Cartagena Protocol on Biosafety

Introduction to basic concepts and core elements of national regimes on public access to information

http://bch.cbd.int/onlineconferences/portal_art23/pa_forum2012.shtml

Programme of Work
Public Awareness and Participation

CBD

United Nations Decade on Biodiversity

Presentation Outline

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- Part 3: Importance of public access to information (ATI)
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Part 1: Background

- Article 23 (b) requires Parties to: endeavor to ensure that PAE encompass access to information on LMOs imported
- Decision BS-V/13: Programme of work on PAEP (2011-2015), Programme element 3 on public access to information
- Online Forum on Public Access to Information (June 2012):
  - Discussion Group 1: "The meaning, scope and importance of public access to information"
  - Discussion Group 2: "Facilitating public access to biosafety information"

Part 1: Background

- The importance of ATI increasingly recognized worldwide
- 95 countries world-wide have enacted ATI laws (http://right2info.org/access-to-information-laws)
- 12 countries in the Americas and 7 in the Caribbean have access to information laws
- Latin American countries include: Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Uruguay
- Caribbean: Antigua & Barbuda, Belize, Dominican Rep., Guyana, Jamaica, St. Vincent & Grenadines, and T&T
- Civil society groups are actively demanding that governments respect the right of access to information

Part 2: Basic Concepts

Meaning and scope of public access to information

- Access to information (ATI) is a basic human right; key to all other rights – the "touchstone of all freedoms" (UN)
- ATI rights are defined in national laws and are enshrined in the Constitution of some countries, e.g. India
- Some ATI frameworks have been developed in response to regional and international agreements, e.g. Principle 10 of the Rio Declaration, Aarhus Convention
- Freedom of information does not mean having access to information *per se*; it encompasses the right to request specific information

Part 2: Basic Concepts

Meaning and scope of public access to information

- Effective Access = accessible and understandable information
- "Public" = People/citizens (and groups or entities with interest in the respective issues/activities)
- ATI should facilitate effective public participation in decision-making
- ATI laws (in general) apply to info held by government institutions and other public/private entities which carry out work in the public interest

Part 3: Importance of Public Access to Information

In general, public access to information fosters:

- Greater transparency and accountability
- Effective public participation in decision-making regarding LMOs
- Greater public trust in the regulatory process

This in turn contributes to:

- Improved implementation of the Protocol
- Rational decision-making regarding LMOs, following due process
- Good environmental governance, in general.

Access to information empowers citizens to effectively scrutinize government processes and decisions, combat arbitrariness and ensure transparency in the management of environmental affairs

Part 4: Core Elements of ATI Regimes

ATI procedures

A number of countries have established procedures and mechanisms for:

- Making information available upon request
- Disseminating information (e.g. information centers, websites)
- Conducting public educational programmes
- Notifying the public on essential biosafety information available
- Providing contact information of key government officials or agencies/entities handing specific types of LMOs

Some ATI laws have provisions for proactive disclosure of information and others spell out the main roles and functions of Information Commissioners

Part 4: Core Elements of ATI Regimes

Procedures of how information can be accessed

In some countries, a request for information has to:

- Be in writing or using a standard request form
- States the name of the applicant
- Provide an address for correspondence

Public authorities have a duty to provide advice and assistance to citizens requesting information. They are expected to:

- Make early contact with an applicant, maintain a dialogue with them and keep them informed at every stage.
- Record and document all communications relating to any clarification and handling of the request.
- Make sure that appropriate method of contact are used

Part 4: Core Elements

Format and Language

- Provision for different formats depending on the target audiences (Electronic and/or hard copies)
- Summarized and simplified, comprehensible formats
- Languages other than the official national language

Timelines for providing information upon request

- National laws/administrative procedures set different time limits; 15-30 days of the date of receipt of the request, in general
- In general, 1 month is allowed for extensions in cases where:
  (a) Requests are complex
  (b) Information is not available immediately
  (c) Further studies and validation are required

Part 4: Core Elements

Charges for accessing information

- In general, no fees should be charged; governments expected to cover reproduction and distribution costs
- In some cases, fees are charged to cover operational costs, e.g. paper, photocopying and sending information

Exemptions/Denial of information upon request

- ATI laws specify exempted information or circumstances under which requests for ATI may be denied.
- Exemptions include info concerning: national security, administration of justice, government policy-making, personal information, confidential information and trade secrets (IPRs and CBI)

Part 4: Core Elements

Confidentiality

- As addressed in relevant international laws
  - (a) Article 21 of the Protocol
  - (b) Trade Related Intellectual Properties Rights (TRIPS) Agreement - confidential business information (CBI)
- Major challenges :
  - (a) Determining what should be confidential
  - (b) Accessing info on potential negative effects of LMOs
  - (b) Maintaining confidentiality
- Article 21 of the Protocol (paragraph 6) states that certain information, e.g. risk assessment summaries and description of an LMO, should not be considered confidential

Part 4: Core Elements

Appeals

- Many national ATI laws provide for mechanisms for appeal or internal review where information is unjustifiably withheld or otherwise not made available

- The laws provide for:

  (a) Establishment of independent and impartial oversight bodies to promote, monitor and protect the right of ATI

  (b) Judicial review of the decisions of the oversight mechanism

- It is important to establish enforcement mechanisms/ procedures

- The legal framework should protect those seeking appeals from being penalized, persecuted or harassed

Part 5: Active Dissemination of Information

Means of Proactive Information Dissemination:

- The BCH and national websites/databases
- E-mails (e.g. e-mail alerts
- Publications/CD-ROMs
- Mass media (e.g. newspapers, radio/TV), bulletins and online tools (e.g. online discussion forums, Webinars) and social media (e.g. Twitter/Facebook)

Part 6: Challenges and Way Forward

Challenges

- Lack of, or inconsistent, legal frameworks
- Limited human resource and institutional capacities
- Implementation/logistical challenges (lack of financial and other resources, poor record keeping systems)
- Deeply embedded secrecy culture in some countries
- Lack of political will
- Citizens often not aware of their right of access to information and/or reluctant to assert it because of prevailing circumstances (cultural, social or political)
- High illiteracy rates in some countries (may citizens don't know how to read or write)

Part 6: Status of ATI and Way Forward

Way Forward

- Raise awareness of citizens about their right of access to information and to enlighten decision makers and public officials about the importance of ATI
- Establish clear organizational structures and responsibilities
- Establish good communication systems – from top to bottom
- Monitor and report on compliance with ATI laws in order to maintain transparency and accountability

Conclusion

- Meaningful public participation in decision-making processes concerning LMOs requires informed participants hence the need for increased public access to information
- Access to information has the unquestionable effect of strengthening transparency and accountability
- Collaboration between governments and civil society organizations is key to making access to information concerning LMOs a reality
- Strong political will is imperative for effective implementation of ATI laws.

Exercise

- To what extent do national laws obligate government agencies responsible for biosafety (or environment in general) to make information available to the public?
- How well does the legal framework support broad access to government-held information by the general public?
- To what extent does the law require government agency to actively disseminate available information?
- To what extent does the law protect government employees who release information to the public
- How clearly defined is the scope of confidential information? How clear and narrow are the limits on claims of confidentiality of the selected information types

Exercise

- Does the law establish a reasonable timeframe within which the responsible agency must make information available to the public?
- Are there monitoring systems and/or penalties for non-compliance to ensure agencies meet obligations to disclose information?
- How complete, relevant, and accurate is the information disseminated to the public?
- How well do responsible agencies make planned and systematic efforts to disseminate information?
- How promptly do government agencies respond to requests for information?

Exercise

- To what extent does the public have access to the requested information at little or no cost?
- To what extent does media and civil society involvement facilitate access to information?

Existing Capacity

- Do government agencies have staff specifically responsible for facilitating public access to information?
- To what extent do staff have the necessary capacity (knowledge and skills) to facilitate access to information?

Exercise

- Are guidelines or training on access to information offered to staff responsible for managing and facilitating public access to information?
- How adequate is the government budget allocation for facilitating public access information?
- How regularly do officials receive training on access to information?
- Are there guidelines on how the public can access information held by government authorities?

Case Studies

- A training video produced by the UK Information Commissioner's Office in 2010 to make public authorities aware of their responsibilities in responding to requests for information under the Freedom of Information Act and Environmental Information Regulations: http://www.youtube.com/watch?v=Tdff6UPzvDQ
- Video on the Pros and cons of the Freedom of Information Act: http://www.youtube.com/watch?v=Bcr9AdL7ttc
- Video on making requests under the Freedom of Information Act: http://www.youtube.com/watch?v=TL6BvyigJ0A

Thank You!

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http://bch.cbd.int/onlineconferences/portal_art23/pa_forum2012.shtml