase the new income levels. Also, a citizen with information is an empowered citizen, and an informed/empowered citizen is a citizen with greater responsibility towards his/her community and country.

On the current draft law on access to information, great efforts have been made to ensure greater compliance with providing access to information, both to citizens and public officials. In general terms the draft law codifies a very comprehensive list of **information to be disclosed and provided upon request**. However, as many other laws, the problem is the lack of specific and concrete mechanisms for its implementation.

For instance, the draft includes a very comprehensive list that covers from existing and draft legal documents, to international agreements and annual work plans and programmes of state agencies and organizations. Information such as financial reports, use of emergency aid, strategies, policies and masters plans, in addition to land planning, plans on land use, land confiscations and sites clearances, are included. This is a good

¹ *jairo.acuna@undp.org*. I would like to thank Ms. Do Thi Thanh Huyen, UNDP Vietnam Local Policy Support Officer, for valuable assistance and comments on this article. The views expressed do not necessarily reflect the official views or positions of the United Nations (UN) or the United Nations Development Program (UNDP)

step in the right direction of enhancing the accountability and transparency levels in the public sector. However, the draft law under discussion still requires further analysis, deliberation and revisions in terms of the specific mechanisms that will be applied to make the enforcement of the law effective. In particular, it is important to clarify **responsibilities of state agencies for information provision; supervision of state agencies in information provision; and measures to secure the right to access information.**

A quick look at other countries' experiences in implementing access to information laws suggest that those countries that specify in the law the specific mechanisms and agency in charge to oversee and monitor the implementation of the law, are the most successful. For example, among developing APEC (Asia-Pacific Economic Cooperation) countries with such legislation, Indonesia, Mexico and Thailand inherently have included a concrete and specific chapter regarding an agency in charge of implementation. For example, Thailand has created the Official

Information Board, Mexico established the Federal Institute of Access to Public Information with specific and concrete mandates and powers even to prosecute violations of the law, while Indonesia is currently working towards the establishment of an Information Commission.

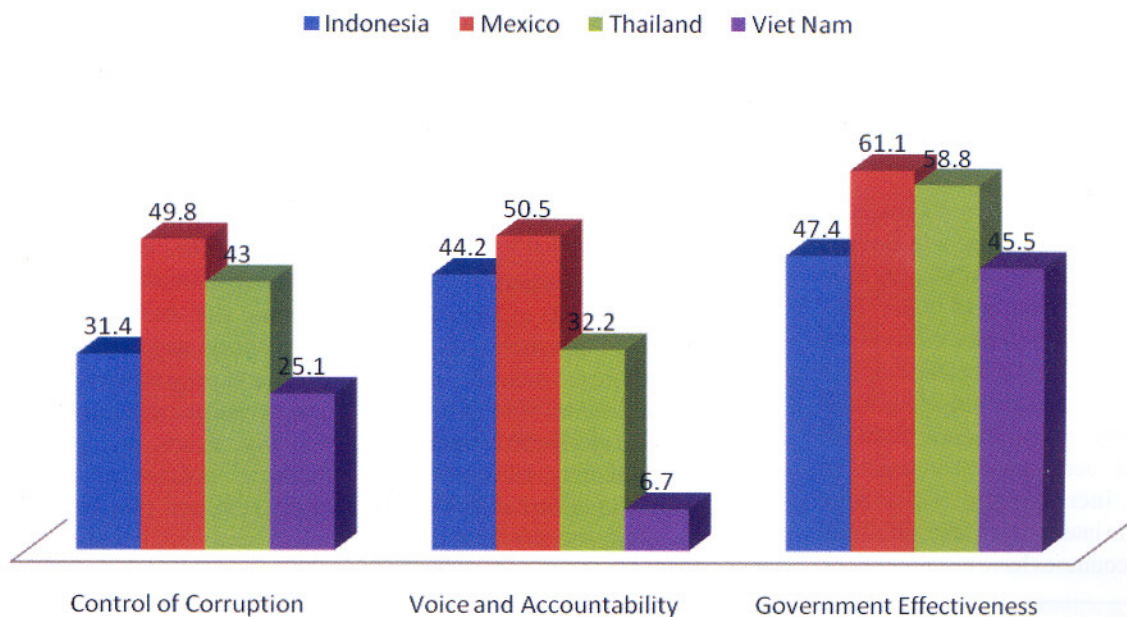
The Official Information Board in Thailand supervises implementation, receives complaints on failure to publish information, and submits reports to the Government. The Board is an independent agency with an office attached to the Office of the Permanent Secretary for the Office of the Prime Minister which has the duty to perform technical and administrative works for the Board and the Information Disclosure Tribunals, co-ordinate with State agencies and give advice to private individuals with regard to the execution of this Act. In addition, any person who fails to comply with an order of the Board is liable to sanctions, including imprisonment for a term not exceeding three months or a monetary fine.

In the case of Mexico (labeled as a best practice in the world regarding

implementation and effectiveness of access to information) the Federal Institute of Access to Public Information is an autonomous body charged with implementing and overseeing the law at the national level. This Institute has operative, budgetary and decision-making autonomy, while is responsible for the promotion and exercise of the implementation of the right to access to public information. In particular, it has the power to resolve over the denial of access to information requests, as well as the protection of personal data in the hands of public institutions.

The question of who or which agency will be tasked to monitor the implementation of this law is relevant and needs to be considered even more carefully, because after all, Vietnam already has a very comprehensive normative legal framework. Yet, implementation is at best cumbersome and ineffective (the Anti-Corruption Law enacted in 2005 is an example in case). The cases of Indonesia, Mexico and Thailand are also relevant as these may be comparable countries for

Indonesia, Mexico, Thailand and Viet Nam: Selected Governance Indicators 2008



Source: Worldwide Governance Indicators (WGI) database (2009) available at www.govindicators.org

**Indonesia, Mexico, Thailand and Vietnam:
Socio-Legal Framework on Access to Information (circa 2008)**

Indonesia	Mexico	Thailand	Vietnam
Development Indicators			
HDI 0.726	HDI 0.842	HDI 0.786	HDI 0.718
Life Expectancy 70.1	Life Expectancy 75.8	Life Expectancy 70.0	Life Expectancy 74.0
Literacy 91.0	Literacy 91.7	Literacy 93.9	Literacy 90.3
GDP p/c (PPPS) 3,455	GDP p/c (PPPS) 12,176	GDP p/c (PPPS) 7,613	GDP p/c (PPPS) 2,363
Law on Public Information Transparency	Federal Law of Transparency and Access to Public Government Information	Official Information Act	Draft Law on Access to Information
Chapter VII: Information Commission	Part II, Chapter II: Federal Institute of Access to Public Information	Chapter V: Official Information Board	
Passed by Parliament and Government in April 2008. To become effective May 2010	Approved by Parliament in April 2002, signed by President in June 2002 and in effect since June 2003	Approved in July 1997 and in effect since December 1997.	Draft to be submitted to National Assembly for comments and passed in 2010 and it is expected to take effect in 2012.

Source: For Human Development Index (HDI) indicators <http://hdr.undp.org/en/>. For national legislation, each country and Banisar, David (2006) Freedom of Information around the World 2006: A Global Survey of Access to Government Information Laws, available at http://www.freedominfo.org/documents/global_survey2006.pdf.

Vietnam and their governance indicators suggest they fair in better positions than Vietnam in terms of control of corruption, government effectiveness and voice and accountability (see graph).

Of course, these countries perform better than Vietnam in these governance dimensions not only because they have access to information mechanisms. This is due to several historical, cultural and developmental characteristics that are particular and inherent to each of them. Yet, the fact that they do have specific and concrete mechanisms and institutions is a reflection of the lessons learned in their development processes. Let's remember these three countries also score better in terms of their human development indicators, and Mexico's GDP per capita (in Purchasing Power Parity - PPP) is five times higher than Vietnam's (see table).

The assignment of the monitoring and oversight functions has created debates and healthy discussion during the

drafting process of this law, and several options have been considered. For example, to request the Office of the Government to establish an autonomous monitoring agency (perhaps following Thailand's model), but also, discussion has revolved around assigning such important task to the National Assembly and/or one of its existing committees, and even tasking the Vietnam Fatherland Front (VFF). What is important here is to clarify what is the existing mandate of these institutions and how are they placed in terms of autonomy and administrative powers considering Vietnam's public administration system. In addition, a clear distinction is required in terms of monitoring and oversight functions vis-à-vis daily implementation, including the development of clear and concrete rules and procedures to follow in case of denials to provide information.

In sum, the current draft law on access to information in general terms contains a very comprehensive list of what type of information should be disclosed by public

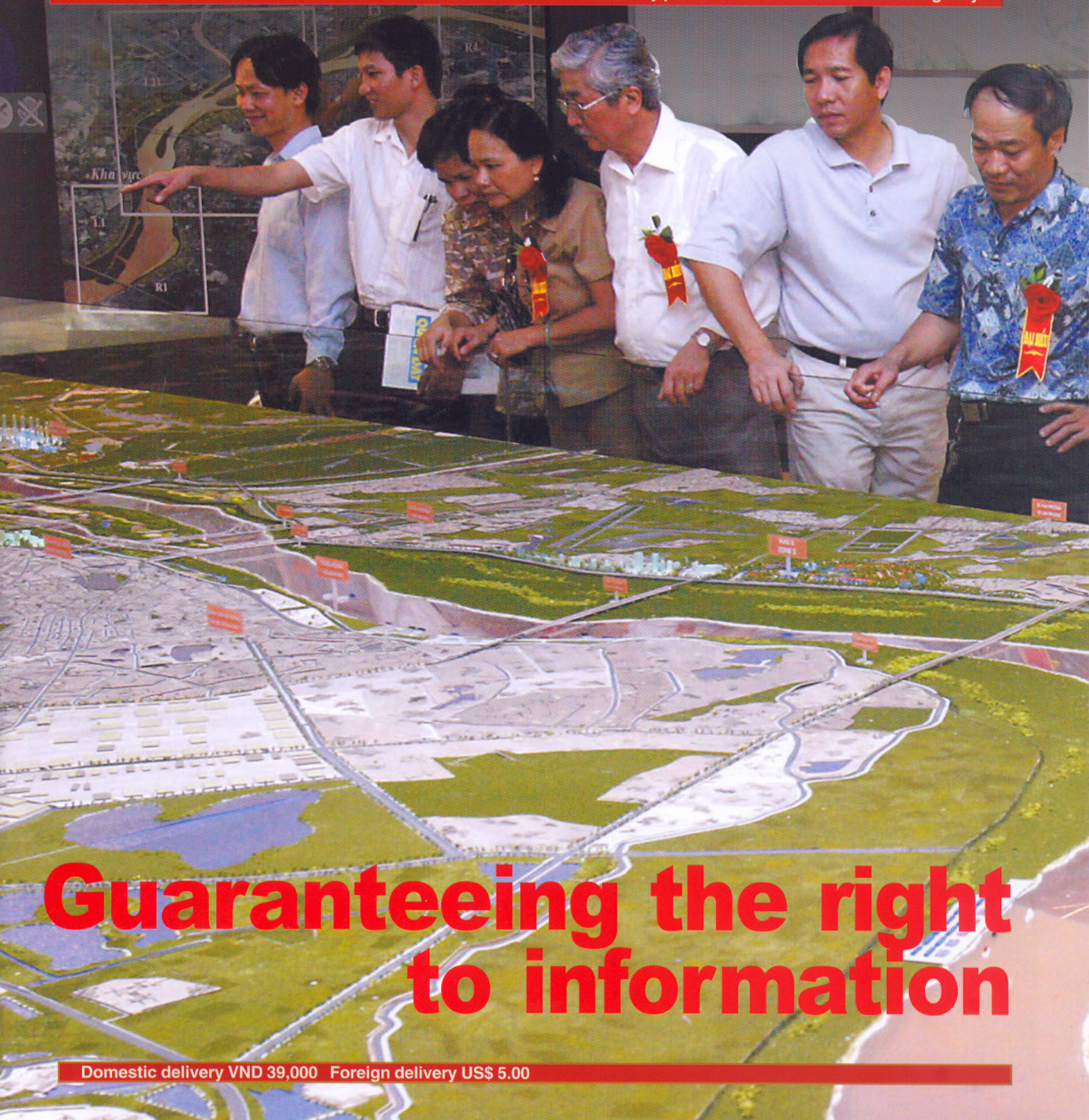
agencies. However, most current normative legal documents have already in one form or another covered regulations requesting organizations, agencies and individuals to disclose information. The idea of organizing these comprehensive normative documentation in one overarching law is seen as a positive development. Yet, experience in Vietnam suggests that the transition from intention to implementation is a big challenge. Regarding access to information, this challenge can be overcome with a concrete mechanism to monitor and oversee the observation of the right to access information. That is to say, an identifiable and autonomous body, with concrete recognizable powers and mandates should be charged with implementing and overseeing the law at the national level. In addition, this mechanism should be supported by administrative and monetary sanctioning methods in order to prevent deliberate violations inherent in a working environment where "secrecy" and power-status seems to be norm. □

VIETNAM LAW & Legal Forum

Vol. 15 - No 180 August 2009

news.vnanet.vn/vietnamlaw

Monthly publication of the Vietnam News Agency



Guaranteeing the right to information

Domestic delivery VND 39,000 Foreign delivery US\$ 5.00