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POLICY BRIEF

THE RIGHT TO ACCESS PUBLIC INFORMATION AND INVISIBLE BARRIERS

Hanoi, 2015

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Introduction

“**R**ight to Access Public Information and Invisible Barriers” is a research under the “Civil Society Empowering Rural Communities” project (Ref No: NSA 306828), funded by the European Union Delegation and implemented by ActionAid Vietnam (AAV) during 2013 - 2017. This policy brief serves as a summary of the research outcomes and emphasizes the relationship between the implementation of the right to access public information (*particularly by the ethnic minority community*) and the accountability of Government bodies. Research on access to public information by rural communities in Ha Giang and Cao Bang provinces has demonstrated the urgent need to enact the Law on Access to public information and strengthen the implementation mechanism to ensure adequate access to public information at all levels.

Access to public information is a fundamental human right and one that is pivotal to the development of Vietnam. The 1992 Vietnam Constitution emphasized the obligation of the Government to promote and protect the rights of citizens. This right of access to information is further enshrined and expanded upon in the Universal Declaration on Human Rights (*UDHR*) and the International Covenants of Civil and Political Rights (*ICCPR*), whose article 19 assures the right of every citizen to seek, receive, and impart information and ideas through any media.

Until the adoption of the 2013 Vietnam constitution, the right to access public information has been of concern to the Government though yet to be realized. With increasing penetration of the internet and other media, information and opinions are more widely available than ever before. However, it is still difficult for Vietnamese citizens, particularly the ethnic minorities to access

public information. This in turn has constrained public oversight of government-provided services and functions.

By the time this research was completed, there was still absence of enabling laws and mechanisms to guarantee access to public information. Though the right to access public information is mentioned in a number of related laws, it was only legalized in the 2013 Vietnam Constitution. Article 25 of the 2013 Vietnam Constitution states that *“The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assemble, form associations, and hold demonstrations. The practice of these rights shall be provided by the law.”*¹ However, given the absence of the Access to public Information Law², the implementation and oversight of the right to access public information by Vietnamese citizens is not feasible. The research has suggested albeit the right to access public information has been legalized, there are both visible and invisible barriers that hinder and discourage citizens who desire to enjoy such right.

The Access to public Information law allows citizens to understand the policies that guide government to make decisions relating to public services including health, education, housing and infrastructure projects and the factual basis for such decisions at a certain period of time. Armed with such knowledge, citizens around the world are effectuating change that allows them to create positive changes to improve their living standards and better their lives.

This policy brief highlights the imperative need for government to improve public access to information for all citizens, regardless of their group or race in the society. Key highlights in the brief are gleaned from a research study entitled AAV report on Access to Public Information in Rural Communities - 2014.

¹ http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28814

² This research was carried out when the Access to Information Law was not yet passed. Such law was adopted by the National Assembly of Vietnam on the 6th April 2016 and will come into force on the 1st July 2018

Methodology

The research was premised the hypothesis that higher transparency will lead to higher accountability. Data collection tools that were used include: in-depth interviews with key informant, household interviews, focussed discussions, and review of legal and policy documents related to the right to access to information in Vietnam and other countries.

Findings of this document will present the barriers to citizens in their effort to become aware of, implement, and monitor the fulfilment of the right to access information in the two difficult Northern areas in Vietnam, i.e. Ha Giang and Cao Bang.

Fig I. Demographic characteristics of respondents

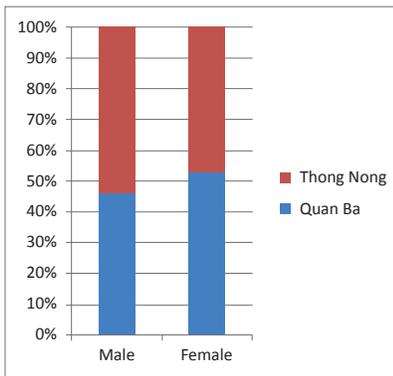
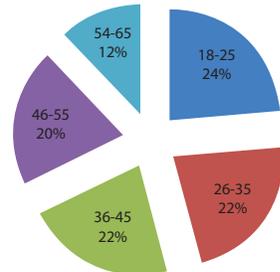


Fig II. Age distribution of respondents

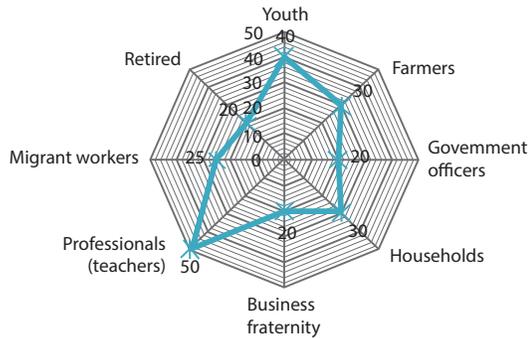


Source: AAV report on Access to Public Information in Rural Communities -2014

Figures I and II present the distribution of respondents by sex and age. Among the 235 individuals surveyed, 41.8% were male and 58.2% female.



Fig III. Number & category of respondents



Source: AAV report on Access to Public Information in Rural Communities - 2014

As illustrated in figure III, the study involved a cross section of people at various levels of society since different people have different information needs, perceptions and different levels of access.

Table I. Respondents’ perceptions on access to information

	Strongly agree or agree	Neither agree or disagree	Strongly disagree or disagree
Government and public bodies should be obliged to publish key information	91.8%	7.4%	0.9%
Everyone has the right to seek, receive, and disseminate information freely	91.3%	7.6%	1.1%
Everyone should be aware of the income and expenditure of the government (district, provincial & national budget)	84.5%	10.7%	4.8%
CBOs have influenced the government and public bodies to improve transparency and accountability	77.8%	17.5%	4.7%

Source: AAV report on Access to Public Information in Rural Communities - 2014

More than 90% of respondents agreed that everyone has the right to access public information without interference. Majority further noted that government and public bodies, including elected bodies, should be obliged to provide public information and everyone should be aware of the income and expenditure of the government at all levels (*i.e., district, provincial and national budget*).

Importance of access to information

Public access to government-held information allows individuals to better understand the role of government and the decisions being made on their behalf. With an informed citizenry, government can be held accountable for its policies.

Equally important, access to information can be used to improve the lives of people as they request information relating to health care, education, and other public services.

Table II. Type of information mainly sought by communities in Ha Giang and Cao Bang

Type of information	Frequency	%
Government support for local farmers in the communities	146	90,1
Land & property compensation	56	34,6
Objectives & scale of socio-economic projects	144	88,9
Access to public services	46	28,4
Job opportunities for youth	49	29,5
Education support opportunities	60	37,0
Progress & audit reports for community projects & programs	19	11,7
Other information	11	6,8

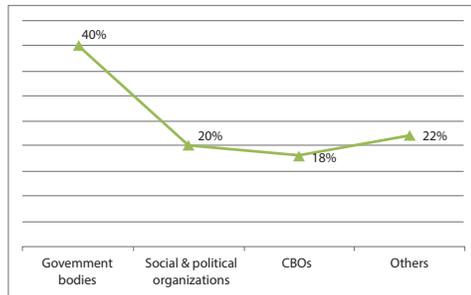
Source: AAV report on Access to Public Information in Rural Communities - 2014

Table II represents the range of information sought by locals in Ha Giang and Cao Bang. The most sought information relates to

Government support for local farmers, with a frequency of 146 (90.1%) followed by information on socio-economic projects and education support opportunities respectively.

Since most inhabitants in these localities are predominantly farmers; it is not a coincidence that information on government support for local farmers is the most sought after.

Fig IV. Major Source of information in Ha Giang and Cao Bang



Source: AAV report on Access to Public Information in Rural Communities -2014

Statistics in figure IV above reveal that only 40% of the population in both localities access information from Government bodies. By any standards, this is below average since government should be playing a more prominent and dominating role in providing information to citizens. Other sources of information include social & political organization and community based organizations at 20% and 18% respectively. Village and commune information boards were also identified as sources of information.

Several respondents tended to confuse the concept of public information and general news. They could not respond specifically to issues that are considered to be news (e.g., weather, traffic, etc.) versus information that is referred to as public information (such as that commonly referred to when discussing access to information).

This highlights the limited awareness of the notion of access to information by rural communities hence the need for mass awareness.



Barriers to information access

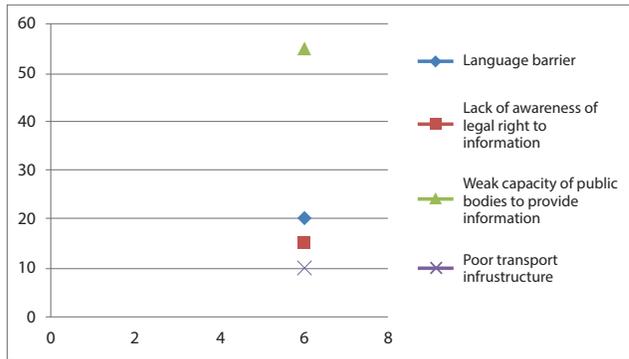
In Vietnam, there are structural barriers that hinder both the capacity and incentives of government to produce information, and the ability of citizens to claim their right to information and to use it to demand better governance and public services³.

While Vietnamese people's right to access information is currently ensured under several separate laws, including the Anti-Corruption Law, the Ordinance on Consumer Protection and the Ordinance on Implementation of Democracy, these regulations are scattered⁴. There is still need to have a comprehensive document to regulate general rights of people and responsibilities of agencies to provide the implementation basis for the exercise of such right to information.

³ <http://vietnamlawmagazine.vn/draft-law-affirms-citizens-right-of-access-to-information>

⁴ <http://vietnamnews.vn/society/185322/law-to-increase-public-access-to-information.html>

**Fig V. Key barriers to access to information
in Ha Giang and Cao Bang**



Source: AAV report on Access to Public Information in Rural Communities - 2014

According to figure V, 55% of respondents identified weak capacity of public bodies to provide information as one of the major barriers to accessing information while 20% observed that they could not access information due to remoteness and poor transport infrastructure. Infrastructure is crucial in citizen's access to information. Effective information access and use depends on communication facilities such as roads, telephones and Internet among others.

Lack of awareness of right to information and language barrier especially among ethnic minorities were further identified as key barriers. This is basically because the limited information available and materials are provided in Vietnamese which is only taught in schools. With the low level of education especially among ethnic minorities, language barrier remains a major hindrance to accessing public information.

Other critical challenges in accessing information

Further analysis of participants' discussions revealed that:

- There was a predominantly negative response from service providers related to a people's request for information from the government.
- While the means of accessing information is growing (*e.g., Internet access, newspapers, and other publications*), many locals still rely on radio and televisions.
- People with less education or who live in poverty are not versed in the norms regarding accessing public information.
- The culture and values of politicians and local authorities has not historically supported the provision of public information to citizens.
- Some citizens believe they will be subjected to threats for seeking particular information.



Fig VI. Type Information difficult to access

Processes and outcomes for access to information cannot be prescriptive, and must take into account the diverse needs of individuals and the nature, strengths, priorities and resources of a community.

	Very difficult	Difficult	Very easy	Easy
Land issues	50%	43%	4%	3%
Corruption issues and cases	60%	30%	4%	6%
Job advertisements-public positions	40%	38%	10%	12%
Education information at all levels	30%	26%	14%	30%
Social and legal issues	46%	47%	2%	6%

Source: AAV report on Access to Public Information in Rural Communities - 2014

As can be seen in figure VI, 50% of respondents found it very difficult to access information on land issues while 60% equally found it difficult to access information on corruption issues and cases. 40% found it very difficult to access information on public jobs while 30% could hardly access information on education. The above topics are personal issues related to the wellbeing of citizens versus nationally pertinent issues.

Conclusion

Access to information is critical for enabling Vietnamese citizens to exercise their voice, to effectively monitor and hold government to account, and to enter into informed dialogue about decisions which affect their lives⁵. However, access to information in Vietnam is still complex, and common challenges include difficulty in adjusting the mindset of the bureaucracy and people who hold the information; a lack of capacity in relation to record keeping and record making; insufficient resources and infrastructure; inadequate staffing in terms of training, specialization and a lack of capacity building or incentive systems.

While the Government of Vietnam has made a high-level commitment to adapt right to access to information legislation as a matter of priority, it should be noted that mere existence of the law on access to information does not guarantee easy access to information. Based on the experience of India, Indonesia and Thailand, the existence of the law on freedom of access to information (*FOI*) does not always guarantee the citizens' easy access to public documents⁶.

Enabling legislation for the right to information should be a three-phase process: passage, implementation, and enforcement of the access to information law, the “*transparency triangle*.” All three elements are crucial and interrelated, but experience indicates that the implementation phase is paramount and serves as the base of the triangle. Without full and effective implementation, the right to information becomes just another example of new laws that serve no one⁷.

⁵ *The Right of Access to Information-(Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008)*

⁶ *Access to Information in Developing Countries (Working Paper)*. www.transparency.org/working_papers/legislation.html

⁷ <https://www.article19.org/.../vietnam:-law-on-access-to-inform>



Policy recommendations

In view of the fact that easy access to public information improves the lives of people as they request information relating to health care, education, and other public services, AAV offers the following recommendations to ensure an informed citizenry which can hold government accountable for its policies:

- The government must see passage, implementation and enforcement of a vigorous access to Information law as a priority. The legislation must be fully implemented and enforced, and these two factors should be considered during the drafting of the law, rather than only after its passage.

- Government should ensure clarity of responsibilities by creating specialized units and oversight bodies to ensure full implementation and compliance with the law.
- Government should improve capacity and leadership skills of local government agencies and create an enabling environment for participation of CSOs in policy-making process.
- Government should integrate local languages into teaching curriculum and provide on-the-ground services on sustainable livelihoods.
- Improve physical access through the development of new roads or upgrading the existing ones to address the problem of remoteness and isolation.
- Ongoing discussions to raise awareness about freedom of information and public information should be engaged at various levels of society.

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A full report can be downloaded from:

<http://www.actionaid.org/Vietnam/publications>

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