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**Developing an Effective Disclosure Policy on Forest Sector
Information in Indonesia**



ABBREVIATIONS

AMDAL	Analisis Mengenai Dampak Lingkungan, Environmental Impact Assessment
ANDAL	Analisis Dampak Lingkungan Hidup, Environmental Impact Report
BIN	Badan Inteligen Nasional, National Intelligence Bureau
CBD	Convention on Biological Diversity
DR	Dana Reboisasi, Reforestation Fund
EITI	Extractive Industries Transparency Initiative
IFC	International Financial Corporation
FIA	Freedom of Information Act
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement, Governance & Trade
FOMAS	Indonesia National Forest Monitoring and Assessment Program
FWI	Forest Watch Indonesia
GFW	Global Forest Watch
GIS	Geographic Information System
HPH	Industrial timber concession
HTI	Industrial timber plantation
ICRAF	World Agro-Forestry Center
IMF	International Monetary Fund
IPK	Land clearing permit to establish a timber plantation
KAIL	Konsortium Anti Illegal Logging, Anti Illegal Logging Consortium.
MOF	Indonesian Ministry of Forestry
NGO	Non Government Organization
PP	Peraturan Pemerintah, Government Regulation
PSDH	Provisi Sumber Daya Hutan, Forest Resource Royalty

PYWP	Publish What You Pay Campaign
RKHT	Annual industrial plantation work plan
RKPH	Annual industrial concession work plan
RKL	Rencana Karya Lima Tahun, Five year work plan
RKT	Rencana Karya Tahunan, Annual work plan
RPBBI	Rencana Pemenuhan Bahan Baku Industri, Raw Material Requirement Plan
SDSU	South Dakota State University
SKSHH	Timber transportation permit
TNI	Tentara Nasional Indonesia, Indonesian National Army
TRIP	Trade Related Aspects of Intellectual Property Rights
USAID	United States Agency for International Development
US	United States
UU	Undang-Undang, Law
WRI	World Resources Institute
WWF	World Wildlife Fund

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INTRODUCTION

Over the past few years, there has been growing recognition that governments and companies should be more transparent and accountable. There is growing consensus that the right to information is a crucial element of democratic, accountable and responsive government.

Laws opening government records and processes are now commonplace among democratic countries. Over 60 countries have adopted comprehensive laws to facilitate access and over thirty more are in the process. These laws are broadly similar, allowing for a general right by citizens, residents and often anyone else to demand information from government bodies.

Indonesia is gradually leaning towards transparent and accountable governance and is currently deliberating a draft Freedom of Information Act that will compel government agencies to disclose information to the general public, with a few exceptions. Adoption and implementation of this Act is hopefully inevitable, but likely to take some time. Meanwhile, demand for transparent forest sector information has increased in light of growing concerns about deforestation rates and forest governance problems that have resulted in rampant illegal logging, rent-seeking behavior and corruption.

In the absence of an overarching Freedom of Information Act, the Indonesian Ministry of Forestry is exploring the possibility of developing a disclosure policy specifically for forest sector information. This initiative is a core component of a forest sector and accountability project (known as FOMAS), which seeks to make relevant, reliable, accurate and up-to-date forest sector information continuously available to decision makers and the general public.

Aside from developing comprehensive guidelines on disclosing forest sector information to the general public, the Indonesian Ministry of Forestry is considering a number of challenging issues: what measures can be taken to ensure that a disclosure policy on forest sector information does not contradict the draft Freedom of Information Act being deliberated by the Indonesian Parliament? how can a

disclosure policy on forest sector information be legally binding?; how can appeals and complaints be handled without the installation of an Information Commission?; how can the costs of information disclosure be covered; and should penalties be handed down if government officials fail to comply with the disclosure policy?

This discussion paper is divided into four parts. Part I provides a general background on the significance and importance of transparency for governments and citizens. It also reveals that transparency and information disclosure have been sweeping through the world in recent years and is being adopted by countless governments, companies and organizations throughout the world.

Part II of the paper briefly explains where Indonesia stands in terms of transparency and information disclosure and provides a general background to Indonesia's draft Freedom of Information law, which has languished in parliament since 2001; and the draft State Security Act that contradicts it.

Part III explains why information disclosure is of relevance and importance to Indonesia's forest sector and includes recent initiatives undertaken by the Ministry of Forestry to improve forest sector transparency. It also outlines progress with this initiative and raises some of the challenges it faces. Part IV concludes the paper and provides a summary of the key points.

PART I: TRANSPARENCY AND INFORMATION DISCLOSURE—A GLOBAL TREND

In 2001, George Akerlof, Michael Spence and Joseph Stiglitz won the Nobel Prize for determining that accurate and up-to-date information can lead to market efficiency and economic growth, while imperfect information can lead to market failure (Bellver & Kaufmann 2005). This is primarily because investors invariably tend to stay away from

Box 1: What is transparency and why is it important?

Transparency can be defined as the increased flow of timely and reliable economic, social and political information, which is accessible to all relevant stakeholders. The information provided should be accessible, relevant, of good quality and reliable. Transparency is important because it can increase efficient allocation of resources, improve governance, combat corruption and help to ensure that the benefits of resource exploitation are redistributed and not captured by an elite few. It can also be beneficial to governments themselves—openness and transparency in the decision making process can assist in developing citizen trust in government actions and maintaining a civil and

countries with high corruption levels and a lack of reliable information and prefer to invest in countries with established policies on information disclosure. This became clear after it was determined that poor transparency combined with new and deregulated financial markets was an underlying cause of recent financial crises in emerging economies across the globe—Mexico (1995), East Asia (1997), Russia (1998), Brazil (1998) and Turkey (2001)—where it led to unsustainable investment, debt and vulnerable financial institutions (Mehrez & Kaufmann 1999).

Transparency is important for economic growth because it can increase efficient allocation of resources, improve governance and help to ensure that the benefits of resource exploitation are redistributed and not captured by an elite few (Bellver & Kaufmann 2005). This has been qualified in a number of comprehensive studies. For instance, Islam (2003) has demonstrated that qualitative and quantitative information allows governments to govern better; and Mauro (2004) has shown that policies aimed at improving transparency, and more generally, disseminating information help to reduce corruption and foster economic growth. Access to government records and information provide an important guard against abuses, mismanagement and corruption. It can also be beneficial to governments themselves—openness and transparency in the decision making process can assist in developing citizen trust in government actions and maintaining a civil and democratic society (Bansier 2004).

Transparency is closely related to accountability. Transparency allows citizens, markets or organizations to hold government institutions accountable for their policies, practices, expenditures and performance. Public scrutiny of government performance drives government to improve their performance and to eliminate corruption and abuse of power. Increased transparency may also increase faith in government and enhance social cohesion (Bellver & Kaufmann 2005).

This research implies that transparency in Indonesia's forest sector could potentially increase revenues, attract investment and allow the Ministry of Forestry to govern Indonesia's forests better. Rightly implemented, it may also provide an important guard against corruption, mismanagement and abuse of power. Furthermore, increased transparency may promote accountability, allow citizens to participate in decision-making processes, and improve relations between government and civil society.

The Rapid Growth of Transparency and Information Disclosure in Other Countries and Sectors

Disclosure of information held by government agencies is already common place in a number of countries. Most of the time, disclosure of information is governed by Freedom of Information Acts, which provide guidelines on what information should be disclosed, how it should be disclosed, time limits for governments to respond to information requests, what information is exempt from disclosure, how refusals to disclose information should be handled, the costs of disclosure and many other matters. This legislation applies to all government agencies, with a few exemptions in some countries (Snell 2002).

Growing Global Adoption of Freedom of Information Acts

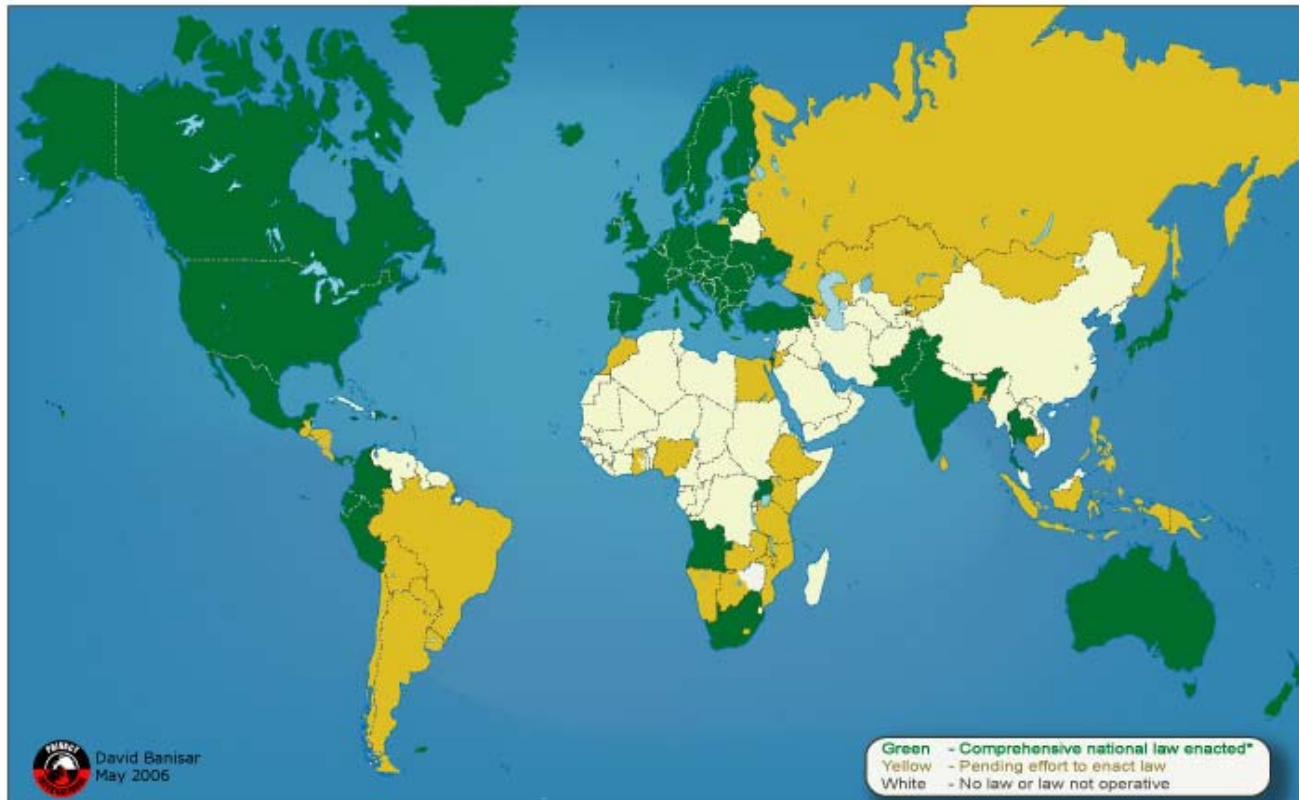
Over sixty countries—from Japan (1999) to Bulgaria, Ireland to South Africa, and Thailand and Great Britain—have enacted legislation giving their citizens access to government information in recent years (Figure 1). This is because transparency and information disclosure are increasingly being recognized as a means to achieve efficient administration, investment and accountability. All of these factors ultimately lead to economic and technological growth (Blanton 2003). Many countries are also

acknowledging the fact that technological innovations (such as free satellite images and the internet) have rendered efforts to suppress information and transparency useless. In many ways, transparency and accountability are becoming inevitable worldwide.

While the vast majority of countries that have adopted Freedom of Information laws are northern, much of the rest of the world is also moving in the same direction. The passage in 2002 of new FOI laws in India and Mexico garnered much attention, and some smaller, poorer countries, including most recently Angola, Antigua and Barbados (2004), the Dominican Republic (2004), Ecuador (2004), Uganda (2005), Montenegro (2005) and Honduras (2006) have recently enacted disclosure legislation.

In Asia, nearly a dozen countries have either adopted disclosure laws or are on the brink of doing so. In South and Central America and the Caribbean, half a dozen countries have adopted laws and nearly a dozen more are currently considering them. Openness is also starting to emerge in Africa. South Africa enacted a wide reaching law in 2001 and many countries in southern and central Africa, mostly members of the Commonwealth, are following its lead (Bellver & Kaufmann 2005; Bansier 2004). Efforts to win passage of FOI laws are underway in over 30 countries, including: Bangladesh, Ghana, Guyana, Kenya, Malawi, the Maldives, Nigeria, Sierra Leone, Sri Lanka and Zambia, and Indonesia (McIntosh 2006).

National Freedom of Information Laws 2006



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

Many of these initiatives have been driven by civil society demand for transparency and accountability, transitions to democracy and political reform laws (Bellver & Kaufmann 2005; Snell 2002; Bansier 2004; McIntosh 2006). For instance, in post-apartheid South Africa, the 1994 Constitution under which Nelson Mandela came to power included a specific provision that guarantees citizens access to state held information, and South Africa's implementation law, passed in 2002, is probably the strongest in the world (Blanton 2003). Thailand's Official Information Act was the culmination of a political reform process that began in 1992 with mass demonstrations against a military regime and became even more urgent with Thailand's economic crisis in 1997. Political change and economic crisis also sparked a Freedom of Information movement in Indonesia around the same time.

International organizations, such as the Commonwealth, Council of Europe, the World Bank and the International Monetary Fund, have also been influential in promoting information disclosure; and scandals have been a catalyst for freedom of information movements in countries such as Ireland, Canada, Japan, Thailand and the UK. Canada passed its freedom of information statute in 1982 following scandals over police surveillance and government regulation of industry. Public outcry over conditions in the meat packaging industry and the administration of public blood banks prompted Ireland to pass a similar law in 1997; and Japan's 1999 national access law followed two decades of scandals, from the Lockheed bribery case in the 1970s to the bureaucracy's cover-up of HIV contamination of the blood supply in the early 1990s (Blanton 2003).

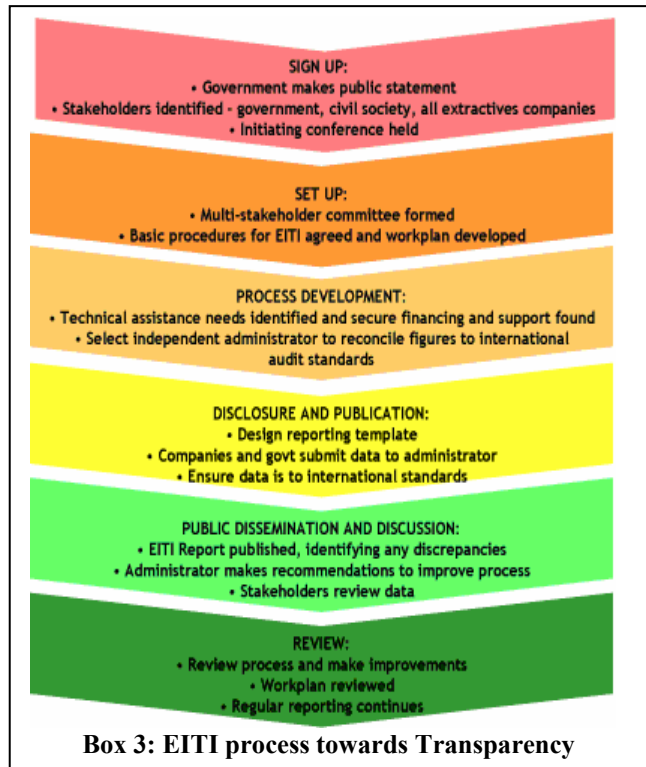
Finally governments themselves have recognized the use of FOI to modernize. The expansion of the internet into everyday usage has increased demand for more information by the public, business and civil society groups. Inside governments, the need to modernize record systems and the move towards e-government has created an internal constituency that is promoting the dissemination of information as a goal in itself (Bansier 2004).

Voluntary Information Disclosure

Voluntary information disclosure has also been growing worldwide as a result of social demand. International organizations, such as the World Bank, Asian Development Bank,

United Nations Development Program (UNDP) and the International Financial Corporation (IFC), and large-scale companies, particularly those involved in the oil and gas sector, have developed disclosure policies in recent years to meet growing demands for information disclosure and transparency.

One voluntary initiative that has been growing worldwide is the Extractive Industries Transparency Initiative (EITI). This is a multi-stakeholder initiative, involving multinational and state-owned extractive companies, host governments, home governments, business and industry associations, international finance institutions, investors and civil society groups. It is primarily convened by the UK Department for International Development (DFID). The EITI initiative aims to increase



extractive revenue transparency by encouraging oil and gas companies to voluntarily disclose the payments (in the form of taxes, royalties, signature bonuses) they provide to governments to a wide audience in a publicly accessible, comprehensive and comprehensible manner. Ultimately, EITI aims to ensure that oil, gas and mining revenues contribute to sustainable development and poverty reduction. The EITI takes a voluntary, country-by-country approach whereby host governments are encouraged to adhere to the principles and objectives of the initiative and to implement the reporting guidelines. Voluntary disclosure of payments is believed to allow the citizens of resource rich countries to hold decision-makers accountable for the use of those revenues and to ensure that those revenues are re-distributed in an efficient and equitable way. Donors and international financial institutions provide capacity building and technical assistance to support countries willing to implement EITI.

A coalition of over 300 NGOs (including Global Witness, CAFOD, Oxfam, Save the Children, Transparency International and the Open Society Institute) have also grouped together to establish The Publish What You Pay (PWYP) campaign. This campaign

prompted the EITI initiative and aims to help citizens of resource-rich developing countries to hold their governments accountable for the management of revenues from oil, gas, and mining industries. It also successfully pushed the World Bank to introduce revenue transparency conditionality into its financing of extractive industry investments by its private sector arms, the IFC and MIGA. The coalition argues that transparency of oil and gas revenues should serve as a basis for poverty reduction, economic growth and development and calls for the mandatory disclosure of tax, fee and royalty payments made by oil, gas and mining companies' to host governments for the extraction of natural resources.

Both Publish What You Pay and the Extractive Industries Transparency Initiative have the support of the G8, international financial institutions (IMF, World Bank, EBRD), the European Union, the industry and its representative bodies, and many parliamentarians from across the world.

Some oil and gas companies (i.e. Talisman, Nexen and TransAtlantic) have already surpassed the EITI and Publish What You Pay calls for transparency and have chosen to systematically disclose royalties, taxes and bonuses paid to the governments of countries in which they operate. They have also developed disclosure policies that apply to all employees and directors to prevent the improper use or disclosure of material information; give guidance on dealing with other confidential information, ensure timely disclosure of information and ensure compliance with legal and regulatory requirements (Save the Children 2005).

Implementation Problems with Information Disclosure

The mere existence of disclosure initiatives does not, nevertheless, mean that information disclosure is being enacted and that public or private institutions are changing their internal cultures. In some countries, Freedom of Information laws lie dormant due to a failure to implement them properly or a lack of demand. For instance, in Bosnia, one of the best designed laws in the world is only used infrequently (Bansier 2004). In others, the exemptions are abused by governments to prevent their embarrassment, or governments resist releasing information, causing long delays (Snell 2002). New laws promoting secrecy in the global war on terror have also undercut access (Bansier 2004).

A study conducted by Save the Children, UK, also determined that despite substantive efforts being initiated by the EITI and PWYP initiatives, most citizens from host countries continue to be unable to find out what revenues their governments have received from extractive companies. Many countries reported a lack of co-ordination between different government departments about disclosure commitments in the extractive sector; and a number of accounting standard setters were not aware of their government's commitment to the EITI or the G8, or the implications it could have for accounting or securities regulations (Save the Children 2005).

Moreover, Bellver & Kaufmann (2005) have argued that disclosure policies and access laws will be largely ineffective if citizens and non-government organizations lack the capacity to exercise their right of access or the resources to pursue complex requests. Similarly, access laws will not be used if elements of civil society are unable to recognize the potential benefits of the disclosure, lack the capacity to analyze disclosed information, or are incapable of acting on it afterwards. There is no point in having a law that provides for the right to access information if there are no clear and effective mechanisms to enable citizens to use the law; and if the content and benefits of the law have not been communicated through a broad communication campaign.

To succeed, these restrictions must be resisted. Public institutions need to change their internal cultures. Civil society, the media and other political actors need to ensure that information is released. Courts and ombudsman should support information disclosure. Parliaments should step in and reverse changes and amend or replace inadequate laws. Perseverance of civil society is therefore crucial in ensuring that the law is actually implemented and effective (Bansier 2004).

PART II: TRANSPARENCY AND INFORMATION DISCLOSURE IN INDONESIA

Indonesia is currently considered to be among the least transparent countries in South-East Asia¹, although significant improvements have been made in recent years². In the past, Indonesia's bureaucracy tended to suppress information flows. Information was primarily governed by the powerful Ministry of Information, which maintained control over the domestic press and the distribution and publication of foreign publications. Both were subjected to censorship and indiscriminate bans (Kitley 2001).

NGO operations were also limited. This was because the former Indonesian government tended to suppress their activities and prevent them from voicing opposition to state policies (Eccleston & Potter 1996). Nevertheless, in the early 1980s, some NGOs, such as Yayasan Lembaga Bantuan Hukum Indonesia (Indonesia Legal Aid Foundation), had started to fight for the recognition of civil and political rights, including the right of public access to information. For years after that, the movement for public access to information as well as transparency became more active—although there were no NGOs that were concentrated specifically on that issue at that time.

Access to government information began to change in mid 1998 when a social reform movement, known as '*reformasi*' emerged. This movement called for accountability, transparency and political reform and lobbied Indonesia's new government to lift restrictions on the press³ and the right to protest. The Ministry of Information later cancelled the requirement for press publication permits (SIUPP) and issued more than 1,200 new licenses (Kitley 2001). This allowed civil society groups and the media to use their new freedoms to raise the profile of Indonesia's forests and to reveal shortcomings that undermine sustainable management of forest resources and community rights to forest resources.

¹ In 2001, a survey on the accessibility to the public of 43 government held records, rated Indonesia as the second least transparent country in South-East Asia. Philippines was ranked as the most transparent (59%), Thailand (56%), Cambodia (44%), Singapore 42%, Malaysia (33%), Indonesia 18%, Vietnam (18%) and Burma (5%) (Source: Philippine Center for Investigative Journalism and Southeast Asian Press Alliance).

² Transparency International has noted that Indonesia's score on the Corruption Perceptions Index recovered from a low point of 1.9 in 2002 (on a scale on which 10 indicates "clean") to 2.2 in 2005 and 2.4 in 2006.

³ Restrictions on the press were lifted after President Habibie ratified the new Liberal Press Act (UU 40/99) in September 1999. The new law banned censorship and guaranteed the right of the press to 'look for, acquire and to disseminate ideas and information'. The law also removed the requirement that publications seek licenses before they can be printed. Much of the law also applied to television and radio.

The reform movement also allowed a number of civil society groups, such as the Indonesian Transparent Society (*Masyarakat Transparansi Indonesia*), Indonesian Corruption Watch, and Transparency Indonesia, to form and promote transparency. Several NGOs, such as *Yayasan Lembaga Konsumen Indonesia* (Indonesian Consumer Foundation) and the Indonesian Centre for Environmental Law (ICEL) also began to lobby for freedom of information and succeeded in gaining recognition of the right to public access to information in the Consumer Law and the Environmental Law.

Indonesia's Draft Freedom of Information Act

In 2000, a Coalition of around 18 NGOs was formed to lobby for a Freedom of Information Act in Indonesia. The coalition, consisting of more than 40 non-government organizations and various professional associations, drafted a Freedom of Information Act in 2000, lobbied the Indonesian parliament to adopt the act and encouraged the mass media and other public forums to educate Indonesia's citizens about their right to know (Nugroho 2003). A draft bill was submitted to parliament on February 9, 2001 where it has unfortunately languished until the current day.

The draft Freedom of Information Act includes many of the essential elements of an effective disclosure policy including:

1. A basic premise that all public information should be open to the public and that every person has the right to see, obtain or know about information;
2. A public interest provision that requires exemptions to be balanced against disclosure in the public interest;
3. Proactive information disclosure;
4. The public institution's obligation to document and to provide the information requested through a simple, inexpensive and immediate procedure;
5. Establishment of an independent Information Commission, which has a mandate to mediate and adjudicate complaints or appeals;
6. A requirement that public organizations undertake an up-to-date inventory of information it holds and to ensure that this information is regularly published;
7. Limited exemptions that employ a consequential harm test and a public interest balancing test on state secrets, commercial competition, personal privacy, official secrets and law enforcement information;

8. Procedures for submitting requests and appeals;
9. Criminal sanctions for government officials that destroy information or impede public access to information.

The civil movement to promote freedom of information has raised awareness among Indonesian citizens about their right to information held or generated by government agencies even though the Freedom of Information Act has not been approved by parliament. However, major obstacles to securing freedom of information still exist. For instance, defamation provisions that can result in criminal sanctions and punitive damages still exist. These provisions may prevent discussion or legitimate criticism and result in the imposition of excessively large damage awards and even imprisonment.

Media freedom is also impeded by a lack of pluralism and diversity. Media groups continue to be under the control of a handful of powerful members of the elite. Foreign media coverage is limited, and community radio, which can be a useful platform for the exchange of views, is largely controlled by influential figures. These aspects of the media in Indonesia can affect the independence and quality of reporting and stifle opportunities for the free flow of information.

Government officials, used to the status quo, also continue to be reluctant to disclose public information. This tendency is exacerbated by the absence of a freedom of information law and by a lack of awareness among the general public, including the media, of their right to know or how to secure such rights.

Indonesia's Draft State Security Act

Indonesia's draft Freedom of Information Act has also encountered problems because it is believed to contradict another bill currently being deliberated by parliament—the State Security Act⁴.

⁴ Resistance to openness got new momentum after the September 11 2001 attacks on the World Trade Centre and the Bali blast on October 12, 2002. The latter incident resulted in President Megawati signing the Anti-Terrorism Regulation proposed by the National Intelligence Agency (BIN). This is not only the case with Indonesia. Several countries reconsidered freedom of information legislation after the September 11 terrorism attack. For instance, Canada contemplated but then backed away from giving its justice minister the power to waive its long standing access law on an emergency, terrorism related basis. India passed the Prevention of Terrorism Ordinance, which threatened jail terms for journalists who didn't cooperate with law enforcement, but no such actions have yet occurred. Great Britain delayed implementing its new information access law until 2005, but said the delay had nothing to do with September 11 (Blanton 2003).

The draft State Security Act was drafted by Indonesia's defense ministry, who has maintained that the absence of clear regulation has led to government policies frequently being leaked to the public and failing to materialize, as they became targets of unending public scrutiny (Razak 2006).

Freedom of Information activists have raised concerns about the draft State Secrecy Act because it does not contain a clear definition of 'state secrets'. They have also argued that a separate law on state secrets is not needed because an exemption for this is already provided for in the draft freedom of information law (Jakarta Post, May 15, 2006). They fear that the draft bill will interfere with on-going democratization processes that promote transparent information disclosure.

Generally, the bill defines confidential information as anything that could jeopardize the state's sovereignty or safety if it fell into the wrong hands. Freedom of information activists are concerned that there will not be a clear mechanism to determine which information is considered classified and which is open to the public. The government has been strongly encouraged to clearly specify what kind of information would be protected by the bill, but has yet to do so (Jakarta Post, June 27, 2006). The latest draft of the bill proposes the establishment of a state secrets agency, which would have the privilege of declaring certain information classified. The agency would be led by the defense minister and would comprise the home minister, foreign minister, justice minister, information minister, attorney general, military chief, police chief, state intelligence agency chief and state coding agency chief. Jail sentences for leaking, sharing, copying, recording or publicizing classified information are also provided for in the draft law. These offenses carry a maximum sentence of life in prison, and even the death penalty during wartime.

Other Relevant Laws and Regulations

A number of other Indonesian Laws also posit problems for information disclosure in Indonesia. For example, there are 20 articles in the Penal Code that define what information can be classified as secret and therefore should not be disclosed. Article 112 of the Penal Code also states that:

Anyone who intentionally imparts letters, news or information that he/she knows should be kept secret for reasons of national interest, or who

intentionally informs or gives such items to a foreign country, is punishable by imprisonment for up to seven years.

Similar provisions can also be found in the Banking Act (UU 10/1998), the Commercial Secrecy Act (UU 30/2000), The Archive Act (UU 7/1971), the Telecommunication Act (UU 26/1999), Decree No.1/2002 on Combating Terrorism and the Documentation Act and Public Court Act. Such acts classify various kinds of information on State secrets, sometimes inconsistently, and impose severe penalties on people who are found to be in breach of them.

The secrecy provisions contained in the Penal Code protects all classified information, even though the classification may be unnecessary and protect no legitimate secret information. International standards note that restrictions should relate to a legitimate interest and that disclosure should only be prohibited where it would actually harm that interest. Furthermore, there should be a public interest override so that where the public interest in disclosure outweighs the harm the material should still be disclosed. The provisions relating to official secrets fail to take into account the fact that over time, information that may once have legitimately been classified as secret will over time become subject to disclosure. In each of these laws information that is secret is defined very broadly and can be open to subjective interpretation (Nugroho 2003).

Nevertheless, the public's right to information is legally acknowledged and guaranteed under Article 28F of the Constitution, and Articles 20 and 21 of MPR Decree No. XVII/MPR/1998 on Human Rights, which state that:

Article 20:

Everyone has the right to communicate and access information in order to develop him/herself and his/her social environment;

Article 21

Everyone has the right to seek, access, own, keep, process and impart information utilizing all kinds of channels available.

Rights to information are also mentioned in sectoral laws, such as Indonesia's Basic Forest Law (UU 41/99), however, these clauses are general and limited to recognizing

the public's right to information without outlining the responsibility of public institutions to provide such information. These laws also do not define the types of information that can be accessed by the public, the procedures and mechanisms that can be used to access information, and other important aspects of the implementation of freedom of information. Specific legislation on these issues is consequently needed.

PART III: THE MINISTRY OF FORESTRY'S TRANSPARENCY INITIATIVE

Indonesia's forests are among the most extensive, diverse and valuable in the world. These forests provide habitats for a wide range of flora and play a pivotal role in supporting economic development, the livelihoods of the rural poor and the provision of local environmental services. Forestry is Indonesia's third largest source of non-petroleum sector export earnings, bringing in an estimated US\$6 billion per annum and of significant importance to multiple stakeholders.

Indonesia's forests are threatened by a number of factors, including illegal logging, estate crop expansion, agricultural expansion, transmigration, rural settlements, road developments and large-scale logging. In 2000, the World Bank estimated that Indonesia had lost over 20 million ha of forests between 1985 and 1997, including 6.6 million ha in Sumatra and 8.4 million ha in Kalimantan. This means that Indonesia is losing close to 2 million ha, or over 2%, of forests annually. Lowland dipterocarp forests in Sumatra and Sulawesi have disappeared fastest; and it is feared that Kalimantan will lose its lowland forest within the next 10 years.

Efforts to support sustainable forest management and to curb unauthorized deforestation have been undermined by a lack of reliable, accurate and up-to-date information on Indonesia's forest resources, harvesting operations, deforestation and forest degradation, timber trade and law enforcement. In fact, the reliability of present day forest data may be worse than it was six years ago. This is because decentralization has made it more difficult for the Ministry of Forestry to collect and archive accurate information from district forest offices. District governments only haphazardly report to the Ministry of Forestry and only about half of Indonesia's wood processing mills submit annual reports (RPBBI) on realized annual consumption of timber (Brown 2002).

Ad hoc record keeping also impedes information access. Information tends to be scattered and not arranged in a systematic way. Considerable effort is consequently required to collect and archive accurate, reliable and up-to-date information on the harvesting, processing and transportation of timber in Indonesia.

Significant improvements in forest sector information disclosure have, nevertheless, been made in recent years. For instance, on 27 February 2006 in Jakarta, the Minister of

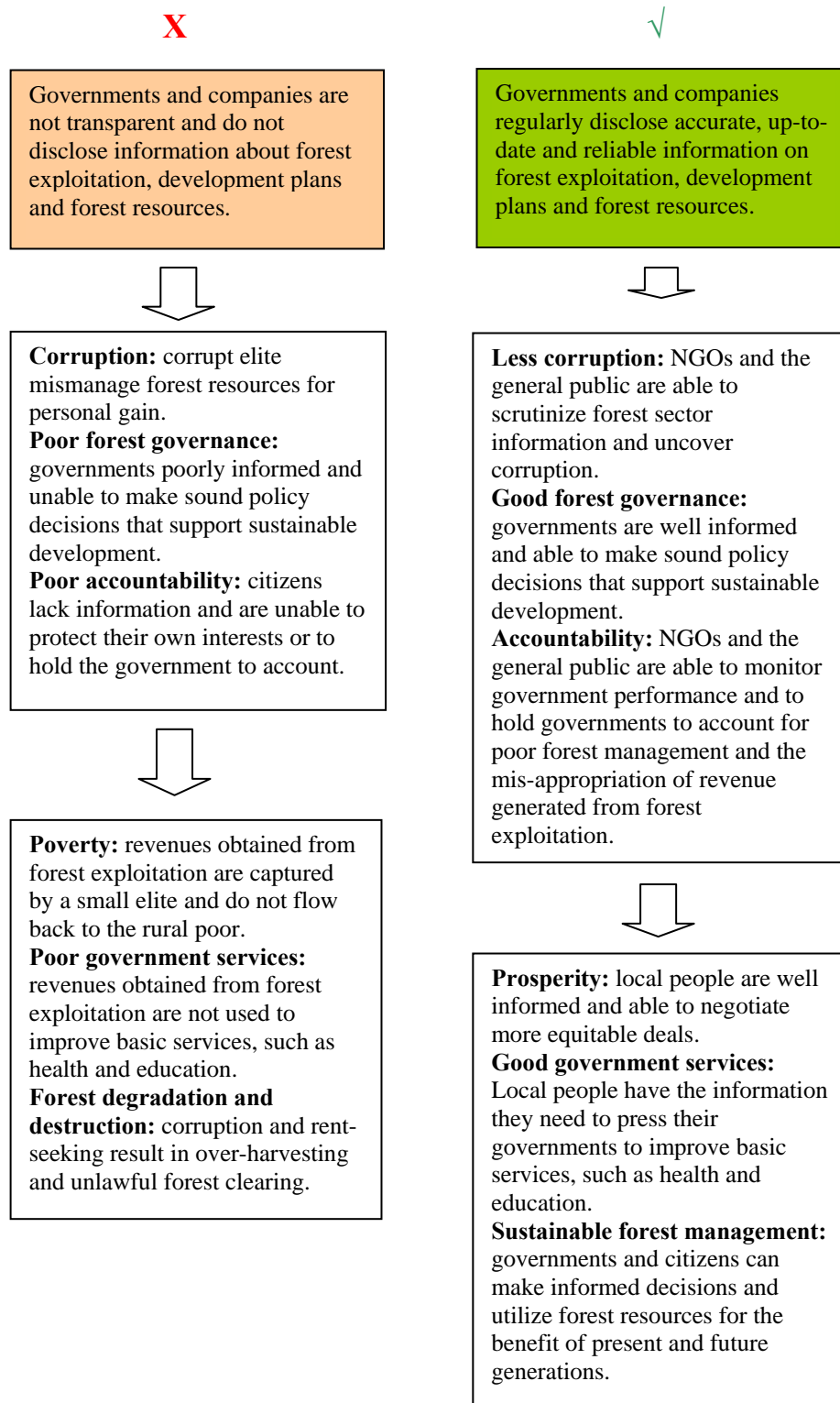
Forestry formally launched the National Dialogue on Forest Sector Transparency, the first effort of its kind in Indonesia, and issued a formal Ministerial Statement on transparency in the forestry sector. The Indonesian Ministry of Forestry has also dramatically improved its website (www.dephut.go.id) and added a plethora of information on deforestation, active logging concessions, statistics on the extent of Indonesia's forest functions (production forest, protection forest, conservation forest), bilateral and multi-lateral forestry projects and forest fires. A complete list of relevant laws and regulations are also readily accessible on the MoF website, including regulations issued in 2007.

The Ministry of Forestry website also features an announcement stating that citizens can lodge a complaint by emailing tp5000@dephut.cbn.net.id; or request information from the Ministry of Forestry's Information Centre (*Pusat Informasi Kehutanan*) by emailing karo.humas@dephut.cbn.net.id. A complete list of Echelon I emails is also provided allowing citizens to write emails to high level government officials, including the Minister of Forestry, M.S. Kaban. However, no information is currently provided about how long information requests will take and what procedures will be taken to fulfill information requests. Most of the statistical information contained on the MoF website is also out of date and only goes up to the year 2003; and most of the maps of forest concessions, protected forest areas, conservation areas, deforestation and the like are out of date and primarily only go up to the year 2000 or 2003 at the latest.

The relevance of transparent forest sector information

Up-to-date, accurate and reliable forest sector data is required to make informed policy decisions, monitor forest cover change and detect illegal logging, clearing and encroachment. Forest sector information disclosure is also considered necessary and important because it is expected to ultimately lead to better forest governance, increase revenues and investment, accountability and more equitable distribution of revenue generated from Indonesia's forest resources. Disclosure of forest sector information is also expected to be able to combat corruption and, ultimately, to alleviate poverty, especially among Indonesia's forest dependent poor (Figure 2). Special attention to this issue is therefore warranted and it has become a focus of donors and NGOs in recent years.

Figure 2: Why is transparency in Indonesia’s forest sector important?



FOMAS

As stated previously, in February 2006 the Ministry of Forestry made a commitment to improve forest sector information and to make this information available to the general public. Their efforts are being supported by a multi-stakeholder forest sector transparency and accountability initiative, known as FOMAS. FOMAS aims to establish the conditions for transparency in the forest sector by making relevant, reliable, accurate and up-to-date forest sector information continuously available to Ministry of Forestry decision makers and the general public. It also seeks to assist decision makers in better decision and policy making based on daily use of better-managed information.

The core components of FOMAS are:

- An **information management process** that generates and archives reliable, accurate and up-to-date information on Indonesia's forest and timber resources.
- A **comprehensive disclosure policy** that clearly articulates what information can be publicly disclosed.
- **Effective disclosure mechanisms** that allow multiple stakeholders to access reliable, accurate and up-to-date information on Indonesia's timber and forest resources.
- An **improved decision-making process** designed to use up-to-date and accurate forest sector information within daily operations in the Ministry of Forestry.

The third core component of FOMAS recognizes the importance of establishing a disclosure policy for forest sector information and the Ministry of Forestry has already began to ready itself for this important activity. Two multi-stakeholder workshops on disclosure of information have been held to get this process moving. In the first meeting, held on 16 March 2007, multiple stakeholders discussed the need to develop a disclosure policy and agreed that this was an important activity that should be prioritized by the Ministry of Forestry. Stakeholders at the meeting also proposed that a special Steering Committee should be established in the Ministry of Forestry to develop the disclosure policy and solicit inputs from multiple stakeholders on the draft.

In the second workshop, held on 23-24 April 2007, the disclosure policy concept was developed further and more buy-in was secured for its development. A Terms of Reference (ToR) for a disclosure policy Steering Committee was also developed during this meeting. The Terms of Reference directs the disclosure policy Steering Committee to: 1) develop a disclosure policy through a process of multi-stakeholder consultations; 2) develop a comprehensive inventory of forest sector information held by the Ministry of Forestry and its provincial and district offices; 3) determine what types of information the general public needs and wants so that their aspirations can be taken into account in decision making processes; 4) develop a user manual for information requests from the general public; 5) develop guidelines on disclosure of information for Ministry of Forestry staff; 6) train and inform government officials about their obligations to disclose information (capacity building); and 6) establish public information centers in Jakarta and a number of forest rich regions.

In 2008, the Ministry of Forestry's Disclosure Policy Steering Committee plan to develop a comprehensive disclosure policy for forest sector information held by the government. The disclosure policy will be developed in a consultative, transparent and participatory manner through a series of workshops, focus group discussions and meetings. The draft will be written the Ministry of Forestry's legal department and it will be widely distributed to allow multiple stakeholders to comment on it and provide inputs.

Disclosure policy guidelines

Guidelines for developing a disclosure policy for forest sector information were developed in early 2007 with assistance from the World Bank and these guidelines are likely to be used to guide the drafting of a disclosure policy for forest sector information. These guidelines drew upon the experiences of other countries and sectors with Freedom of Information Acts. The guidelines recommend that the Ministry of Forestry should endeavor to develop a disclosure policy that draws upon Indonesia's draft Freedom of Information Act and contains clear and concise articles on:

- The Ministry of Forestry's commitment and obligation to disclose forest sector information to the general public.
- Limited exemptions related to personal information, commercial information, law enforcement information, defense and national security, policy making and intellectual property rights.

- The public interest test, which requires government agencies to disclose exempt information if it is deemed to be in the public's best interests;
- Costs of disclosure.
- Complaint and appeal mechanisms.
- Time limits for government officials to respond to information requests.
- How refusals to supply information should be handled.

The guidelines also recommend that the disclosure policy should be based on a presumption in favor of public disclosure of information held by the Ministry of Forestry. This implies that all information held by the Ministry of Forestry and its district and provincial forestry offices should be made available to all members of the general public, unless it is explicitly exempt from disclosure. This includes: satellite images; boundaries of forest concessions, industrial timber plantations and agricultural plantations; spatial plans; work plans and reports; permits and licenses; timber transportation documents; relevant laws and regulations; revenue data; environmental and social impact assessments; relevant demographic data and export, trade, production and consumption statistics.

It is, nevertheless, widely recognized that a few specific and narrow exemptions to information disclosure may need to be adopted. The guidelines recommend that exemptions may be applicable for:

- **Personal information about government officials** (particularly information about their general health or well-being, marital status, religion, personal beliefs or domicile address).
- **Commercial information**, particularly trade secrets or information that is likely to seriously prejudice the commercial or financial interests of the timber industry.
- **Information that may pose a risk to national security or foreign relations**, such as satellite maps of country borders (i.e. the border of PNG and Papua; or between Kalimantan and Malaysia); satellite maps of forests harboring terrorist activities; satellite maps of forests harboring guerilla groups; joint law enforcement operations carried out in collaboration with neighboring countries, such as Malaysia and PNG, or consuming countries, such as China.

- **Information about the formulation and development of government policies.** This exemption should only be applied to allow government officials to freely and frankly discuss policy issues, however considerable care will need to be taken to ensure that this exemption, if endorsed, does not discourage or prevent public participation in policy making.
- **Information on the intellectual property rights of indigenous peoples.** This exemption may be required to protect information which may belong to customary communities. Such information may include, maps of customary lands, information about medicinal plants used by customary people, indigenous knowledge about tree and seedling propagation, and indigenous knowledge about ecosystems, wildlife and resource management.
- **Law enforcement information.** This exemption is likely to be among the most relevant for the Ministry of Forestry because it will apply to law enforcement operations targeting illegal logging—an issue that has attracted widespread concern within Indonesia itself, and internationally. The guidelines recommend that the exemption should only be applied to information generated during on-going law enforcement investigations because disclosure of such information may jeopardize or undermine an investigation, allow suspects to flee the scene of a crime, prejudice investigative processes, wrongfully embarrass a suspect who is later cleared of any wrong-doing, or deny a suspect the right to a fair trial. However, it should not be applied to the majority of law enforcement information generated after an arrest has been made.

.As with other disclosure policies, the guidelines recommend that exemptions to disclosure of information should be subjected to a 'public interest test' that requires information withholdings to be balanced against disclosure in the public interest. This test is often used for the release of information that would reveal wrong-doing or corruption or to prevent harm to individuals or the environment.

Implementation Guidelines

In addition to the above, guidance has been provided to ensure that a disclosure policy on forest sector information can be effectively implemented. This guidance recommends that the Ministry of Forestry should endeavor to:

- 1. Develop a comprehensive inventory of forest sector information.** A comprehensive inventory of forest sector information held by the Ministry of Forestry and provincial and district forest offices is needed to determine what information can potentially be made available to the general public. The inventory could include any information that may be exempt from disclosure unless this would in itself constitute disclosure of exempt information. Once the inventory has been completed, it should ideally be published on the Ministry of Forestry website to allow citizens to know what types of information is held by the Ministry of Forestry and up-dated at least bi-annually.
- 2. Update forest sector information.** Up-to-date information on critical forest sector issues such as forest cover, deforestation rates, concession boundaries, community forest, mill consumption and capacity and revenue is needed to ensure that the Ministry of Forestry is able to supply such information to citizens if they request it. This information will need to be regularly updated to meet future information requests. The most recent information held by the Ministry of Forestry, which has been deemed appropriate for public disclosure, should be ideally be posted on the Ministry of Forestry website to allow citizens easy access to the information and to reduce the cost and burden of requests for generic forest sector information.
- 3. Establish a systematic archival system.** This will allow government officials to quickly source information requested within a limited time frame. A systematic archival system will also reduce search time costs.
- 4. Develop a user manual for information requests.** A clear and simple guide containing practical information on how citizens can request information from the Ministry of Forestry should be developed and disseminated widely in an accessible form. The guide should provide crucial information on how requesters can request information, what they should pay, how long requests will take, what appeal mechanisms exist and what information is exempt from disclosure.

5. **Develop a user manual for Ministry of Forestry officials.** A clear and simple guide on disclosure of information will need to be prepared for government officials so that they know what types of information they can disclose, how they should respond to requests for information, what fees they should charge for information requests and the time limits that they have in order to respond to information requests. Special training programs should also be provided to Ministry of Forestry officials to ensure that they understand the contents of the manual and their obligation to disclose information.

6. **Establish an information division.** A special information division may need to be established within the Ministry of Forestry and within provincial and district forestry offices. The division should ideally be given a clear mandate to carry out the following tasks:
 - Promote within the Ministry of Forestry the best possible practices in relation to record maintenance, archiving and disposal;
 - Develop a code of practice relating to the keeping, management and disposal of records;
 - Serve as a central contact within the Ministry of Forestry for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public body relating to information disclosure.

7. **Train and inform government officials about their obligations to disclose information.** Many government agencies in other countries (including Australia, Canada and Thailand) have experienced problems with the enactment of disclosure legislation because it was assumed that the simple passage of a well drafted and strongly worded legislation would produce automatic changes in the previous culture of official secrecy. Most countries have realized that public servants, accustomed to working in secrecy will need training to effectively implement a disclosure policy and will need to be regularly reminded of their obligations to make information transparent.

8. **Establish a reporting system** that outlines progress with the implementation of forest sector transparency, highlights impediments to transparency and offers solutions to these impediments.

9. **Allow for independent monitoring of disclosure compliance.** Independent monitoring of the Ministry of Forestry's performance with information disclosure may be required to build up trust with the general public and to ensure that government officials carry out their obligation to disclose information to the general public.
10. **Create a constituency of supporters.** The viability of disclosure requires an active constituency (made of government groups, the media, academics, public interest law firms & citizen groups). This constituency needs to ensure that forest sector information is disclosed, that citizens are aware of their right to request information, assist citizens to request and obtain information, and most importantly, ensure that citizens are able to use and understand the information they acquire.
11. **Establish public information centers (infoshops).** To ease public access to information, the Ministry of Forestry may consider establishing a public information centre inside the Ministry of Forestry and in provincial and district forest offices. The information centres could be modeled off various other information centers, including the World Bank infoshop. The World Bank infoshop is a public reading room with photocopying facilities. It acts as a comprehensive information and reference centre where information assistants answer specific questions or connect applicants to knowledge and information resources within the Bank. It provides computer workstations and high-speed printers for public use to browse the Bank's website and CD-ROMS, offers guidance on using bank information resources, provides bibliographic information and knowledge for specific needs. It also houses books and periodicals, project related documents released according to the Banks own disclosure policy, CD-ROMs of bank reports and videos and posters of the Banks work in developing countries.

Problematic Issues to Resolve and Contemplate

The Ministry of Forestry will endeavor to develop a disclosure policy on forest sector information as outlined above in a participatory manner. However, during consultation and discussion it will need to contemplate and attempt to resolve the following issues:

How can the Ministry of Forestry ensure that a disclosure policy focusing specifically on the release of forest sector information does not contradict Indonesia's draft Freedom of Information Act? Indonesia's draft Freedom of Information Act is still being deliberated by parliament and it is likely to be adopted sometime in the future, although this may still be many years away. To avoid contradictory articles, the Ministry of Forestry may need to base their disclosure policy on the draft Freedom of Information Act to avoid potential contradictions and follow developments and changes to the Act while it continues to be deliberated by parliament. It is, nevertheless, possible that the Ministry of Forestry's disclosure policy will need to be significantly revised once Indonesia's Freedom of Information Act is adopted.

What legal instrument should be used to endorse a Ministry of Forestry disclosure policy? Given that Indonesia's draft Freedom of Information Act has not been endorsed by Indonesia's parliament, decisions will need to be made about what legislation is most appropriate for a Ministry of Forestry disclosure policy. A law (UU), regulation (PP) or a Ministerial Decree (SK)? In Indonesia, a law (UU) would allow the legislation to include criminal sanctions but would need to be approved by the Indonesian parliament. The law making process in Indonesia can be very lengthy; so too is the parliamentary approval process. It is also possible that a sectoral specific law on disclosure of information would not be approved by Indonesia's parliament because the draft Freedom of Information law is still being deliberated. For now, the most appropriate legal instrument may be a Ministry of Forestry regulation which will not be able to contain criminal sanctions and be limited by the fact that it can only flesh out guidelines for disclosure of information that are based on an overriding law, such as Indonesia's Basic Forest Law. This law contains a few specific articles on disclosure of information and states that it should occur in principle, however these articles are somewhat vague and limited. A Ministerial Decree would only have fairly limited application and would probably not be able to give a sectoral disclosure policy much credence.

How can complaints and appeals be handled? Indonesia's draft Freedom of Information Act currently calls for the establishment of an independent Information Commission that can mediate and adjudicate complaints or appeals made by citizens requesting information from the Indonesian government. It also specifies that every person has the right to appeal a disclosure decision if their request is rejected, they don't obtain all of the information they requested; they receive the wrong information; the fee

charged for obtaining the information is considered too high, or the request is not dealt with in the time frame specified in the law. In the absence of this overarching law, how can complaints and appeals be handled? It is, for instance, possible that an independent review board could be formed to handle complaints and appeals. The board could be comprised of highly regarded individuals from NGOs or civil society, as well as government officials from other government departments that have a good knowledge about forests and forest sector information. The board would need to have a clear mandate to review appeals and complaints about information disclosure requests and adjudicate conflicts of interest. This board could allow citizens to have an appeal fairly reviewed. However, the Ministry of Forestry will need to consider what legal instrument can be used to create the independent board, and give it credence, legitimacy and weight.

How should the costs of information disclosure be covered? Information disclosure is bound to burden the Ministry of Forestry with extra expenses and costs. In other countries, government bodies charge fees for searching for information, duplicating or copying information and reviewing information request and the Ministry of Forestry may consider doing the same, although fees should ideally be kept to a minimum and cover the actual costs of providing information. The Ministry of Forestry may also need to solicit donor assistance to develop a comprehensive and systematic database of up-to-date, reliable and accurate forest sector information so that it can promptly respond to information requests from the general public. Many donors are ready to support such an initiative and have already pledged support for the Ministry of Forestry's Forest Monitoring and Assessment System that seeks to establish such a database of up-to-date, reliable and accurate information. Finally, the Ministry of Forestry may need to allocate funding for the creation of a special information division, the creation of infoshops within the Ministry of Forestry and district forestry offices, the drafting and publication of disclosure guidelines and manuals, reproducing requested information, creating an efficient and effective archival system, training government officials on how to deal with information requests, informing the general public about their right to know and how they can access information from the Ministry of Forestry.

Should penalties be handed down if government officials fail to comply with the disclosure policy? Disclosure of information is likely to be met with some resistance in the Ministry of Forestry and penalties for failing to disclose information may need to be considered to give a disclosure policy weight.

Criminal sanctions or fines could potentially be handed down to government officials that intentionally destroy information, refuse to disclose information or release false information. However, without a Freedom of Information Law, this will be difficult. This is because criminal sanctions can only be included in a law, not a government regulation or a Ministerial Decree. Other legislation also restricts government officials from disclosing information and provides stiff criminal sanctions for disclosure. This means that criminal sanctions for failing to disclose information can only be stipulated in a overriding law, such as Indonesia's Basic Forest Law, or ideally, through a Freedom of Information Act that applies to all government officials.

Without criminal sanctions, the Ministry of Forestry may need to carry out extensive dialogue on disclosure of information to ensure that government officials are on-board about disclosure of information. This process may take time and should be enforced as much as possible through a well articulated, clear and concise disclosure policy.

PART IV: CONCLUSION

Ideally, Indonesia's Freedom of Information Act will be signed and enacted in the near future to provide a clear legal mandate for forest sector information disclosure, not only for the Ministry of Forestry and its provincial and district offices, but also for other government agencies that may hold forest sector information (i.e. Ministry of Trade, Ministry of Industry, National Police, Attorney General, District Courts, Supreme Court, Coordinating Ministry for Political and Security Affairs, Ministry of Environment etc). In reality, this is some time off. Recent deliberations in Parliament have not resulted in the law being enacted and a submission has been made to delay implementation of the law to 5 years after signature.

In the absence of a Freedom of Information Act, a disclosure policy designed by the Ministry of Forestry, would need to be enacted in legislation, preferably via a law (UU) to allow for criminal sanctions and to provide a clear mandate to government officials about information disclosure. It is, nevertheless, more likely that a Ministry of Forestry regulation will have to be used as the legal instrument for releasing a disclosure policy because a new law would need to be deliberated and passed by parliament. This regulation will need to be reinforced with considerable dialogue on the significance and importance of transparency. Bellver & Kaufmann (2005) have pointed out that even though ministers and officials may recognize the importance of transparency, the political and bureaucratic pressures to control information can be irresistible. Merely the act of adopting a law can limit certain abuses and can make people aware of their rights. It is also a way of signaling government's commitment to transparency and the first step of institutionalize the right to access information and provide resources to it.

The new regulation should ideally draw upon Indonesia's draft Freedom of Information Act as much as possible to ensure that it does not considerably contradict this Act if it is signed and contain clear and concise articles on:

- The Ministry of Forestry's commitment and obligation to disclose forest sector information to the general public;
- The public interest test;

- Clear, concise and limited exemptions personal information, commercial information, law enforcement information, defense and national security, policy making, intellectual property rights and conflicting statutes;
- Costs of disclosure;
- Complaint and appeal mechanisms;
- The establishment of an information division that is obliged to ensure that the act is effectively implemented;
- Time-limits for government officials to respond to information requests;
- Procedures for how requests can be made;
- The Ministry of Forestry's obligation to regularly publish inventories of information it holds;
- How refusals to supply information should be handled.

A number of measures will also need to be undertaken to ensure that information disclosure is effectively implemented. These measures include:

- Developing a comprehensive inventory of forest sector information.
- Updating forest sector information.
- Establishing a systematic archival information system.
- Developing a user manual to guide citizens on how they can request information.
- Developing a user manual to guide Ministry of Forestry officials on how to respond to information requests.
- Establishing an information division to handle information requests.
- Training and informing government officials about their obligations to disclose information.
- Establishing a reporting system.
- Allowing independent monitoring of disclosure compliance.
- Creating a constituency of supporters to spread the news about the Ministry of Forestry's disclosure policy.
- Establishing several public information centers, not only in Jakarta, but also in several provincial centers.

Extensive dialogue and consultation will also be required to ensure that: a sectoral disclosure policy targeting forest sector information does not contradict Indonesia's draft

Freedom of Information Act; an appropriate legal instrument is chosen to legitimate the Ministry of Forestry's disclosure policy; an independent body is formed to handle complaints and appeals; the costs of information disclosure are fairly managed; and government officials understand and are willing to comply with the disclosure policy.

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APPENDIX 1: A BRIEF OVERVIEW OF INDONESIA'S DRAFT FIA

General Issues

- The act is based on the premise that all public information should be open to the public and that every person has the right to see, obtain or know about information;
- The law supports accountability and public participation in decision-making.

Time Limits and Fees

Information should be provided promptly and at minimum cost. (no specific time limits for responding to requests are provided, which is a significant weakness).

Information Commission

The Act provides for the establishment of an Information Commission, which is an independent organization who mediates and adjudicates complaints or appeals made by citizens about the implementation of the Freedom of Information Act. The information commissioner can decide to make public information exempt under the law if he/she feels it to be in the public interest. The commission is to be represented at the central, provincial and district level.

The information commission at the central government level is to consist of 7 members, while the commission at the district and provincial level is to have 3 members. The information commission is responsible to the public and is obliged to issue yearly reports on their activities to the mass media.

The commission members are to be: Indonesian citizens, have integrity, have not been associated with a political party for three years, not a member of TNI or POLRI, not be prosecuted, have an understanding about human rights and public policy, be provided to leave their official position, be prepared to work with full capacity. The information commission is required to respond to complaints or appeals within 30 days.

The information commission has to be formed 6 months after the law is signed. Information commissions at the provincial level must be formed within 3 years; while information commissions at the district level, must be formed within 5 years after the law is signed.

Obligations of Government Bodies

The Act states that government bodies are obligated to implement the Freedom of Information Act, educate the public about the act and build the capacity of government officials to implement the act. Government bodies are also obligated to ensure that they have an up-to-date inventory of the information it holds and makes this information public; and to ensure that information is regularly published.

Exemptions

The government agency also has the right to refuse information requests if:

- the information is regarded as state secrets;
- Endangers commercial competition
- Violates personal privacy
- Relates to official secrets
- Endangers the lives of others
- Interferes with law enforcement operations.

However, this does not include, court decisions, instructions to cease law enforcement operations; financial reports of legal institutions, reports of corruption investigations. Information can only remain confidential for a period of 20 years.

Procedures for Submitting an Information Request

Detailed guidelines are provided for submitting an information request. These guidelines specify that requests can be submitted in writing and that an information officer is obliged to take note of requests that are not made in writing (i.e. oral requests). The Information Board is obliged to tell the requester that they have received the request and are processing it. Requests can also be made via email, or other electronic means.

Within 10 days the information board is required to inform the requester if it holds the information or if it is held by another government institution. It is also obliged to tell the requester if it will provide the information or if it is exempt from disclosure in accordance with the exemptions specified in the law. It should also tell the requester if he/she can receive all or only some of the information requested; provide the format in which the information will be provided; and the cost of the information request.

The Board can extend the time frame for providing this information by 7 days if it provides a written reason.

Costs of Disclosure

The general public should be charged the actual costs of searching and duplicating information. Commercial businesses can be expected to be charged more.

Information Institute

Ensures that government bodies are carrying out their obligations and builds the capacity of government bodies to implement information disclosure. The institute is obligated to monitor the implementation of the act, monitor citizens use of the act, evaluate government bodies ability to carry out the act and to ensure that citizens aspirations about the act are being fulfilled.

Appeals

Every person has the right to appeal a disclosure decision if their request is rejected, they don't obtain all of the information they requested; they receive the wrong information; the fee charged for obtaining the information is considered too high, or the request is not dealt with in the timeframe specified in the law. Appeals should first be submitted to the information officer in the government agency. If the requester is not satisfied with their response, they may submit a complaint to the information commissioner. A final recourse is to submit an appeal with the high court. If a requester complains that he/she is having difficulty obtaining information, the government agency must respond to his complaint within 7 working days. The requester may submit an appeal to the information commissioner within 14 working days if he/she is dissatisfied with the agency's response. The Information commission must respond to the appeal within 14 working days and is obliged to act as a mediator between the two parties. The information commissioner's response is considered to be the final decision and overrides the former decision of the public body.

Sanctions

Criminal sanctions apply for:

- Any person who intentionally does not carry out a decision made by the Information Commission can be imprisoned for a minimum of 1 year and a maximum of 5 years.

- Any person who neglects to carry out a decision made by the Information Commission can be imprisoned for a minimum of 1 year.
- Any person who doesn't cooperate by providing information to the Information Commission so that it can consider an appeal can be imprisoned for a minimum of 6 months.
- Any person who prevents the Information Commission from doing their job can be imprisoned for a minimum of 3 months.
- Any person who destroys information can be imprisoned for up to 5 years.
- Any person who releases false information can be imprisoned for a maximum of 2 years.
- Any person who releases information in accordance with this law is protected from being prosecuted.
