



SUPPORTING ACCESS TO INFORMATION

A PRACTICAL GUIDE FOR EU DELEGATIONS

Funded by



AUTHORS

Author: Bill Orme

Editor: Caroline Giraud

With contributions from Toby Mendel (peer review), Ioana Avadani and Media4Democracy team Susan Angle, Angela Weis.

Bill Orme is an author and consultant who has worked and written extensively on access to information and press freedom issues. From 2015 to 2018 he represented the Brussels-based Global Forum for Media Development at the United Nations, leading civil society advocacy efforts for the inclusion of a commitment to freedom of information in the UN's 2016-2030 Sustainable Development Goals. A former foreign correspondent for The Economist and The Washington Post in Latin America and The New York Times in the Middle East, Orme served as executive director of the Committee to Protect Journalists and as chief of communications and senior media development advisor for the United Nations Development Programme. Orme collaborates with Media4Democracy since 2017, as an author and by strengthening the EU Delegation to Honduras efforts for information access.


©Media4Democracy, 2018 Supporting Access to Information: A Practical Guide for EU Delegations, Brussels, European Union. This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Media4Democracy and do not necessarily reflect the views of the European Union. No third-party textual or artistic material is included in the publication without the copyright holder's prior consent to further dissemination by other third parties. Reproduction is authorised provided the source is acknowledged.

SUPPORTING ACCESS TO INFORMATION

A PRACTICAL GUIDE FOR EU DELEGATIONS

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	4
PURPOSE OF THIS GUIDE	5
INTRODUCTION	7
WHAT YOU NEED TO KNOW	9
1.1 ACCESS TO INFORMATION – A BRIEF HISTORY	10
1.2 MAJORITY OF UN MEMBER STATES HAS ATI LAWS	12
1.3 POLITICAL THREATS AND TECHNICAL OBSTACLES TO ATI	14
Global Right to Information Rating analysing quality of the world's access to information laws – July 2018	16
1.4 INTERNATIONAL POLICY FRAMEWORK FOR ACCESS TO INFORMATION GLOBAL TREATIES, REGIONAL PACTS, AND VOLUNTARY ACCORDS	17
1.5 EUROPEAN POLICY FRAMEWORK	27
1.5.1 Key EU Accords and policy documents	27
1.5.2 Do we practice what we preach in the EU space?	32
1.6 BEYOND THE EU: OTHER REGIONAL ATI PACTS, INSTITUTIONS & COMMITMENTS	34
1.6.1 In Europe: regional institutions and conventions with ATI provisions	35
1.6.2 Beyond Europe: the OAS, the AU, ASEAN & others	38



WHAT YOU CAN DO	45
2.1 FIRST STEPS: ASSESSMENTS AND ANALYSIS, UNDERSTANDING THE CONTEXT	46
2.1.1 Understanding the national law	47
2.1.2 What has been done? Evaluations of ATI aid & public use	49
2.2 ATI AS A DEVELOPMENT DRIVER IN VARIOUS COOPERATION SECTORS – THEMATIC POINTS OF ENTRY FOR ATI PROJECTS	51
2.2.1 Human Rights Promotion & Protection	51
2.2.2 Democratic Governance	53
2.2.3 Combatting Corruption	54
2.2.4 Gender Equality	55
2.2.5 Peace and Security	57
2.2.6 Climate Change & Other Environmental Issues	58
2.2.7 Public Health	59
2.2.8 Education	60
2.2.9 Social Inclusion	60
2.3 ENTRY POINTS AND POTENTIAL ACTIONS	62
2.3.1 ATI Action Options for EU Delegations	62
2.3.2 EU Funding: Appropriate Instruments for ATI support	66
2.4 CASE STUDIES: EXAMPLES OF EU SUPPORT FOR ATI INITIATIVES	70
ANNEXES	81
ANNEX 1: FOIA-NET METHODOLOGY FOR ASSESSING SDG16-10-2 IMPLEMENTATION	82
ANNEX 2: LECTURE HANDOUT	96
ANNEX 3: EXPERT RESOURCES AND ATI REFERENCE DOCUMENTS	103

LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific
ASEAN	Association of Southeast Asian Nations
ATI	Access to Information
AU	African Union
CSOs	Civil Society Organisation(s)
DCI	Development Cooperation Instrument
DEVCO	European Commission's Directorate-General for International Cooperation and Development
EC	European Commission
ECLAC	Economic Commission for Latin America and the Caribbean
EDF	European Development Fund
EIDHR	European Instrument for Democracy and Human Rights
EITI	Extraction Industries Transparency Initiative
ENI	European Neighbourhood Instrument
EU	European Union
EUACI	EU Anti-Corruption Initiative
EUDs	European Union Delegation(s)
FOIANet	Freedom of Information Advocates Network
GDPR	General Data Protection Regulation
IAIP	Institute for Public Access to Information
IATI	International Aid Transparency Initiative
ICCPR	International Covenant on Civil and Political Rights
IcSP	Instrument Contributing to Stability and Peace
ICT	Information and communication technologies
IDUAI	International Day for Universal Access to Information (28 September)
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
OAS	Organization of American States
OGP	Open Government Partnership
OHCHR	UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
SDGs	Sustainable Development Goal(s)
UN	United Nations
UNECE	UN Economic Commission for Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization



PURPOSE OF THIS GUIDE

The right of access to information is a fundamental right of all persons to access information held by public bodies. The protection of the right of access to information is vital to democracy and a driver of good governance, development and the upholding of other human rights. Information access has particular relevance within the new 2030 Development Agenda, and in particular with Sustainable Development Goal (SDG) target 16.10 which calls for ensuring public access to information and protection of fundamental freedoms.

*This Practical Guide **prepared by Technical Assistance Facility Media4Democracy (M4D) managed by the Directorate General International Cooperation and Development (DG DEVCO)** provides non-mandatory technical guidance to EU Delegations (EUDs). It builds off the guidance in the EU Human Rights Guidelines on Freedom of Expression Online and Offline¹ (EU Guidelines on Freedom of Expression) that describe actions the EU institutions and Member States should take to support access to information.*

EU Delegations are at the frontline of these issues and can have a substantial impact on progress in strengthening governments commitment to access to information, improving implementation of existing laws, mobilising and supporting civil society to defend and advocate for these rights, and supporting media actors in using access to information in efforts to fight corruption and hold government to account. To this end, Delegations can work, both nationally and regionally, based on the EU's development priorities and drawing upon available guidelines, EU aid instruments and best practices, as well as local and international partnerships.

“Without freedom of expression, development cannot exist.”

Director-General of the European Commission's
Directorate General for International
Cooperation and Development (DEVCO)

2018, European Development Days

¹ EU Human Rights Guidelines on Freedom of Expression Online and Offline - http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf

The *Guide* shows how support for the principle of public access to information and the practical implementation of access to information (ATI) laws reinforce the EU's work around the world in promoting participatory democracy, good governance, freedom of expression and other fundamental rights, and human development overall. Among other things, it notes regional agreements and instruments relevant to the practical application of access to information principles which are invaluable references, both for the policy guidance they provide to EU Delegations and as potential models for such regulations and systems in other regions where the EU supports progress in this area.

There is much to be done – and much that EU Delegations can do to help. These are some of the practical, effective steps that EUDs have already taken to improve public access to information in developing countries:

- ▶ Training journalists in the use of access to information laws
- ▶ Providing technical IT aid to state agencies running online ATI systems
- ▶ Supporting public information campaigns about citizens' 'right to know'
- ▶ Aiding in the drafting of ATI laws, with expert advisers in the field
- ▶ Sponsoring cross-border consultations of ATI systems specialists
- ▶ Collaborating in legal training programmes for judges and prosecutors
- ▶ Assisting countries in measuring local ATI progress in accord with the commitments of SDG16-10, in conjunction with media and civil society

This *Practical Guide* overall provides tools and hands-on examples for EU Delegations to study and perhaps to emulate, including a review of the EU's own policy guidance and recent history in this area.



INTRODUCTION

The public's right to 'access to information' has long been recognized in international law, including in the founding documents of the United Nations and the European Union. As a legal doctrine, its roots in Europe go back two and half centuries. Yet only in recent years have most countries enacted laws specifically guaranteeing people's right to request and obtain information from the governments that represent them.

From just a dozen, 25 years ago, to more than 120 today, the growing number of countries with access to information laws represents one of the most important recent developments in democratic governance worldwide. At its core, this principle is simple, yet potentially profound: Information collected and held by governments belongs to the people they serve, not the state, and governments cannot refuse to disclose or disseminate official data and documents without clear legal reasons based on exceptions to this rule, which should be rare.

The default position for governments in the 21st century should be openness and transparency. This represents a historic reversal of the longstanding practice in many countries, where official information of all kinds was commonly treated as confidential state property, to be shared with the public – or not – at the discretion of government officials. Timely and focused assistance in the adoption and implementation of ATI laws could have a lasting impact on a wide range of global challenges, from combatting corruption and reducing poverty to protecting the environment and fighting for women's rights. This is why a commitment to 'public access to information' was included in the UN's 2016-2030 **Sustainable Development Goals**.

The European Union (EU) has recognized the centrality of the principle of public access to information to democratic governance, with the right of people to 'seek and receive information' from national governments and the EU's own institutions expressly stated in its governing treaties and other regional accords.

Today the EU is at the vanguard of legal efforts to extend and safeguard these rights in digital platforms, including people's rights to obtain and control personal data from social media enterprises and other commercial enterprises. On the national level, nearly all EU Member States now have enacted their own access to information laws, in many cases relatively recently. This shared experience makes the EU and its diplomatic Delegations uniquely placed to offer assistance in the adoption and implementation of these laws.

The EU takes a rights-based approach to its ATI assistance, supporting public access to information not just as a means to an end – combatting corruption, or encouraging civic engagement, or improving the availability of data on health, education, or the environment – but as an end in itself, an integral component of the human right to freedom of expression and access to ‘information and ideas’.²

Philosophically, as well as practically, this distinguishes ATI support from ‘Open Data’ initiatives, which – while important contributions to the objectives of transparency and accountability, especially in the area of public spending – are not grounded in the principle of people’s right to information, and states’ obligations to respect that right. An ‘Open Data’ commitment to the proactive publication of digital databases, financial statistics and human development indicators expands public access to information, and should be considered complementary to the enforcement of ATI laws and rights.³

As the *Guide* shows, this rights-centric approach is also consistent with the EU commitment to the Sustainable Development Goals (SDGs), where ensuring public access to information is both an objective unto itself and a prerequisite for achieving and monitoring all the SDGs, in all regions of the world.

2 EC: Rights-based approach to development cooperation
https://ec.europa.eu/europeaid/sectors/rights-based-approach-development-cooperation_en

3 OPEN DATA WATCH <https://opendatawatch.com/>



WHAT YOU NEED TO KNOW

1.1 ACCESS TO INFORMATION – A BRIEF HISTORY

The principle of public access to information – the people’s ‘right to know’ – has long been considered a cornerstone of democratic governance. **The Universal Declaration of Human Rights**, adopted by the founding members of the United Nations in Paris in 1948, affirmed the right of all people everywhere to ‘seek, receive and impart information, through any medium, and regardless of frontiers.’⁴ In 1953, in intentionally similar language, this principle was formally recognized by the signatory nations of the **European Convention on Protection of Human Rights and Fundamental Freedoms**.⁵

“The freedom of a nation cannot be upheld by laws alone, but also by the light of the nation and knowledge of their use.”

Anders Chydenius, Member of Swedish Parliament from Finland, 1763.

In a recent global recognition of this principle, a pledge to ‘ensure public access to information’ is included in the UN’s new Sustainable Development Goals, endorsed by all 193 UN Member States to guide global and national development policies from 2016 to 2030.

This right broadly encompasses access to information of all kinds – political, cultural, educational, economic, scientific – as a necessary corollary to freedom of expression and freedom of the press. It also includes the narrower but critical realm of official data, documents and other information held by government institutions at every level, from the municipal to the international.

It is in that latter sense – the public’s right to get information from the governments that serve and represent them – that the principle of public access to information is most commonly understood, and legislated.

Yet until the 21st century, national laws guaranteeing that right were relatively rare.

4 The Universal Declaration of Human Rights (1948)
<http://www.un.org/en/universal-declaration-human-rights/>

5 European Convention on Protection of Human Rights and Fundamental Freedoms (1950; 1953)
<http://www.echr.coe.int/pages/home.aspx?p=basictexts>



Sweden was the first country to enshrine this principle into law, in 1766, with the passage by the parliament in Stockholm of 'His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press', which abolished censorship of books and newspapers and required authorities to provide public access to official records.

It was not until 200 years after that pioneering Swedish statute – in 1966 – that the U.S. Congress enacted its Freedom of Information Act, widely considered the first such comprehensive legislation of the modern era. (A 'RTI request' has become generic global journalistic shorthand for a formal appeal for government information under such statutes.)

In 1970, Norway and Denmark adopted similar laws, followed by France and the Netherlands in 1978, and Australia and New Zealand in 1982. Canada passed its Access to Information Act in 1983, and Colombia became the first Latin American country with a freedom of information statute in 1985.

But for decades, those countries were exceptions. As recently as 1990, only 13 nations had enacted access to information statutes, including just eight of the current EU Member States.

1.2 MAJORITY OF UN MEMBER STATES HAS ATI LAWS

By July 2018 however, over 120 countries had adopted such laws⁶, reflecting the growing recognition that specific legal guarantees and administrative mechanisms are required to make this right a practical reality. At least 40 other countries are now drafting or debating similar laws. Several countries have enacted decrees or administrative orders establishing access to information policies and systems. Going forward, through 2030, the SDGs will require continued reporting from all UN Member States on the adoption and use of ATI laws. This trend represents a profound political change for people and governments worldwide, as the presumption now, in most countries, is that official information should be in publicly available, with exceptions – in principle – to that rule both rare and logically defensible.

For ATI laws to be honoured and effective in practice, however, there must be a supportive enabling environment for the free flow of ‘information and ideas’ generally, including legally enforced guarantees of press freedom, academic freedom and artistic expression.

In at least 90 countries, access to information laws were either preceded or subsequently reinforced by specific constitutional guarantees of the public’s right of access to information. While providing clear principles for rulings by national courts, and serving to safeguard this right for citizens now and in the future, these constitutional provisions must still be supplemented with statutes spelling out standards for governmental disclosure, and creating systems for physical and online access to official information.

In most cases, these laws established entirely new state institutions to receive and respond to public queries for official information, with oversight bodies to ensure government compliance. Equally important, many set needed standards for the proactive disclosure of official information on government websites and other platforms. **The laws have become indispensable tools for investigative journalists and civil society activists, as well as for ordinary citizens seeking information about themselves and their communities.**

6 Global Right to Information Rating <http://www.rti-rating.org/country-data/>

The provisions and enforcement of the public systems for making ATI requests mandated by these laws are just one aspect of public access to information, however. A good measure of access to information policies is whether official information is in fact easily and openly available, digitally and by other societally appropriate means. The number of personal petitions for specific information filed and answered is not a sufficient indicator per se.

A policy of systematic pro-active publication, including making accessible government data and documents electronically – or ideally online – diminishes the need for individual formal requests for such information, reducing the administrative burden on government and the need for time-consuming formal queries from citizens seeking information that should be in the public domain. An affirmative, pro-active commitment to public disclosure is a more effective way to keep people informed about government activities and provide access to official records than requiring them to solicit such information individually. (It is instructive that formal requests for government information are less common in Sweden⁷, the pioneer in this field, where most official documents have long been public, than in the United Kingdom, for example, with its more recent access to information law and past prerogatives of confidentiality for policy-makers, or the United States, with its frequent government assertions of national security exemptions from public disclosure requirements.)

Counterintuitively, ATI laws in the long-established democracies of Western Europe and North America are often less comprehensive and weaker than recent laws in the newer democracies of Africa, Asia, Eastern Europe and Latin America. The continuing dynamism in this fast-evolving area of national and international law means that countries in all regions at all levels of development can learn from and assist one another.

EU Delegations have an invaluable opportunity to work on ATI initiatives with governments and civil society in developing countries, not from an implicit presumption of more advanced expertise, but through a peer-based sharing of national experiences and innovation.

“Official information that enhances people’s capacity to exercise their rights belongs in the public domain. This information must be accessible and understandable.”

United Nations Development Programme, 2004

7 Principle of public access to official documents (Government of Sweden) <http://www.government.se/how-sweden-is-governed/the-principle-of-public-access-to-official-documents/>

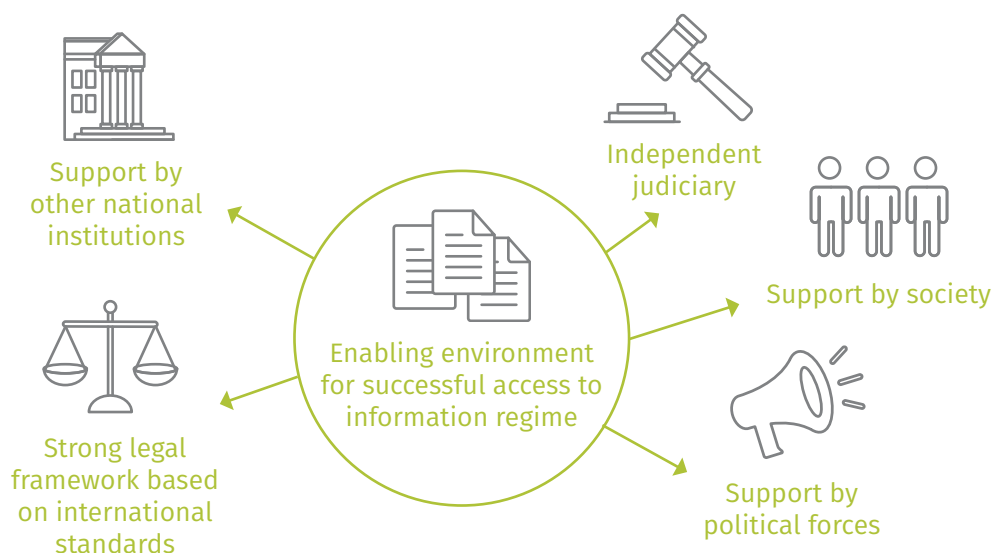
1.3 POLITICAL THREATS AND TECHNICAL OBSTACLES TO ATI

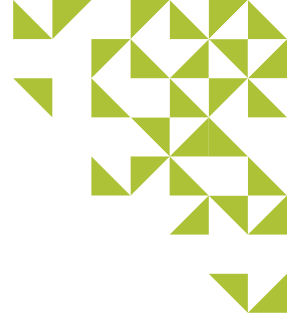
While remarkable progress has been made in the enactment of ATI laws and the broad acceptance of ATI principles in recent years, many governments have yet to adopt such laws or take even basic steps to open up government records and data to the general public. And in many countries that now do have such laws, there are both technical and political obstacles preventing their effective implementation.

A prominent technical obstacle is **inadequate IT systems and personnel capacity within governments in less developed countries**, making it difficult for ministries and state agencies to respond adequately to public information requests. These difficulties are often compounded by **national deficiencies in broadband access for government offices** – especially at the local level – as well as for the public at large. A wide domestic ‘digital divide’ can also effectively restrict use of online ATI systems to more affluent urban areas, requiring alternative means of access for rural or other low-income communities, such as internet-equipped information terminals in town halls.

Another common impediment to ATI implementation is the **lack of systematic records management in non-digital and digital aspects**. With **digitalization** of government documents being out of reach for many developing countries, it makes electronic retrieval and publication very difficult, despite laws requiring prompt public disclosure of requested information.

Political obstacles are equally or more formidable in many countries, ranging from entrenched ‘cultures of secrecy’ in government bureaucracies, to **overbroad regimes of exceptions**, to weak judicial and administrative oversight and enforcement of ATI laws. Media use of ATI mechanisms to expose official malfeasance often also leads to internal government resistance against compliance with these laws.





A factor in a successful access to information regime is a supportive ‘enabling environment’ for free expression and media generally, based on a strong legal framework upheld by an independent judiciary and supported by other major national institutions and political forces and society at large.

Without a free press, and equivalent protected freedoms for academia and civil society, there is no genuine open public access to official information, or indeed to any other information. As stated in the EU’s Freedom of Expression Guidelines Online and Offline, ‘All governments must allow journalists to work in a free and enabling environment in safety and security, without the fear of censorship or restraint.’⁸

Yet in a number of countries with ATI laws and constitutional protections for freedom of expression and media, **journalists and civic activists face threats of violence that effectively limit reporting and advocacy on crucial social issues and restrict public access to information.** (Mexico, for example, has one of the most advanced and widely used ATI laws and public information systems in the world, yet it has also become the most dangerous country in the world for working journalists, outside active armed-conflict zones.⁹)

The linkage between ATI effectiveness and the safety of journalists was recognized in the UN decision to monitor progress on SDG16-10 with two indicators, one on the adoption and implementation of ATI laws, and the other including data on the murders and detention of journalists.¹⁰ That direct connection is also spotlighted in the EU-backed UN Plan of Action for the Safety of Journalists (2012)¹¹, managed by UNESCO, which includes a pledge of UN support in ‘assisting countries to develop legislation and mechanisms favourable to freedom of expression and information.’

By training reporters in the use of ATI tools, international aid programmes can help accelerate progress in both of these interlocking areas, press freedom and public access to information.

This also requires working directly with officials who have specific ATI responsibilities, such as ministerial information officers and members of administrative oversight bodies, as well as the judges and government attorneys responsible for enforcement of ATI laws and press freedom protections.

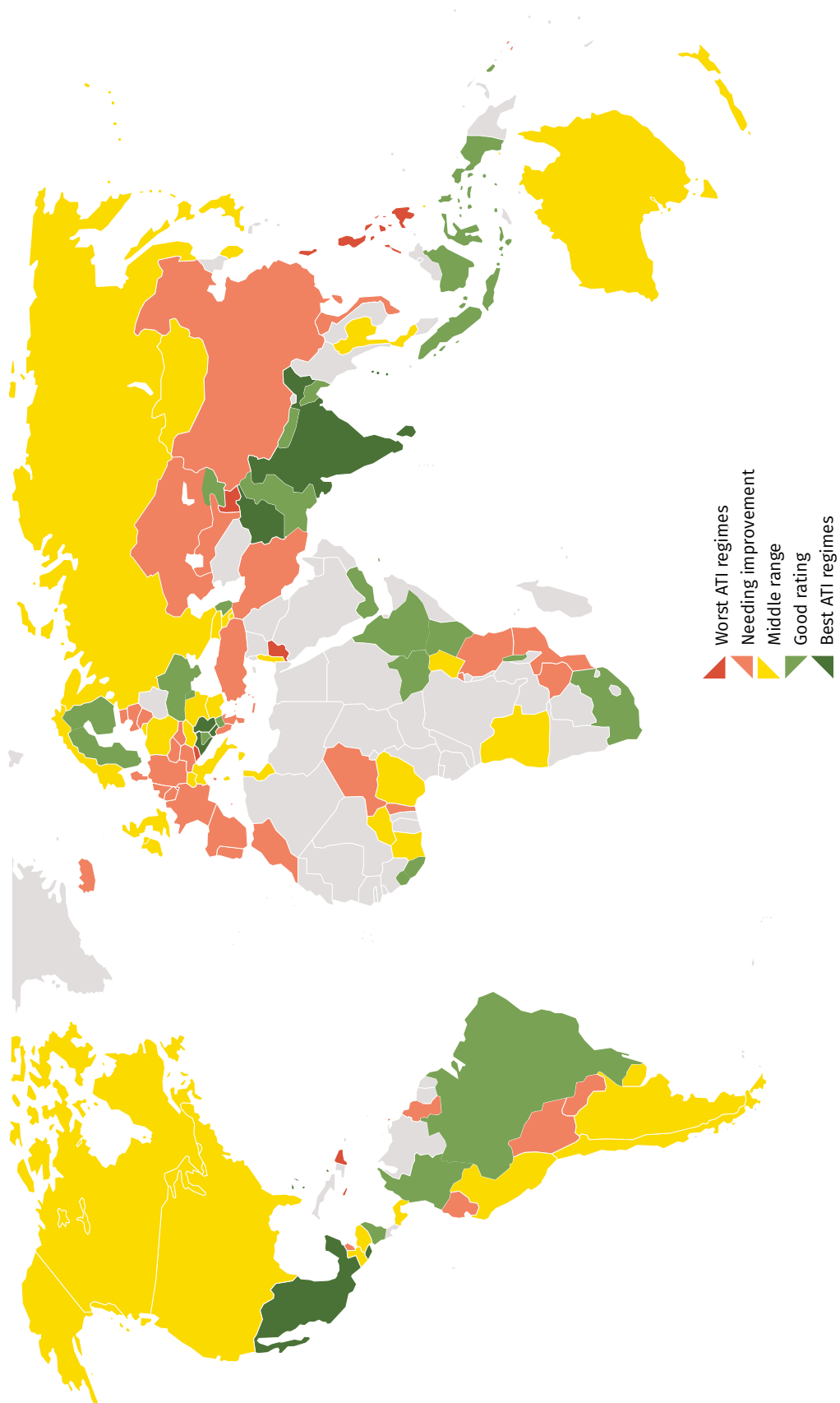
8 EU Human Rights Guidelines on Freedom of Expression Guidelines Online and Offline <https://ec.europa.eu/digital-single-market/en/news/eu-human-rights-guidelines-freedom-expression-online-and-offline>

9 Committee to Protect Journalists – Mexico report (2018) <https://cpj.org/americas/mexico/>

10 Measuring SDG16.10.2: Inclusion of Access to Information in the SDGs http://foiadvocates.net/?page_id=11036

11 UN Plan of Action on the Safety of Journalists and the Issue of Impunity <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/un-plan-of-action/>

Global Right to Information Rating analysing quality of the world's access to information laws – July 2018



Source: <http://rti.webdev.paginaweb4u.com/> by AccessInfo Europe and Centre for Law and Democracy



1.4 INTERNATIONAL POLICY FRAMEWORK FOR ACCESS TO INFORMATION GLOBAL TREATIES, REGIONAL PACTS, AND VOLUNTARY ACCORDS

1. Universal Declaration of Human Rights

Article 19:

Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

2. International Covenant on Civil and Political Rights

Article 19:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

These two foundational documents of the United Nations recognize the universal right to 'seek, receive and impart information' as the human right to freedom of expression.

The Universal Declaration of Human Rights, adopted by the founding members of the United Nations in 1948 as a statement of principles, was considered aspirational at the time, and was not legally binding on UN Member States. The International Covenant on Civil and Political Rights (ICCPR) was endorsed by the UN General Assembly in 1966 as a multilateral treaty, with all the legal obligations for ratifying states that entails. The ICCPR has since been signed and ratified as a binding commitment by most of the 193 UN Member States.

Though neither the Universal Declaration nor the ICCPR explicitly required governments to provide public access to official documents and other state-controlled information, the principles of Article 19 articulated in both international agreements have been widely cited in national laws and constitutions as implicitly affirming that right, and these guarantees were subsequently recognised as including RTI.

Subsequent UN agreements have explicitly recognized right of public access to official information. The UN Convention against Corruption¹² of 2003, a binding treaty now signed and ratified by 184 countries, including all EU Member States, requires signatory governments to ensure ‘that the public has effective access to information’, including through the adoption of ‘procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.’(Article 10.a)

The UN and its Member States have also recently recognized that this right of access to information must include digital as well as physically archived official documents and data.

In 2016, the **UN Human Rights Council** adopted a resolution on the ‘Promotion, Protection and Enjoyment of Human Rights on the Internet’¹³ which states that ‘the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.’ The non-binding resolution called upon all UN Member States ‘to consider formulating, through transparent and inclusive processes with all stakeholders, and adopting national Internet-related public policies that have the objective of universal access and enjoyment of human rights at their core.’

The Office of the UN High Commissioner for Human Rights (OHCHR) has also advocated extensively and effectively for the right of public access to official information, including in intergovernmental organizations, beginning with the UN itself.¹⁴

12 United Nations Convention against Corruption (2003; 2005)
<https://www.unodc.org/unodc/en/corruption/uncac.html>

13 UN Human Rights Council: Promotion, protection and enjoyment of human rights on the Internet
<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ResDecStat.aspx>

14 Office of the UN High Commissioner for Human Rights: Report of the Special Rapporteur to the General Assembly on Access to Information in International Organizations
<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/InformationIntOrganizations.aspx>



© iStock/ferrantraite

The OHCHR **Special Rapporteur for Freedom of Opinion and Expression** and Special Rapporteurs from the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), and the African Union (AU) have adopted a Joint Declaration on a freedom of expression issue every year since 1999. The 2004 Joint Declaration stated that ‘access to information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation [...] based on the principle of maximum disclosure.’¹⁵

The **UN Human Rights Committee’s General Comment No. 34, paragraphs 18-19 on Access to information** states that:

18. ‘Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. (...) The designation of such bodies may also include other entities when such entities are carrying out public functions. (...) The right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. (...) Every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified.

15 2004 Joint Declaration by the Three Special Mandates for Protecting Freedom of Expression: UN, OSCE, OAS <http://merlin.obs.coe.int/iris/2005/2/article1>

19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the **timely processing** of requests for information according to clear rules that are compatible with the Covenant. **Fees** for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.’¹⁶

“The great democratizing power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today... With information on our side, with knowledge a potential for all, the path to poverty may be reversed.”

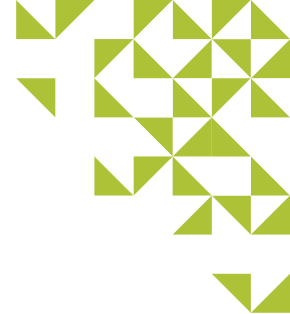
Kofi Annan, UN Secretary General, 2001

The UN’s **2030 Agenda for Sustainable Development (Agenda 2030)**, so named because it is an agreement on shared global and national development priorities through the year 2030, includes a commitment to ‘ensure public access to information’ in its **Sustainable Development Goals, or SDGs**.

Though adherence to is not legally mandatory, the Agenda and its SDGs were unanimously adopted by all UN Member States at the UN General Assembly in 2015.

As detailed below, all signatory countries have agreed to take steps to achieve the SDGs and to report voluntarily on this progress, including advances in public access to information. The recently formed **Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies** – known more commonly as the ‘Alliance for SDG16’ – is a group of UN Member States that have pledged to cooperate on the implementation globally of SDG16 targets, including the SDG16-10 commitment to access to information.

16 Human Rights Committee (102nd session, 11-29 July 2011; General comment No. 34 on ICCPR Article 19: Freedoms of opinion and expression
<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>



Other voluntary coalitions of UN Member States such as the **Open Government Partnership** (OGP) and the Community of Democracies¹⁷ also promote enactment of access to information laws and related transparency policies. A number of EU members are active in both initiatives. In 2011 the Open Government Partnership, a new global alliance of democratic countries was formed, which is predicated on the principles of promoting transparency, accountability and participation, and which has a membership recommendation of having an access to information law or, at the very least, being in the process of adopting one and ensuring that this happens once a member of the partnership. To date over 70 countries and 20 sub-national entities are members of the OGP, and between them they have made over 2,500 commitments to advance on opening up their governments working in collaboration with civil society organisations. A key OGP access to information focus is on the exposure and elimination of corruption in public budgeting and contracting, including through its affiliated 'Open Contracting Partnership'¹⁸ group of Member States, multinational corporations and international financial initiatives. The Community of Democracies, for its part, takes a more rights-based approach to ATI support, with a special emphasis on measuring progress towards SDG16 compliance on the national level.

One more specialized international example is the **Extraction Industries Transparency Initiative** (EITI)¹⁹, actively supported by several EU Member States, with participation by many major oil-producing and mining-dependent countries in the developing world. The EITI requires public disclosure of the terms of state concessions to mining and hydrocarbons firms as well as government income from fees and taxes on these commercial operations.

Another is the International Aid Transparency Initiative (IATI)²⁰, under which bi-lateral and multilateral aid agencies and independent philanthropies voluntarily disclose details of their funding sources, recipients, projects, and related expenditures on IATI's online platforms. More than 700 institutions now participate in the IATI system, publishing this data annually. IATI also provides training to journalists and civil society activists in the use of its extensive online databases and other 'open data' resources. This mechanism and its online databases can be a valuable resource for EU Delegations in assessing potential aid partnerships and offering guidelines on public reporting about specific local aid initiatives.

17 Community of Democracies (2018) <http://www.community-democracies.org/democracy-development/>

18 Open Contracting Partnership: Global Principles <https://www.open-contracting.org/implement/global-principles/>

19 Extractive Industries Transparency Initiative <https://eiti.org/countries>

20 International Aid Transparency Initiative <https://www.aidtransparency.net/>

Access to information and the Sustainable Development Goals (SDGs)

SDG16.10, included in the 2030 Agenda for Sustainable Development²¹ with strong EU support, and approved unanimously by the UN General Assembly in 2015, commits all UN Member States to:

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

The UN Statistical Commission approved two technical indicators to measure progress towards the achievement of SDG16.10:

1. UN Indicator SDG16.10.1: Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months
2. UN Indicator SDG16.10.2: Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

The new universal commitment to access to information under the Sustainable Development Goals may represent the best opportunity to support these rights, laws and systems in all regions of the world. Under SDG16.10, in the 2030 Agenda for Sustainable Development²², approved unanimously by the General Assembly in September 2015, all UN Member States have pledged to ‘Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.’

The inclusion of this specific ATI commitment – a first for an international agreement of this kind – was strongly advocated by civil society activists and by many UN Member States as essential to the achievement of the overall objectives of good governance articulated in SDG16, which calls on the signatory governments to **‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’** More broadly, public access to information was seen as necessary for monitoring progress on all 17 of the SDGs.

21 UN 2030 Agenda <https://sustainabledevelopment.un.org/post2015/transformingourworld>

22 UN 2030 Agenda <https://sustainabledevelopment.un.org/post2015/transformingourworld>



© Internews

Compliance with that access to information commitment will be measured by both the adoption and implementation of laws or equivalent regulations guaranteeing that right, with the first national reports on SDG16.10 compliance due for submission to the UN in 2019.

As with all the SDGs, the aspiration is to reach universal compliance by 2030. UNESCO has been assigned the task of monitoring the passage and use of these laws. Ideally, this new commitment by UN Member States should not only accelerate the adoption and active use of such statutes, but also serve as a safeguard against the possibility of future governments repealing or declining to enforce access to information laws adopted under prior administrations.

Many of these laws were passed only recently, however, and have yet to be fully implemented. Some of these statutes, are structurally flawed, in the view of many experts²³ with overbroad regimes of exceptions, without strong enforcement mechanisms or clear guidelines for the mandatory disclosure of official information.

Yet in most cases, these newly adopted laws meet or exceed accepted international standards for such legislation. Indeed, many laws passed in recent years are considered superior to previous laws elsewhere, in both legal scope and administrative arrangements, as legislators and civil society activists learn from the lessons of countries with older statutes in this area.

23 Global Right to Information Rating <http://www.rti-rating.org/>

Implementation, however, is another matter. Some governments have resisted putting these laws into practice. Others, while supportive of the laws in principle, require legal and technical assistance to put newly mandated access to information systems in place, with needs ranging from the recruitment and training of a new corps of public information officers to the creation or adaptation to adequate information-technology systems.

Equally important, government officials who are bound by these new laws, and members of oversight bodies and the judiciary who adjudicate disputes between citizens and government under the terms of the laws, require instruction in their specific new legal obligations. (UNESCO has piloted such a programme in Latin America with support from Spain and Portugal, training thousands of judges and prosecutors freedom of expression and in access to information principles and legal precedents, and is exploring expanding the programme to Africa and Asia.)

Citizens also need information about the scope and practical use of these new legal mechanisms. **Public awareness of the laws – and the rights on which they are based – is the key to successful implementation of an access to information regime, experience has shown.** Demand generally drives positive implementation.

Particularly important is early and active use of the law by media and civil society, which puts a spotlight on the law's purpose and potential for positive social impact. Public information campaigns drawing attention to the public's right to information have also proven effective in many countries. These are all areas where international resources and technical assistance can prove critical.

Access to Information as a Development Tool

Are access to information laws primarily a means to ensure public oversight of government programmes and expenditures, as some advocates suggest? Or should they be seen in broader human development terms, as a means for people to become better informed in a wide variety of areas directly affecting their lives?

One telling indicator is how people use these systems: In many developing countries with functioning access to information systems, data shows that queries to health and education ministries are far more common than information requests directed to finance or budget or planning ministries, for example.

The access to information commitment in the SDGs was intended as both a key development objective unto itself, and, equally, an essential tool for achieving all 17 SDGs, from the eradication of extreme poverty to the protection of the environment to policies promoting gender equity, among other goals of Agenda 2030.

Goal 16 of the SDGs, for example, which includes the ATI provision, calls on all countries to work together to ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.’ While SDG16.10 is just one of ten targets in SDG16, all ten are interrelated and mutually reinforcing, and all require access to information, ranging from commitments to combat corruption and reduce violence from both crime and conflict, to pledges to improve government accountability and ‘access to justice’ for people around the world.

Without public access to information about all of the SDGs, locally and globally, progress towards these goals cannot be measured, much less achieved. There are important precedents for this explicit linkage between development goals and public access to information in previous international agreements, including in previous global accords on air pollution, climate change, and migration, and rights to health care, education, and potable water. But the global commitment to the SDGs should greatly accelerate progress towards the promised ‘data revolution’ in hundreds of key development indicators, all of it in the public domain.

On a national level, access to information systems can help guard against government waste and corruption in programmes in all these thematic areas. Guarantees of access to information have been incorporated into a number of national, regional and international initiatives promoting government transparency and accountability, especially regarding government payrolls, public works contracts, natural resource concessions to private business, and multilateral and bilateral economic assistance programmes.

All of these issues and objectives are reflected in the priorities of all the SDGs, perhaps especially SDG16, which includes specific commitments to combat corruption and to ‘develop effective, accountable and transparent institutions at all levels’, as well as the SDG16.10 pledge to ensure public access to information. Yet every one of the 17 SDGs requires public access to relevant factual information in each thematic area – in detail, accurately and objectively compiled, regularly updated – if these goals are to be achieved.

In addition to SDG16.10, SDG5 to ‘achieve gender equality and empower all women and girls’ and SDG9 to ‘build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation’ include explicit language related to access to information:

- ▶ SDG9.C aims to ‘significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020’

- ▶ Indicator 5.6.2: Number of countries with laws and regulations that guarantee women aged 15–49 access to sexual and reproductive health care, **information** and education
- ▶ Target 5.b: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women
- ▶ Indicator 5.b.1: Proportion of individuals who own a mobile telephone, by sex

Noteworthy is the adoption, in 2018, of the ‘Atlanta Declaration for the Advancement of Women’s Right of Access to Information’²⁴ under the helm of the Carter Center and the Open Government Partnership. The document was signed by 100 participants from 30 countries, representing governments, multi-stakeholder initiatives, information commissions and independent oversight bodies, gender, transparency, accountability and access to information civil society organizations, international institutions, donor agencies and foundations, private sector companies, media, scholars and practitioners. It presents a series of eight recommendations to advance women’s right of access to information.

24 Atlanta Declaration for the Advancement of Women’s Right of Access to Information http://store.aip-bg.org/newsletter/172/Inform_Women_Transform_Lives_Declaration.For_Distribution.pdf

PRACTICAL TIP

The UN Sustainable Development Knowledge Platform gathers all goals, targets, indicators and official yearly progress information:

SUSTAINABLE DEVELOPMENT GOAL 5 – Achieve gender equality and empower all women and girls : <https://sustainabledevelopment.un.org/sdg5>

SUSTAINABLE DEVELOPMENT GOAL 16 – Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels: <https://sustainabledevelopment.un.org/sdg9>

SUSTAINABLE DEVELOPMENT GOAL 9 – Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation: <https://sustainabledevelopment.un.org/sdg16>



1.5 EUROPEAN POLICY FRAMEWORK

1.5.1 Key EU Accords and policy documents

The European Union has embraced the principle of public access to information as a fundamental right of all people in its own jurisdictions, as well as elsewhere in the world. This principle of access and transparency has also been seen as fundamental for the democratic legitimacy of the institutions of the European Union itself.

As stated in Regulation 1049/2001 on public access to documents of the European Parliament, Council and Commission: 'Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.'²⁵

In the Consolidated Version of the **Treaty on the Functioning of the European Union**,²⁶ the specific treaty provisions on access to information cited below were seen as essential guarantors of that commitment to openness.

Paragraph 1 of the Preamble states: '...the Treaty on European Union **enshrines the concept of openness**, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which **decisions are taken as openly as possible and as closely as possible to the citizen.**'

Paragraph 11 of the Preamble states: 'In principle, **all documents of the institutions should be accessible to the public.**'

Article 15 of the Treaty states: 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium.'

²⁵ Regulation (EC) No 1049/2001 of the European Parliament and Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents
<https://publications.europa.eu/en/publication-detail/-/publication/2063659d-65fc-4956-b086-8f5a0a2cb9d1/language-en>

²⁶ Consolidated version of the Treaty on European Union
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>

In 2001, the EU put this principle in force, administratively, adopting the equivalent of its own access to information law: 'Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, pp. 43-48).'²⁷

- ▶ Article 15(3) of the TFEU gives EU citizens, residents and businesses the right of access to documents of the EU institutions, bodies, offices and agencies subject to certain principles and conditions.
- ▶ The regulation lays down the general principles and limits on access. It aims to ensure that citizens can exercise their right of access in the easiest possible way. Access can be requested to all documents drawn up or received by an institution, in all areas of EU activities.

Exceptions and rights of third parties

The institutions can refuse access to a document where disclosure:

- ▶ would undermine the protection of:
 - the public interest as regards public security, defence, international relations and the financial, monetary or economic policy of the EU or of an EU country, or
 - the privacy and integrity of an individual, in particular in accordance with EU legislation regarding the protection of personal data;
- ▶ would undermine a person's:
 - commercial interests, court proceedings, and legal advice, or
 - the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure;
- ▶ would seriously undermine the protection of the institution's decision-making process, unless there is an overriding public interest in disclosure.

²⁷ Access to European Parliament, Council and Commission documents
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A14546>

The **EU Human Rights Guidelines on Freedom of Expression Online and Offline**, adopted in 2014, provide broad policy and practical guidance for EU Delegations worldwide.

The Guidelines explain the international human rights standards on freedom of opinion and expression and provide political and operational guidance to the officials and staff of EU institutions and the EU Member States.

The EU Guidelines also provide officials and staff with practical guidance on how to contribute to preventing potential violations of freedom of opinion and expression, how to analyse cases that come to their attention and how to react effectively when violations occur. They also outline how and in which strictly prescribed circumstances freedom of opinion and expression can be legitimately limited.



© iStock/tjhunt

DEFINITIONS - EXTRACTS FROM THE EU HUMAN RIGHTS GUIDELINES ON FREEDOM OF EXPRESSION ONLINE AND OFFLINE

i. The right to seek and receive information

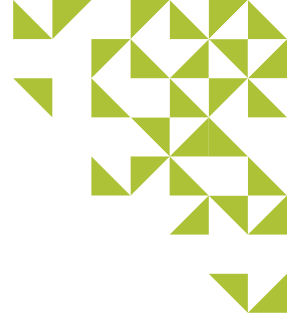
14. The right to freedom of expression includes freedom to seek and receive information. It is a key component of democratic governance as the promotion of participatory decision-making processes is unattainable without adequate access to information. For example the exposure of human rights violations may, in some circumstances, be assisted by the disclosure of information held by State entities. Ensuring access to information can serve to promote justice and reparation, in particular after periods of grave violations of human rights. The UN Human Rights Council has emphasized that the public and individuals are entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government.

15. Every individual should have the right to ascertain in an intelligible form, whether, and if so what, personal data is held and stored about them and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may take decisions affecting the processing of his or her personal data kept in electronic or manual files. If such files contain incorrect personal data or data that have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified and in certain circumstances erased. States should make every effort to ensure easy, prompt, effective and practical access to such information. It is recognised that it can be relevant to consider data protection in the context of freedom of expression.

16. The Internet and digital technologies have expanded the possibilities of individuals and media to exercise the right to freedom of expression and freely access online information. Any restriction that prevents the flow of information offline or online must be in line with permissible limitations as set out in international human rights law.

Priority area of action 4. **Promoting and respecting human rights in cyberspace and other information and communication technologies**

33. Information and communication technologies (ICT) are now part of everyday life and provide new opportunities for the fulfilment of human rights and for social and economic development. Non-discriminatory access to information and freedom of expression for all individuals, both online and offline must be ensured and protected.



In the **New European Consensus on Development**²⁸ (2017), which aligns the Union's development policy with the 2030 Agenda for Sustainable Development, the EU highlights its commitment to 'promote accountable and transparent institutions, including participatory decision-making and public access to information.'

Nearly all EU Member States (except Luxemburg) have now enacted their own national freedom of information laws, requiring them to provide public access to government documents and other official information, under clear rules and within set time-frames.²⁹ Moreover, the right of public access to official documents of the European Council, the **European Parliament** and the **European Commission** is explicitly recognized in the **EU Charter of Fundamental Rights** of 2009 (Article 42).³⁰

Administrative obligations for EU officials in support of this principle are stipulated in the **Code of Good Administrative Behaviour for European Commission Staff** and Regulation 1049/2001 on access to European Parliament, Council and Commission documents.³¹ The General Court of the European Union has also often ruled for open public access to EU records, as in its recent order to the European Parliament, in March 2018, for the release of documentation on discussions between the Parliament and the European Commission and the European Council.³²

A regional approach to safeguarding this right – through mutually reinforcing regional treaty obligations and institutional commitments, with oversight by both national and regional courts – is paralleled in the Inter-American system, through the Organization of American States and its Court of Human Rights, and increasingly in Africa's regional institutions as well. Each of these regions can learn from the legal systems and practical experiences of the others in this area, experts agree. Judges in Latin America, for example, have cited decisions by the European Court of Human Rights in cases involving citizen petitions for public disclosure of official documents.

28 New European Consensus on Development - 'Our world, our dignity, our future' (2017) https://ec.europa.eu/europeaid/new-european-consensus-development-our-world-our-dignity-our-future_en

29 Legal Leaks Toolkit http://www.legalleaks.info/wp-content/uploads/2016/04/Legal_Leaks_English_International_Version.pdf

30 EU Charter of Fundamental Rights: Article 42 - Right of access to documents <http://fra.europa.eu/en/charterpedia/article/42-right-access-documents>

31 Access to European Parliament, Council and Commission documents <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14546>

32 Judgement of the General Court (Seventh Chamber; 22 March 2018) - <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130da9eb89e-39f9654199bb4498fe809d479a.e34KaxiLc3eQc40LaxqMbN4Pb3eKe0?text=&docid=200551&pageIn-dex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=426848>

The European Union is also in the vanguard of expanding the public's right to information into the digital and private corporate realm, with its newly adopted **General Data Protection Regulation (GDPR)** requiring social media companies and other commercial online platforms to both abide by GDPR privacy restrictions on the use and sharing of personal user data and to provide users with access to personal information collected by those corporations.³³ The GDPR, which entered into force in May 2018, stipulates that its rules for managing, archiving, and providing access to personal data also applies to governments, state agencies and other public entities. The GDPR requires both governments and private companies to respond to requests from individuals regarding their personal data within one month, in 'concise, transparent, intelligible and easily accessible form, using clear and plain language.'(Article 12.1)

1.5.2 Do we practice what we preach in the EU space?

The EU has made great strides in recent decades in pledging and providing public access to its own institutional records and other relevant documents (see above), and in strengthening the rights of all EU residents to obtain personal and other information from both government and private commercial sources.

With nearly all EU Member States now having adopted and put into practice their own national ATI laws, the **EU can be said to be the world region or multi-state organization with the best compliance with the access to information commitment SDG16.10**, as measured by the official UN indicators for that target. Data from these national ATI systems shows that thousands of EU citizens use them to obtain official documents and other information from governments that in the past was not easily accessible to the public.

Yet some independent international experts say the EU Member States could and should do more to promote and protect the right of public access to official information, both on the national level and in its regional institutions and agreements.³⁴ Administrative procedures and mechanisms for soliciting information could be strengthened and simplified, according to these experts and specialized civil society groups, including procedures for submitting information requests without the currently required legal EU residency documentation. Information provided under EU access to information procedures should go beyond pre-existing 'documents' (as regulations now state) to include direct answers to questions to EU officials, they say.

33 European Commission: What does the GDPR govern? https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en

34 Global RTI Rating: European Union
http://www.rti-rating.org/view_org/?country_name=European%20Union



© iStock/AdrianHancu

More important, though, these experts stress, few people in the EU space use or fully understand their ATI rights and laws – a problem common to many other countries and regions with ATI mechanisms. As noted by *AccessInfo Europe*³⁵, ‘The EU has recognised a fundamental right of access to EU documents, but the EU’s freedom of information law – which goes by the catchy title of “*Regulation 1049/2001*” – remains underused by the population at large.’ (*AccessInfo* produced its own guide to 1049/2001 which ‘demystifies the process of asking for EU documents by explaining step by step how to make a request.’)³⁶

On the Member State level, moreover, some of the national access to information laws now in effect are considered deficient by current international standards. In the global rating of access to information laws by academic and civil society specialists in *AccessInfo Europe* and the Canada-based *Centre for Law and Democracy*³⁷, the law in just one Member State (Croatia) is ranked in the top ten of national laws in effect worldwide, while the laws in others (Austria, Belgium, Liechtenstein, Germany) are in the bottom ten internationally.³⁸

As the methodology stresses, these assessments are confined to the legal and administrative provisions of the laws, and do not necessarily reflect either enforcement of these national laws or the state of public access to information generally in any of these countries. **Laws adopted more recently tend to be broader in scope and more rigorous in their technical requirements than previous laws elsewhere**, as countries learn from the examples of their predecessors in the field.

35 Access Info Europe <https://www.access-info.org/eutransparency>

36 Guide on Access to EU Documents <https://www.access-info.org/pub-and-toolkits/10632>

37 Centre for Law and Democracy <https://www.law-democracy.org/live/>

38 Global RTI Rating: European Union <http://www.rti-rating.org/>

MONITORING ATI AND MEDIA PLURALISM IN EU MEMBER STATES

Media Pluralism Monitor (MPM) is an independent project co-funded by the European Commission and led by the Center for Media Pluralism and Media Freedom which refers to ATI as one of the indicators to evaluate risks to media pluralism in EU Member States.

“The indicator on the Protection of the right to information is designed to assess the existence and effective implementation of regulatory safeguards in relation to access to information. The indicator focuses on the right of access to information that is held by public authorities and the state, the lawfulness of its limitations, as well as the existence and effectiveness of appeal mechanisms in cases where there is denial of access to information.

The indicator is based on the notion that ‘all information in the possession of the State belongs to the public, with limited and qualified exceptions that must be justified by State authorities’.

More information and past results:

<http://cmpf.eui.eu/media-pluralism-monitor/>

1.6 BEYOND THE EU: OTHER REGIONAL ATI PACTS, INSTITUTIONS & COMMITMENTS

The Member States of the EU are also signatories to or engaged in other regional accords and intergovernmental institutions dealing with access to information rights and regulations, sometimes collectively, but more often in their national capacity as sovereign governments.

Other regional intergovernmental organizations – in Africa, Asia and the Americas – have pacts and processes, several of which have had cooperative agreements and projects with EU institutions.

1.6.1 In Europe: regional institutions and conventions with ATI provisions

The Council of Europe

European Convention on Protection of Human Rights and Fundamental Freedoms (1953) Article 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.³⁹

The **Council of Europe Convention on Access to Official Documents** of 2009⁴⁰ – ratified by nine European nations as of 2016⁴¹ – guarantees citizens' right of access to all official documents held by public authorities, with exceptions for information restricted from dissemination on clearly defined grounds, such as security or privacy.

This goes beyond current ATI provisions in EU agreements. As the Council of Europe notes, the Convention 'is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities.

39 Convention for the Protection of Human Rights and Fundamental Freedoms (1950, 1953) <http://www.echr.coe.int/pages/home.aspx?p=basictexts>

40 Council of Europe Convention on Access to Official Documents <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>

41 Chart of signatures and ratifications of Treaty 205 (Council of Europe Convention on Access to Official Documents) https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p_auth=sBQQ7oIF

[... It] sets forth the minimum standards to be applied in the processing of requests for access to official documents (forms of and charges for access to official documents), review procedure and complementary measures and it has the flexibility required to allow national laws to build on this foundation and provide even greater access to official documents.'

OSCE: Organization for Security and Co-Operation in Europe

One of the important regional groupings active in this field is the **Organization for Security and Co-Operation in Europe**, the OSCE, whose 57 participating countries include all of the current EU Member States.

The OSCE engages in research, advocacy and technical support on right to information and the media, primarily within its own region but also internationally, emphasizing its particular focus on issues related to the 'safety of journalists, media self-regulation, access to information, professional reporting on the internet, freedom of expression and new media technologies.'

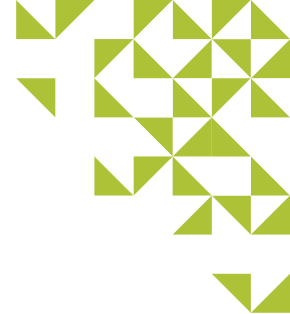
The OSCE states further: 'The Organization promotes sharing of best practices across the OSCE region to strengthen freedom of the media in line with international standards and OSCE principles and commitments.'⁴² The OSCE's work in this field is led by the office in Vienna of its **Representative on Freedom of the Media**, which the OSCE calls 'the only inter-governmental institution mandated to protect and promote media freedom in 57 OSCE participating States.' The OSCE Representative has two assigned priorities: 'observing media developments as part of an early warning function; and helping participating States abide by their commitments to freedom of expression and free media.'⁴³

Those commitments, according to the OSCE, include a commitment to promote and provide public access to official information. Yet the OSCE says one of the 'continuing threats to media freedom' in some OSCE countries is the continued 'denial of access to information held by government agencies.'

The OSCE can be a useful collaborator with EU Delegations in ATI promotion initiatives and policy guidance, perhaps especially in its non-EU member countries in Eastern Europe and Central Asia. (The OSCE also has special partnerships for cooperation with six countries in the MENA region: Algeria, Egypt, Israel, Jordan, Morocco, and Tunisia.)

42 OSCE: Media freedom and development <https://www.osce.org/media-freedom-and-development>

43 OSCE Representative on Freedom of Media
<http://www.osce.org/representative-on-freedom-of-media>



UNECE: UN Economic Commission for Europe

The **UN Economic Commission for Europe**, or UNECE, to which all EU Member States also belong, has been a pioneer in promoting the principle of public access to information to environmental issues, from air and water pollution to ecosystems protections and climate change. Despite its name, UNECE also includes North America and Central Asia; its member countries cover a vast 47 million square kilometres and are home to a fifth of the world's population.⁴⁴

In 1998, UNECE members adopted the '**Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters**'⁴⁵, named for the city in Denmark where it was signed. It entered into force as a binding treaty for the required minimum number of ratifying countries in 2001, and many more countries have signed onto the Convention since. All EU Member States are parties to the convention, as is the European Commission. (The EC commissioned several reports on the adherence of EU members to their Aarhus obligations.)⁴⁶

The Aarhus Convention was inspired by Principle 10 of the **1992 Rio Declaration on the Environment and Development**, a non-binding statement by UN Member States participating in a landmark international conference on the environment in the Brazilian city:

At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

As the European Commission notes, the Aarhus Convention put that principle into practice for the first time, guaranteeing the right of all people in signatory countries to request and receive environmental information held by public authorities: 'This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be

⁴⁴ United Nations Economic Commission for Europe (UNECE) <http://www.unece.org/mission.html>

⁴⁵ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) <http://www.unece.org/env/pp/treatytext.html>

⁴⁶ EC: The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies <http://ec.europa.eu/environment/aarhus/studies.htm>

affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession.⁴⁷

In Costa Rica, in March 2018, the member countries of one of UNECE's four counterpart UN organizations, the Economic Commission for Latin America and the Caribbean (ECLAC), followed UNECE's example with the adoption of its own 'Regional Agreement on Access to Information, Participation and Justice in Environmental Matters.' The Europe-based Aarhus Convention secretariat provided ECLAC legal and technical support in the drafting of the new Escazú regional treaty, was presented for signing by the 33 ECLAC Member States at the UN General Assembly in September 2018.⁴⁸

As with the Aarhus Convention, the new ECLAC accord is a binding pact, putting Principle 10 of the Rio Declaration into practice. Latin American environmental groups and other civil society activists, as well as journalists and academics, will require technical assistance and training in the implementation of these new legal obligations by governments in the region, experts in these accords and issues agree. In several countries, EU Delegations have been leaders in providing such assistance in recent years (i.e. Honduras).

1.6.2 Beyond Europe: the OAS, the AU, ASEAN & others

Latin America: Organization of American States

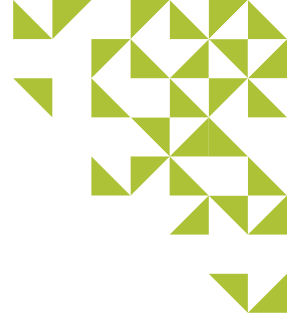
“The best weapon of a dictatorship is secrecy, but the best weapon of a democracy should be the weapon of openness.”

Niels Bohr, Danish physicist (1885-1962).

The Inter-American system, led by the Organization of American States, or OAS, is recognized as a leader among regional institutions globally in the promotion and implementation of access to information rights and systems. This is due both to the role of regional treaties and institutions in upholding the right of all people in the OAS countries to obtain official documents and other information from their respective national governments, and continuing cooperation among Latin American countries in the drafting and enforcement of access to information laws and systems.

47 EC: What is the Aarhus Convention? <http://ec.europa.eu/environment/aarhus/>

48 ECLAC: Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean <https://www.cepal.org/en/events/opening-signature-ceremony-regional-agreement-access-information-public-participation-and>



The **American Convention on Human Rights**⁴⁹, a binding charter of the OAS Member States, like its equivalent EU instruments, deliberately echoes the commitments of Article 19 of the Universal Declaration of Human Rights and the ICCPR, stating in its Article 13: ‘Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.’ Article 13 of the Convention goes on to say: ‘The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions...’

The OAS **Inter-American Court of Human Rights**⁵⁰ has ruled that Article 13 of the Convention expressly ‘protects every person’s right to access information under the control of the State, with the exceptions permitted under the strict regime of restrictions established in the Convention.’ The Court, based in Costa Rica and functioning as a regional court of appeal for human rights cases, has overturned several national court rulings supporting government refusals to grant public information requests, setting legal precedents for the public right to information not just in the country in question, but throughout the Inter-American region as a whole.

In parallel, the **Inter-American Commission on Human Rights** and its **Special Rapporteur for Freedom of Expression**⁵¹ provides legal analysis and policy guidance for OAS Member States on the right of public access to information. The OAS charter imposes ‘a positive obligation for the State to allow its citizens access to information under its control’, the Commission states, including a citizen’s own personal information, ‘whether it be contained in databases or public or private registries.’

In 2010, at the request of OAS members, the OAS Department of International Law drafted an influential ‘model law’ on access to information⁵² which was adapted by a number of Latin American countries for their own national laws, and used as guidance for legislation in several African countries as well.

49 American Convention on Human Rights
<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

50 OAS: American Convention on Human Rights
<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=25&IID=1>

51 OAS: Office of the Special Rapporteur for Freedom of Expression
<http://www.oas.org/en/iachr/expression/index.asp>

52 OAS: Model ATI Law and Implementation Guide
http://www.oas.org/en/iachr/expression/topics/acceso_otros_ley_modelo.asp

Most OAS Member States have now enacted their own access to information laws, with the legislation in several Latin America countries – Mexico, Brazil, Chile, El Salvador, Uruguay – considered by experts to be among the best laws of their kind in the world.⁵³

The OAS Rapporteur's office also provides guidelines on the legal obligations of governments to support 'free, open and inclusive' internet access, including specifically 'the right to public information on the Internet.'⁵⁴ In conjunction with UNESCO and the **Ibero-American Judicial Summit**⁵⁵, a professional organization of judges with national chapters in Spain and Portugal as well as 21 countries of Latin America, the OAS Rapporteur is collaborating on training courses on ATI and Freedom of Expression law for judges and state attorneys in the region. Thousands of judges and prosecutors have now taken these courses.⁵⁶

Africa: the African Union

The African Union (AU) has also made clear commitments to the principle of public access to information, and created institutional structures to advocate for and help implement that right, while a growing number of AU Member States have adopted their own ATI laws.

The African Union-chartered **African Commission on Human and People's Rights** has been increasingly active in promoting access to information legislation and the broader goals of government transparency. The AU's **African Charter on Human and Peoples' Rights**⁵⁷ states unequivocally in its Article 9 that: 'Every individual shall have the right to receive information' as well as the right 'to express and disseminate his opinions within the law.' The right to 'seek and receive' information from governments and others is further emphasized in the OAS Declaration of Principles on Freedom of Expression in Africa and other non-binding but widely supported pan-African agreements and initiatives.

In 2004, the African Commission on Human and People's Rights established the office of the **Special Rapporteur on Freedom of Expression and Access to Information in Africa**⁵⁸ with a wide-ranging mandate in the field, including the authority 'to analyse national media legislation, policies and practice within [AU] Member States,

53 Access to Information: Lessons from Latin America (UNESCO 2017) <http://unesdoc.unesco.org/images/0024/002498/249837E.pdf>

54 OAS: Office of the Special Rapporteur for Freedom of Expression <http://www.oas.org/en/iachr/expression/index.asp>

55 Cumbre Judicial Iberoamericana <http://www.cumbrejudicial.org/>

56 School for Judges (UNESCO 2018) http://www.unesco.org/new/en/office-in-montevideo/about-this-office/single-view/news/school_for_judges_lessons_in_freedom_of_information_and_e/

57 African Charter on Human and Peoples' Rights <http://www.achpr.org/instruments/achpr/>

58 African Union: Special Rapporteur on Freedom of Expression and Access to Information <http://www.achpr.org/mechanisms/freedom-of-expression/>

monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular, and advise Member States accordingly.' The Rapporteur's office has published a 'model law' on access to information as guidance for national ATI statutes and policies on access to information rights and procedures specific to national election periods, among other reports and policy manuals.⁵⁹

The AU, in contrast to the EU and the OAS, does not yet have a strong regional court with a widely backed mandate to enforce human rights guarantees in national judicial and legislative proceedings and allow citizens to appeal decisions of national courts. The authority of the **African Court on Human and People's Rights**, based in Burkina Faso, has been recognized in principle by 30 of the 55 AU Member States to date, but only eight accept the Court's authority to hear and rule on cases from individuals or non-governmental organizations.⁶⁰

On the national level, however, the number of AU member countries with access to information laws increases every year. As of 2017, those countries included Angola, Burkina Faso, Ethiopia, Guinea, Ivory Coast, Kenya, Liberia, Mozambique, Niger, Nigeria, Rwanda, Sierra Leone, South Sudan, South Africa, Tanzania, Togo, Tunisia, Uganda and Zimbabwe.

Explicit constitutional guarantees of the public's right to official information are also increasingly common. South Africa's pioneering post-apartheid constitution includes what some consider the most comprehensive articulation of that right in any constitution in the world, stating in its Section 32 'that everyone has the right of access to any information held by the State' and 'provid[ing] for the horizontal application of the right of access to information held by another person to everyone when that

59 Guidelines on Access to Information and Elections in Africa (African Commission on Human Rights) <http://www.achpr.org/mechanisms/freedom-of-expression/Guidelines-Information-and-Elections-in-Africa/>

60 The African Court on Human and Peoples' Rights <http://www.african-court.org/en/>





information is required for the exercise or protection of any rights.⁶¹ Courts in South Africa have held that this access extends to information held by corporations or other private entities if it is relevant to the ‘exercise and protection’ of any constitutionally recognized rights, including the right to clean air and water and other mandated health and environmental standards.

Asia: Central, South, East & the Pacific

Asia, as an extraordinarily diverse and physically immense area that is home to more than half the world’s population, is not a politically or administratively integrated region, with shared institutions and legal instruments such as those of Africa, the Americas or Europe.

As a consequence, there are no formally agreed specific regional human rights pan-Asian standards nor enforcement mechanisms for access to information and freedom of expression.

Yet on a sub-regional level, there are significant commonalities and shared commitments in this area. South Asian countries, most notably, have been pioneers in these laws and principles. For more than decade, India and Nepal each have had actively used and judicially enforced access to information rules and systems on both the national and subnational level. The Maldives and Sri Lanka recently enacted their own ATI laws, as have four of the five Central Asian nations (Turkmenistan excluded).

61 University College London – The Constitution Unit (South Africa)
<http://www.ucl.ac.uk/constitution-unit/research/foi/countries/south-africa>

In the Asia-Pacific, Australia and New Zealand have had access to information laws in place since the early 1980s. Indonesia's access to information law of 2010 is considered one of the best Asian examples. Vietnam, Thailand, and the Philippines also have ATI laws on the books.

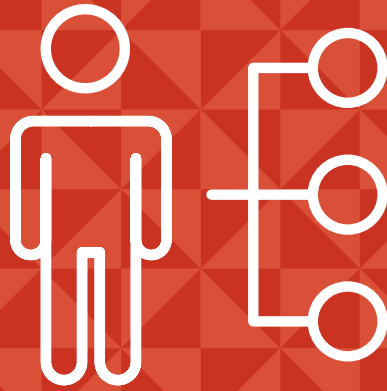
The Human Rights Declaration of ASEAN – the Association of Southeast Asian Nations, comprised of ten neighbouring Member States stretching from Myanmar in the ASEAN northwest to Indonesia's Papua provinces in its Pacific southeast – explicitly recognizes the right 'to seek, receive and impart information', paraphrasing Article 19 of the Universal Declaration in its own Article 23. In 2016, building on this principle, the ASEAN countries adopted a ten year, four-point 'Strategic Plan for Information and Media', of which the first stated priority is: 'Advancing cooperation and ASEAN-level agreements to provide regional mechanisms to promote access to information.'⁶²

Yet official and unofficial restrictions on press freedom and internet use in a number of Asian countries limit the practical impact of access to information laws. China, for example, has established its own access to information regulations and on-line systems that Chinese journalists use to obtain official data and documents, some of which have been used to expose official mismanagement or corruption at the local level. But state-appointed managers of news outlets and other government officials control the scope and public reach of such stories, both nationally and locally. In other Asian countries with ATI laws, new restrictions on national media have slowed or reversed past progress in public access to information.

“Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing.”

Justice P N Bhagwati, Chief Justice, Supreme Court of India (1981)

62 ASEAN Strategic Plan for Information and Media 2016-2025
<http://asean.org/asean-socio-cultural/asean-ministers-responsible-for-information-amri/>



**WHAT YOU
CAN DO**

2.1 FIRST STEPS: ASSESSMENTS AND ANALYSIS, UNDERSTANDING THE CONTEXT

At various stages of the programming cycle, in particular when developing actions plans and considering support for ATI projects or initiatives, the first step is to evaluate the specific national and regional context, starting with some basic questions:

- ▶ If there is an ATI law, is it effective? If weak, is there political will to improve? Is it being used – by media, or civil society, or the public at large? How do independent experts assess the law and its administrative systems? How does it compare to similar laws in other countries? Does the government at all levels have the capacity and resources to abide by the law and provide requested data and documents online and/or through other legally mandated channels?
- ▶ Even with an ATI law, is the political system conducive to the free flow of information? Is the press free to report critically on government authorities and powerful private interests? Are print and broadcast outlets professionally managed and financially and structurally independent? Do minority and opposition voices get heard, without fear of reprisal? Are journalists and civic activities subjected to arbitrary legal penalties or by threats and attacks in full impunity?
- ▶ Assuming a reasonably favourable environment for freedom of information, are there social factors limiting public awareness of ATI or leading to an official opposition to implementation? Are language barriers a problem? Patterns of gender or ethnic discrimination? Is there a deep ‘digital divide’ between an affluent urban minority and a lower-income majority lacking affordable access to online information resources? Do ATI systems function only in ministries and major state agencies, or also on the district and municipal level? Do average people understand and use these laws?
- ▶ If there isn’t an ATI law, is one advocated for by civil society or under consideration in the legislature or by executive? Are independent legal experts and/or civil society and media leaders providing input and promoting public awareness of this proposal? Is compliance with SDG16-10 a factor in government attitudes towards the proposed law? Would outside technical support or regional consultation facilitation be useful and welcomed in this process?
- ▶ Is progress towards the ATI commitment in SDG16-10 monitored and reported by the government? Are there independent assessments from academia or civil society experts?

- ▶ Are there cross-border or broader regional cooperation networks for ATI systems managers or other professional ATI practitioners or regulators, such as journalists and judges? Have EU institutions provided past support for this kind of South-South ATI cooperation?

2.1.1. Understanding the national law

Every national law is different, just as every national political culture is different.

Unless it is very weak, an imperfect law can still be quite effective in a country where freedom of expression and information and government accountability has been the norm, not the exception. Conversely, a near-perfect law can prove completely ineffective if the government lacks either the capacity or the political will to implement the law. If there is political will, capacity gaps can usually be overcome.

In all cases, though, understanding the basic structure and core provisions of the national law is a prerequisite for serious work in this area. The Global Right to Information Rating index⁶³ is an excellent online resource, with full texts and clause-by-clause comparative assessments of most national laws.

Yet even without that degree of technical detail, there are some general questions about any ATI law and system that are important to keep in mind:

- ▶ What are the exceptions and are they legitimate? Are authorities providing reasons for any refusal to provide access to information? Are the procedures providing for the timely processing of requests for information according to clear rules? Are fees for requests for information reasonable? Are there arrangements for appeals from refusals or in cases of failure to respond to requests?
- ▶ Is there an independent state institution dedicated to overseeing the law or an institution managing public records mandated by the law or dealing with complaints? Does it have independent enforcement powers? Is it professionally run?

63 ASEAN Strategic Plan for Information and Media 2016-2025
<https://www.law-democracy.org/live/global-rti-rating/>

- ▶ Does the ATI law cover government at all levels – national, provincial, municipal? Does it also apply to the legislature? To the judiciary? Police and armed services? State corporations? Are all state budgets and contracts and other financial records considered public documents under the law?
- ▶ What does user data tell us about the law's use and effectiveness? What do we know about how the law is used, and by whom? Can meaningful comparisons be drawn from user data in other countries with ATI laws?
- ▶ Do journalists use the law? Are documents or data obtained from ATI requests cited in investigative news stories? Has the legally mandated publication of state budgets and public contracts changed the way news organizations report on government? Has media use of ATI laws and tools contributed to the exposure and reduction of official corruption? Do the courts support appeals when officials don't provide requested information?
- ▶ Has civil society been strengthened by the availability of information through ATI laws? Are there specific sectoral areas – such as public health, the environment, or women's rights – where specialized local NGOs have used ATI systems to obtain important data or documents relevant to their concerns?

PRACTICAL TIP: MEASURING RTI IMPLEMENTATION

FOIANet⁶⁴, the Freedom of Information Advocates Network designed in 2017 a simple tool to help civil society conduct parallel assessments of the extent to which States have met SDG indicator 16.10.02 designed a simple tool in 2017 to help RTI laws. This methodology can be used by EU Delegations to obtain a broad picture of how implementation is going in their respective country or EUDs can support CSOs in using it. The methodology can be found in Annexes of this guide.

64 Measuring implementation of SDG16.10.1(FOIA-Net)

<http://foiadvocates.net/wp-content/uploads/SGD-16.10.2-measuring-implementation.18-09-1-1.docx>

2.1.2 What has been done? Evaluations of ATI aid & public use

Before proceeding with any proposed ATI programming, identification, formulation or support action, due diligence should include a review of current or recent ATI aid initiatives with international partners, to avoid overlaps and redundancies, to learn from the lessons of previous interventions and envisage collaborative approaches.

Lack of coordination or even communication among international donors on the country level is all too common in ATI assistance, as in other thematic development areas. It is recommended to identify other parallel ATI aid initiatives, workshops and training courses by an expert with international and local stakeholders. By convening informal working groups of bilateral and multilateral donors on the country level, with the aim of information-sharing and possible collaboration, EU Delegations can contribute greatly to the efficacy and impact of international assistance in this area. **A basic mapping or listing of local ATI projects – with their respective sponsors, goals, and outcomes – can, in itself, be an invaluable resource for current and future aid managers in EU Delegations,** as well as for other donors and ATI specialists.

This coordination should go beyond the relatively few projects that are identified as ‘access to information’ initiatives. Frequently, there is an important potential ATI component to other thematically focused development projects: whether the objective is to protect the environment or improve maternal health care or administer fair and inclusive elections, open public access to official data and documents can be crucial to the achievement of those goals.

Going beyond the donor community, consultations with public officials, civil society groups and other local partners are also essential. How do they view the country’s ATI rules and systems? Are the laws and systems working as intended? Are they widely used? Is the government following the dictates of the law? What should the priorities be for local ATI assistance, including as defined by local civil society who are often well positioned to identify them?

“The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

Barack Obama, US President, Jan. 21, 2009.



Bilateral and multilateral ATI support often target the public administration of these laws and systems, with aid directed primarily at internal government technology, staffing and organizational coordination, and legal training. This support can prove critical, especially in lower-income countries with newly enacted ATI laws. **Connecting relevant government officials with peers in neighbouring countries with greater experience in ATI administration and enforcement can be particularly effective. Regional institutions such as the AU and the OAS can also offer ATI support to governments.**

Equally important, but often overlooked, is the 'end user' of ATI statutes and systems: the journalist, the civic activist, the small business owner, the local community leader, and – most important – the average citizen seeking information directly relevant to her daily life.

A constant flow of requests for documents and data from all these sources is the key to making an ATI system work as it should, setting in motion a virtuous cycle of information supply and demand. But unless people understand their rights and learn how to use these tools, that won't happen.

Professional training and public awareness campaigns are prerequisites for ATI effectiveness.

2.2 ATI AS A DEVELOPMENT DRIVER IN VARIOUS COOPERATION SECTORS – THEMATIC POINTS OF ENTRY FOR ATI PROJECTS

The promotion of access to information laws and principles is often driven by budgetary transparency and anti-corruption concerns by international donor agencies. Without question, that is a critically important function of ATI laws and systems: corruption is not only corrosive unto itself, squandering public resources and eroding public confidence in government, but it can slow or prevent the attainment of all important national development objectives.

Strong ATI public disclosure rules and robust protections for independent media scrutiny are requirements for effective public oversight of public finances. As the U.S. Supreme Court Justice Louis Brandeis wrote almost a century ago: ‘Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.’ By exposing and preventing budgetary waste and corruption, a good ATI system can more than pay for itself.

Yet there are many other points of entry for ATI projects with government, civil society and the news media that are also consistent with the EU’s development priorities.^{65 66} These include such core EU principles as the promotion of human rights and support for democratic governance, as well as the many specific development objectives spelled out in the SDGs.

2.2.1 Human Rights Promotion & Protection

The EU is committed to combatting threats and violence against human rights activists, whistle-blowers, and independent journalists, as emphasized in the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*.

The active use of ATI laws to expose corruption or abuses of power can sometimes provoke reprisals against individuals or institutions filing such requests. Yet well-designed ATI systems can also be used to track the status of official inquiries and actions taken by police forces, prosecutors’ offices and the judiciary in response to such threats or attacks.

⁶⁵ EU Action Plan on Human Rights and Democracy (2015-2019)
https://ec.europa.eu/europeaid/sectors/human-rights-and-governance_en

⁶⁶ EC: Freedom of Opinion, Freedom of Expression and the Right to Information
https://ec.europa.eu/europeaid/sectors/human-rights-and-democratic-governance/democracy/freedom-expression_en

The EU is similarly committed to strengthening the legal framework for freedom of information and media, which includes adoption and implementation of ATI laws, as also called for in the UN indicators on national progress towards SDG16.10.

These are the stated priority areas of the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*, all of which either directly or implicitly include support for public access to information:

- ▶ **Combating violence, persecution, harassment and intimidation of individuals**, including journalists and other media actors, because of their exercise of the right to freedom of expression online and offline, and combating impunity for such crimes
- ▶ Promoting **laws and practices** that protect freedom of opinion and expression
- ▶ Promoting **media freedom and pluralism** and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting
- ▶ Promoting and respecting **human rights in cyberspace** and other information and communication technologies
- ▶ Promoting **best practices** by companies
- ▶ Promoting legal amendments and practices aimed at strengthening **data protection and privacy online/offline**

Through the European Instrument for Democracy and Human Rights (EIDHR)⁶⁷ the EU supports and funds the NGO-administered ‘Protect Defenders’⁶⁸ initiative, which can be used to provide security training and legal assistance, including in the exercise of their ATI rights, to ‘human rights defenders working in remote areas and countries where it is particularly dangerous to work in human rights defence. It also focuses on defenders who are especially targeted, including women human rights defenders, defenders of LGBTI rights, land and environmental rights defenders, economic and social rights defenders, defenders of minorities, lawyers, and those fighting for freedom of expression and association.’

67 European Instrument for Democracy and Human Rights (EIDHR) (2014) - https://ec.europa.eu/europeaid/how/finance/eidhr_en.htm_en

68 EU’s Protect Defenders Programme: <https://www.protectdefenders.eu/en/index.html>

2.2.2 Democratic Governance

In promoting the use of ATI laws and tools to strengthen democratic governance, EU Delegations should be guided by the principles and policies included in the EU's own legal instruments and systems, as summarized in the first section.

These include:

- ▶ Using ATI laws and systems to promote **civic engagement**, both by raising awareness of people's right to know what their governments are doing and by helping community organizations in the use of their ATI rights to get information about state programmes in their specific geographic or thematic areas of interest
- ▶ ATI can be used to support the correct functioning of the judiciary, for example in relation to individual right to access one's legal files; access to reasoned legal decisions when relevant to the weight and importance of case-law; correct record keeping with regard to legal cases; transitional justice related processes
- ▶ Assisting local authorities in the pro-active use of ATI systems to improve communications with constituents and local administration of social services
- ▶ Utilizing ATI laws and systems as a gateway to the broader introduction of '**e-governance**' techniques and services, as recommended in the EU Guidelines on Freedom of Expression; these should include online interactive access to personal records in official archives as well as national, provincial and municipal data
- ▶ Support to accountable institutions and public finance management: public reporting, including on development and international aid projects; publication of government budget(s), breakdown of budget expenditures, publication of budgets of organisations receiving public financing including political parties; publication of reports related to social and environmental impacts' assessments; prevention and transparent public procurement; curbing of corrupt practices in local and national authorities
- ▶ ATI laws and systems can be employed to improve fairness and transparency in the management of national and local elections and election monitoring, for ex via online access to voter registration rolls and data on public subsidies to political campaigns; access to electoral certificates for voters; timely publication of election results (including outside election polls); publication of voters' lists in public places; access to election polls' documentation by authorised election observers.

2.2.3 Combatting Corruption

As noted above, ATI laws with online information request systems and requirements for the proactive publication of government budget and contract records are critical tools for exposing and reducing corruption and mismanagement in the use of public funds.

For this to work, however, these laws and systems must be used routinely and visibly for these purposes by journalists and civic activists who are trained to use these systems and who have the legal and political protections required to publicize what they learn, including evidence of malfeasance.

Support for the use of ATI laws in combatting corruption can include:

- ▶ Training for media actors and CSOs on using ATI laws in combatting corruption
- ▶ Media tracking of progress on public works projects, supported by training programmes for investigative journalists in ATI tools & techniques
- ▶ Supporting OGP: Technical support for ATI implementation commitments under the Open Government Partnership, including proactive disclosure of budgets
- ▶ Cooperation on ATI aspects of anti-corruption initiatives supported by global and regional International Financial Institutions, such as the World Bank and the African Development Bank, working with governments, media and civil society
- ▶ Technical aid for effective public disclosure and oversight of public works projects, including publication of contracts, budgets, and project assessments.

“ Integrity, transparency and the fight against corruption have to be part of the culture. They have to be thought as fundamental values. ”

Angel Gurría, OECD Secretary General

2.2.4 Gender Equality

There is a well-documented gender divide in both the public use and government management of ATI systems in countries at all stages of development. In countries where ATI user data is disaggregated by gender, it almost invariably shows that women are underrepresented among those filing requests for public information, though the degrees of this disparity vary from country to country and region to region.

Women are also typically underrepresented among the public officials overseeing ATI systems, as in other areas of government. Affirmative measures are needed to correct this chronic imbalance.

ATI laws and systems can be used to document patterns of gender inequity, including through:

- ▶ Public access to information on women's rights and relevant legal cases
- ▶ Gender data disaggregation in ATI systems at all levels of government
- ▶ ATI training programmes for women journalists and civil society activists
- ▶ Academic research using ATI tools to identify gender disparities, as documented by government records in areas such as public health, education, employment, and political participation
- ▶ Support for women's right groups working on various issues to incorporate RTI into their work.

In addition, SDG5 (see section 1) can be harnessed to emphasize the commitment to access to information for women and girls. Recommendations for specific actions from the 'Atlanta Declaration for the Advancement of Women's Right of Access to Information' include:

- ▶ Compiling country and shadow reports on Women's Right of Access to Information as part of periodic reporting to human rights bodies
- ▶ Preparing annual and special reports on women's right of access to information by UN and regional special rapporteurs, working groups, and independent experts

- ▶ Ensure that access to information legal frameworks are gender sensitive and implemented in ways that support women's ability to fully exercise the right
- ▶ Change the dominant culture within institutions to make them gender responsive and within society to promote women's right of access to information, including:
 - Engaging elected, appointed, community, traditional, and religious leaders to be vocal champions of women's right to information
 - Training government officials to be gender sensitive and responsive
 - Decentralizing information, using media, libraries, community members, and other accessible medium
 - Making people aware of women's right to information
 - Developing curriculum and using centres of education to teach about women's right of access to information and to enhance women's and girls' confidence in requesting information
- ▶ Commission research and culturally-rooted pilot projects on women's information needs, structural obstacles that hinder access, the role that information plays in women's increased political participation and leadership, best use of information and communication technologies to reach women with meaningful information, and the levers of change
- ▶ Mitigate risks and backlash faced by women who exercise the right of access to information; and mobilize resources to support programmatic initiatives to secure women's right of access to information.



© iStock/borgogni

2.2.5 Peace and Security

With good ATI laws and online documentation systems, people should be able to monitor the incidence and prosecutions of crimes of violence, by category and by specific geographical location, in order to track and improve citizen security.

Public access and inputs to this online documentation can help police and other public officials to improve public security, and with it public confidence in law enforcement. Conversely, open access to accurate data on crimes of violence can sometimes expose inequities in government law enforcement practices and police deployment in different regions and communities.

ATI laws and systems can also be relevant to other aspects of peace and security. For example: national and local governments in areas experiencing civil conflicts or receiving people displaced by conflicts elsewhere can use interactive ATI tools to identify needs and improve delivery of public services for affected populations.

Support for ATI implementation in this area could include:

- ▶ Training of police forces and prosecutors to improve public documentation of crimes of violence and official responses to such incidents (investigations, prosecutions, pre-emptive security measures, community outreach)
- ▶ Data collection and dissemination in post-conflict and reconciliation contexts
- ▶ Improving public data on internal & international migration and displacement.

The Right to Information in peacebuilding is key the following processes:

- ▶ Accountability for past abuses, in particular with reference to Transitional Justice mechanisms;
- ▶ Other reparation mechanisms: information regarding missing, disappeared, victims of war, victims of SGBV during the war;
- ▶ Land and property issues in post-conflict societies: access to public and communal land registers, property registers, cadastre, etc.
- ▶ Post-conflict electoral processes

Example in Sri Lanka:

<https://bit.ly/2PGrg8N>

The Struggle for Right to Information in Sri Lanka: Is it Leaving Victims Behind?

<https://bit.ly/2qzyRYC>

Sri Lanka's Right to Information Act is a Weapon of the People - Op-Ed Interview with Commissioner, Right to Information Commission of Sri Lanka, Attorney-at-Law Kishali Pinto Jayawardena

2.2.6 Climate Change & Other Environmental Issues

Current data on changing air and water temperatures and contamination levels, in all parts of the world, are examples of the kind of information that is needed to monitor and ultimately slow the pace of climate change. Effective investment in mitigation in the countries and regions most affected by global warming also requires reliable baseline and tracking data.

To properly shape and drive policy, this information must be accurate and easily accessible to scientists, civic activists, journalists, policy-makers and the public at large.

ATI support programmes that can help by:

- ▶ Training environmental activists to use national make ATI requests and use data and data visualising tools and methods
- ▶ Improving government capacity to collect and publish data on carbon emissions; air and water pollution; deforestation; fisheries and endangered species populations; and other areas of environmental pressures and concerns; and government responses – whether policies or programmes – to these issues
- ▶ Using national ATI systems to track compliance with the Paris Agreement COP21 goal (2015)
- ▶ Public sharing of real-time crowd-sourced data during extreme weather events
- ▶ Strengthen the environmental data dimension of ATI-based industry oversight projects such as the Extractive Industries Initiative (EITI).

2.2.7 Public Health

The Ebola pandemic in West Africa and deadly cholera outbreak in Haiti are just two recent examples of the critical importance of timely, factual, publicly available information in public health emergencies. The public dissemination of credible public health information is equally crucial to the management of such long-standing challenges as maternal mortality, malaria, and HIV-AIDS, among others.

Yet ATI systems have been under-utilized in both the monitoring and treatment of preventable diseases, and in other public health priorities such as chronic malnutrition.

Public health programmes could benefit from targeted ATI initiatives, such as:

- ▶ Training reporters and civil society activists to use ATI systems to obtain public health data, trends and programmes on the local level as well as nationally
- ▶ Working with health ministries to improve the availability of accurate public information on health services, disease prevention and local treatment options
- ▶ Including databases of key health indicators such as malnutrition, obesity, infant and maternal mortality, and life expectancy in online ATI systems
- ▶ Providing free phone accessible links to information on hospitals and clinics.



© iStock/harry1978

2.2.8 Education

In many developing countries with ATI laws and online systems, among the most frequent queries are those directed to Education Ministries, and to public universities and other educational institutions covered by ATI statutes, regarding schooling and educational issues in general – application requirements; course offerings; enrolment fees and scholarships; graduation rates; budgets for school construction and school supplies; job postings for teachers; and similar practical information for students, parents, and education professionals.

To increase educational opportunities for young people and strengthen public education generally, ATI laws and systems can be used to:

- ▶ Monitor public education standards and achievement, school by school
- ▶ Publish detailed school enrolment data, with gender & socioeconomic indicators and other contextual information
- ▶ Facilitate online learning at the university level and beyond
- ▶ Improve oversight of public education expenditures: Public disclosure of budgets can help ensure that schools are built and maintained as promised, and properly staffed and equipped (examples: Uganda, Paraguay).

2.2.9 Social Inclusion

Even in developing countries with highly successful ATI laws and systems, users tend to be disproportionately concentrated in relatively affluent, educated, urban areas, skewing both the kinds of official information typically requested and provided, and further marginalizing poor rural communities and other low-income populations without affordable Internet access or personal experience in the use of these public information tools. This marginalization can be exacerbated by native-language and gender discrimination, among other socio-economic factors. In addition, ATI provisions should be accessible to all citizens, including those living with disabilities.

ATI rights and systems can be a powerful force for social inclusion, aided by support for:

- ▶ Training local reporters, community radio staffs, and community activists to use ATI laws with and on behalf of remote and/or marginalized populations
- ▶ Research by civic activists, academics, and policymakers to identify and address socioeconomic inequalities through the systematic use of ATI tools
- ▶ Closing the rural-urban digital divide with affordable broadband access
- ▶ Tailoring official ATI tools for use by ethnic, religious and other minorities, and people with disabilities
- ▶ Educating girls and women about their ATI rights and the use of ATI systems (see section on gender).

2.3 ENTRY POINTS AND POTENTIAL ACTIONS

2.3.1 ATI Action Options for EU Delegations

Political dialogues and high-level events & missions in support of ATI

EU Delegations can shine a spotlight on ATI needs and achievements and provide needed support for ATI user groups and systems managers by sponsoring political dialogues on the subject and referencing ATI rights and data in high-level missions and reports.

Examples⁶⁹ of high-level EU missions with briefs relevant to the enforcement of ATI rights and laws include election monitoring missions and thematically focused fact-finding missions dealing with issues as varied as maternal health care, post-conflict development strategies, and climate change. EU Delegations can facilitate such missions, for example from the European Union Special Representative for Human Rights, regional or UN special rapporteurs.

Freedom of information and expression can in itself be the primary focus for EU Delegation events, partnerships or high-level missions by visitors such as the EU's Special Representative for Human Rights and the relevant special rapporteurs from the UN and regional bodies such as the AU, OAS and OSCE. The *EU Human Rights Guidelines on Freedom of Expression Online and Offline* strongly encourage EU diplomatic representatives to take such initiatives:

*In appropriate high-level political contacts **the EU will raise systemic issues and individual cases relating to the protection of freedom of expression** and call on partner countries to initiate legislative changes to ensure the promotion and protection of the right to freedom of opinion and expression, online as well as offline. In political dialogues with partner countries, the EU will raise serious or systemic violations and restrictions on the right to freedom of opinion and expression online and offline as appropriate. The EU will encourage partner countries to ratify and implement relevant international and regional human rights instruments.*

69 Examples: <https://ecpmf.eu/get-help/fact-finding-missions> and <https://ipkey.eu/en/latin-america/activities/fact-finding-mission-central-america-and-mexico>



© iStock/Sean_Warren

The EU will **encourage partner countries to issue invitations for country visits** to UN Human Rights Special Procedures, particularly the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for country visits, and to accept and implement UN recommendations, including from treaty monitoring bodies and the Universal Periodic Review, as well as from the Council of Europe and the OSCE, where relevant.

Public diplomacy & advocacy in national and multilateral forums

Similarly, the Guidelines emphasize EU active support for the principles of freedom of information and expression at the United Nations and other international forums:

The EU will ensure that freedom of expression remains a prominent issue on the UN agenda, working actively in all relevant multilateral fora to ensure strong cross-regional support for the promotion and protection of freedom of opinion and expression online and offline, supporting the mandate of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and cooperating closely with the special rapporteurs having related mandates from the AU, OAS, OSCE and OIC.

At the national level, this would include EU support for and participation in missions, reports and public events with other multilateral and bilateral partners.

Participation in national events or initiatives promoting access to information

One appropriate annual opportunity to demonstrate support for ATI principles and programmes is the recently adopted ‘UN Day’ recognizing the right of public access to information.

Celebrated on 28 September, a date also commemorated as ‘Right to Know Day’ by civil society groups around the world, UNESCO’s International Day for Universal Access to Information’ (IDUAI) is increasingly used by national ATI agencies and NGOs for public forums spotlighting this right and analysing progress towards its enforcement. UNESCO, as the lead UN agency in this area, has welcomed EU participation in its regional ATI events on 28 September.

World Press Freedom Day on 3 May is another relevant ‘UN Day’ when EU Delegations can participate in national and regional events in support of independent media, the safety of journalists, and the EU supported principles of freedom of information and expression.

In 2017, the EU Delegations received from DEVCO guidance and the EU4Democracy campaign material. The package provided communications materials, suggestions for activities and background information to assist effective participation in the campaign. Whenever possible, EU Delegations were encouraged to promote activities that involve local stakeholders, such as students, civil society, media, politicians, researchers and interested and active citizens. Harnessing the power of social media was an important element of the campaign, so the suggested hashtags #EU4Democracy and #MyDemocracys were actively promoted. Other activities included debates and workshops, and a video competition asking people to record what democracy means to them. The ‘EU-4Democracy Package’ was prepared by Media4Democracy and its partner EIDHR technical assistance project, Supporting Democracy: A Citizen Organisations Programme.⁷⁰

⁷⁰ EU4Democracy campaign

<http://media4democracy.eu/eu4democracy-campaign-raises-awareness-makes-impact/>

PRACTICAL TIP: WHERE TO FIND EU CAMPAIGN MATERIAL ON ACCESS TO INFORMATION

The EU4Democracy (2017) campaign material can be downloaded on [Capacity4Dev](#)

For information notes, cases studies, social media material: info@media4democracy.eu

For an event handout on Democracy Support and access to information, see Annexes.

Incorporating data related to ATI in country-level programming and implementation of SDGs

EU programming and policy in the areas of human rights, democratic governance, electoral support, rule of law, and transparency and accountability should incorporate, when possible, data and indicators related to the use and effectiveness of ATI laws and public-information systems.

In addition, it is important to include **analysis of the state of freedom of information and media as it relates to the monitoring and achievement of the SDGs.**

As of 2019, country-level and global data to monitor the implementation of SDG 16.10 to ‘ensure public access to information’ will be compiled by UNESCO.

The *EU Human Rights Guidelines on Freedom of Expression Online and Offline* state: ‘Missions in third countries (EU Delegations, CSDP missions and Member States embassies) and headquarters will monitor the respect for freedom of opinion and expression online as well as offline and will report on situations of concern, including individual cases and systemic issues. **The EU’s Human Rights Country Strategies should include a section on freedom of opinion and expression.**’

Using the EU’s ‘convening power’ to support ATI principles & progress

On both the national and regional level, EU Delegations can lead or join working groups of partners in multilateral and bilateral aid agencies to assess the role and potential contribution of ATI laws and systems to a wide range of development objectives.

Effective use of this ‘convening power’ can lead to useful donor collaboration in such ATI awareness-raising and capacity-building initiatives as:

- ▶ Cross-border cooperation among ATI specialists in government and academia
- ▶ ATI legal and technical training for media, civil society, and the judiciary
- ▶ Information sharing and coordination among donors on current or potential components of (for example) anti-corruption and election support initiatives
- ▶ Joint consultations with relevant public officials and specialized NGOs to identify what is not being done to support ATI but could be done, in a manner consistent with EU guidelines & national development priorities.

2.3.2 EU Funding: Appropriate Instruments for ATI support

Several EU funding instruments are potentially appropriate for ATI projects, either under their broad intended use in support of human rights and ‘transparent’ governance, or for more tightly defined thematic purposes with explicit or implicit ATI components. Most instruments listed below have been used to support ATI.

As noted in the *EU Human Rights Guidelines for Freedom of Expression Online and Offline*: ‘All appropriate EU external financial instruments should be used to further protect and promote freedom of opinion and expression online as well as offline, including by supporting the emergence of a free, diverse and independent media.’

Support for ATI rights and the implementation of ATI laws is consistent with that guidance, both for providing good-governance tools to media and civil society and strengthening the overall ‘enabling environment’ for freedom of information and expression.

DCI – Development Cooperation Instrument 2014-2020⁷¹

Section 7 of the 2014-2020 Development Cooperation Instrument (DCI) sets out these priorities for EU support, all of which either require or can be strengthened by ATI systems and legal commitments: ‘Respect for human rights, fundamental freedoms, the promotion of the rule of law, democratic principles, transparency, good governance, peace and stability and gender equality.’ The DCI adds: ‘Those issues should be mainstreamed in the Union’s development policy, particularly in programming and in agreements with partner countries.’ The DCI includes mechanisms to support local governments – many of which require additional resources and capacity-building to meet their ATI obligations to local constituents – as well as ‘non-state actors’, specifically including media and civil society groups.

EDF – European Development Fund⁷²

Created in 1957 by the Treaty of Rome, the European Development Fund (EDF) is the EU’s main instrument for providing development aid to African, Caribbean and Pacific (ACP) countries and to overseas countries and territories. The EDF funds cooperation activities in the fields of economic development, social and human development as well as regional cooperation and integration. In all these areas, there is an increasingly important role for ATI laws and systems.

71 Development Cooperation Instrument (DCI) 2014-2020 – https://ec.europa.eu/europeaid/development-cooperation-instrument-dci-2014-2020_en

72 European Development Fund (EDF) https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund_en



EIDHR – European Instrument for Democracy & Human Rights⁷³

Because it is specifically designed to support civil society ‘in the area of human rights, fundamental freedoms and democracy’ the **European Instrument for Democracy and Human Rights (EIDHR)** is especially suited to training and awareness-raising programmes for NGOs in both the practical use and political defence of ATI rights, laws and systems.

As the EU notes, the EIDHR:

*...is designed to support civil society to become an effective force for political reform and defence of human rights. [...] It offers **independence of action**, as it cooperates directly with human rights defenders and local civil society organisations without the need for approval of national authorities.*

*It has the ability to address sensitive political issues (such as death penalty, torture, freedom of expression in restrictive contexts, discriminations against vulnerable groups) and can respond to **emerging and complex challenges**, due to its high flexibility in terms of implementation modalities. The EIDHR has a **global scope** and can intervene anywhere outside the European Union, operating worldwide at national, regional or even international level, both in developing and non-developing countries.*

⁷³ European Instrument for Democracy & Human Rights (EIDHR)
https://ec.europa.eu/europeaid/how/finance/eidhr_en.htm_en

ENI – European Neighbourhood Instrument⁷⁴

The preamble to the ENI states: ‘Cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights, are the founding principles of the special relationship between the EU and the Neighbourhood countries of the East and the South.’

The first of the six ‘ENI targets’ is: ‘Fostering human rights and fundamental freedoms, the rule of law, equality, sustainable democracy, good governance and a thriving civil society.’ In promoting public access to information as both a right unto itself, and as a means to help achieve all of the interconnected governance goals identified in that primary ENI target, support for ATI rights and statutes would be consistent with ENI’s original intent.

Many countries in the ENI ‘Neighbourhood’ do not yet have comprehensive, functioning ATI laws and systems.



© iStock/Yuri_Arcurs

⁷⁴ The European Neighbourhood Instrument (ENI)
<https://www.euneighbours.eu/en/policy/european-neighbourhood-instrument-eni>

IcSP – Instrument Contributing to Stability and Peace⁷⁵

The Instrument Contributing to Stability and Peace (IcSP) is the EU's main instrument supporting security initiatives and peace-building activities in partner countries.

Though there is no specific mention of ATI rights in the IcSP, several of its stated short-term and long-term purposes either require or could be aided by good ATI laws and systems, as an integral part of a broader commitment to freedom of information and expression.

Short-term (to prevent conflict, support post-conflict stabilization, or aid disaster recovery):

- ▶ Advancing the development of democratic and pluralist state institutions
- ▶ Promoting independent and pluralist media

Long-term (addressing global and trans-regional threats and emerging threats):

- ▶ Threats to law and order, the safety of individuals, and public health
- ▶ Security and climate change

IPA II – Instrument for Pre-accession Assistance⁷⁶

This specialized fund for social and economic assistance to countries prior to accession to the EU identifies two priority areas – 'public administrative reform' and 'rule of law' – where functioning ATI laws would be required for consistency with EU democratic norms. It states:

'Prepared in partnership with the beneficiary countries, IPA II sets a new framework for providing pre-accession assistance for the period 2014-2020. IPA II targets reforms within the framework of [...] sectors closely linked to the enlargement strategy, such as democracy and governance, rule of law, or growth and competitiveness. This sector approach promotes structural reform that will help transform a given sector and bring it up to EU standards.'

⁷⁵ Instrument contributing to Stability and Peace (IcSP) https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/peace-and-security/instrument-contributing-stability-and-peace_en

⁷⁶ Overview - Instrument for Pre-accession Assistance https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en

2.4 CASE STUDIES: EXAMPLES OF EU SUPPORT FOR ATI INITIATIVES

Many EU Delegations have conceived and managed a number of innovative ATI projects in recent years, with very positive results. Each was carefully tailored to local circumstances and managed in collaboration with local partners, using a variety of EU funding mechanisms.

“Official information that enhances people’s capacity to exercise their rights belongs in the public domain. This information must be accessible and understandable.”

United Nations Development Programme, 2004

These projects provide useful models for further ATI initiatives. Four are described in detail below: a project in **Mozambique** to improve people’s access to information about local schools and other educational opportunities; an initiative in **Kyrgyzstan** to give rural women access to government information resources, as a means to aid their political empowerment; a 2-year programme to introduce ATI tools for better governance in a provincial port town in **Morocco**; and an evaluation of an EU-supported Public Access to Information Institute in **Honduras**, with training for journalists in its ATI systems and recommendations for EU action on further ATI training and reform initiatives.

Other recent ATI projects and initiatives by EU Delegations include:

- ▶ Practical, locally focused ATI user manuals and training programmes for media and civil society in **Morocco**, **Somalia**, and the **Palestinian Territories**.
- ▶ An EU Anti-Corruption Initiative (EUACI) project ‘to improve implementation of anti-corruption policy in **Ukraine**’, with measures to strengthen ‘accountability and transparency mechanisms’ and ‘access to public information’.
- ▶ A detailed needs-assessment in **The Gambia** of media capacity and autonomy, and government policies affecting press freedom and public information, in the context of restoring democratic civilian government, as guidance for EU action.

- ▶ In **Cambodia**, the EU Delegation organized a project under the EU 'Protect Defenders' programme to train threatened environmental activists and journalists in personal security and cyber-security techniques, in an effort to protect them against attacks and promote access to information about illegal logging and deforestation.
- ▶ In **Liberia**, the EU supported a Carter Center ATI training programme for government officials to help implement the country's 2010 Freedom of Information Act.
- ▶ In March 2017 the EU and the African Union organized a **Pan-African Conference on Freedom of Expression and Access to Information** in Kampala, Uganda. The event gathered participants from the African Union, the United Nations, the EU, inter-governmental organisations, and representatives from the freedom of expression advocacy community in Africa, African journalists' organisations, human rights defenders, trade union leaders and women rights activists. It aimed to take stock of the state of freedom of expression and access to information in Africa and the achievements made in implementing African Union instruments concerning freedom of expression and access to information. The conference took place 25 years after Windhoek Declaration on Free Press, which spearheaded development and protection of free press on the continent.



© AFIC

- ▶ In a regional project to combat money laundering in **West Africa**, the EU supported training for investigative journalists in ATI tools and technical support to governments for more effective implementation of ATI regulations.

Morocco: Access to Information in a Model Municipality

Access to information in favour of public service delivery improvement

Summary

This is a 2-year project to reinforce good governance and cooperation between elected officials, civil servants, civil society and the local population in the management of local politics in Morocco. The overall objective of the project is to contribute to the improvement of quick and easy access to information mechanisms to reinforce participation of multiple actors in local politics of Larache, Morocco.

Context

This project sought to implement the right to public information of citizens defined by the new Constitution and to increase the space for exchange between civil society, media and local authorities and public service. It contributed at the same time to increasing transparency of public action and knowledge and scrutiny by civil society, thus increasing service delivery effectiveness.

Objectives

- ▶ Provide citizens with fast and effective access to information.
- ▶ Strengthen the capacities of local actors to facilitate access to information.

Activities

- ▶ 237 members of local associations, media, staff members and elected members of local authorities trained in access to information.
- ▶ In January 2015, a field knowledge exchange was organised in Malaga, Spain, to support the study of good practices in access to information for Larache stakeholders for a group of 7 stakeholders: 1 journalist, 1 rep. of the chamber of commerce, 1 elected politician, 1 VP of the Larache Municipality, 1 civil servant, 1 officer of the Senate, 1 CSO President.

EU contracted amount

170 676 €

Benefiting zone

Morocco

Duration

January 2013 - January 2015

Implementing organization

Association Madinati
Larache

Funding instrument

EIDHR

Nature

Action Grants

Sector

Media and free flow of information



Access to information in favour of public service delivery improvement

Result

- ▶ A functional and equipped public information desk in the Larache Municipality with trained staff, saving time for citizens.
- ▶ Dedicated information tools, such as signs about services were installed, or CDs distributed to the population about rights and services.
- ▶ The online presence of the municipality was enriched with access to online info bulletins, available services, relevant contacts, procurements publications.
- ▶ Regular consultations and debates were organised between authorities and the public.

Facts and Figures

- ▶ 8000 Larache households received information about public services, access to information and concertation
- ▶ 30 journalists trained
- ▶ Concertation meetings organised
- ▶ 2 municipality desks

Honduras: Aiding the National Access to Information Institute

Supporting Access to Information – EU Delegation Honduras

Summary

This project was designed to: 1) evaluate previous EU technical and financial support for the country's Institute for Public Access to Information (IAIP), created to manage the online information systems and public disclosure regulations mandated by Honduras's 2007 ATI law; 2) train local journalists in the use of the law and its ATI mechanisms; 3) advise the IAIP on steps to facilitate use of its online systems by media, civil, and society at large and raise public awareness of ATI rights, the law, and IAIP information services; and 4) advise Honduras EUD on possible next steps in ATI support.

Project reports showed that despite the successful implementation of EU-supported technical improvements to IAIP's online ATI system, use of these ATI tools by media, civil society and the public at large remained very low by regional standards, including in comparison with neighbouring countries with ATI laws and systems. Training journalists in the use of ATI systems for investigative reporting can help change that pattern, but significant legal and structural reforms to the country's ATI system and regulations are also needed.

Context

These activities worked to strengthen the outcomes of EU Delegation efforts to improving access to information in Honduras, including the Delegation's past support of the work of the IAIP and the establishment of the Institute's public access and information web Portal Unico de Transparencia and the request platform SIELHO.

EU contracted amount

61 350 €

Benefiting zone

Honduras

Duration

July 2017 - March 2018

Implementing organisation

Thomson Foundation and Media4Democracy

Funding instrument

European Instrument for Democracy and Human Rights (EIDHR) via Media4Democracy.EU

Nature

Technical assistance

Sector

Media and free flow of information



Supporting Access to Information – EU Delegation Honduras

Objectives

- ▶ Increase understanding of EU Human Rights Guidelines on Freedom of Expression Online and Offline, notably in the area of access to information and the role of media in democracy support.
- ▶ Support implementation of the National Policy and Action Plan in Transparency and Access to Public Information in Honduras in support of public access and to provide best practice models and practical tools for replication by EU Delegations.
- ▶ Support citizens of Honduras in exercising their right to access public information.
- ▶ Increase the use of Institute for Access to Public Information (IAIP access) to information web-based platforms by media and the knowledge of and understanding of the relevance of the IAIP activities, notably those in association to the right to access information and means to act on that right.
- ▶ Develop the capacity of investigative journalists and editors to use the IAIP and other public information access systems, to analyse and visualise that information and to use that information in reporting and other means of exposing information to the public.

Activities

- ▶ National access to information institute (IAIP) implemented proposed technical and editorial changes to its websites, to facilitate public & media use.
- ▶ On the recommendation of the project consultant, IAIP organized public events and academic forums for country's first commemoration of the UN Day for Universal Public Access to Information.
- ▶ 2 training sessions for reporters and editors: 46 Honduran journalists (19 women, 27 men) took part in hands-on tutorials on data journalism & use of national ATI systems.

Best practice

- ▶ Assistance on gap analysis in ATI implementation and focused on the effective implementation of ATI provisions
- ▶ Promotion of the effective use by civil society and media actors of the public data
- ▶ Promotion of proactive disclosure
- ▶ Skills reinforcement of ATI stakeholders: media, government officials, EU Delegation staff

Mozambique: Access to Information about Education

Promotion of Access to Information: empowering citizens to know and claim their rights

Summary

A 2-year project supporting citizens and CSOs. The overall objective is to improve Access to Information (ATI) through citizen reporting and CSO advocacy.

Context

This project sought to address the gap between the existence of a solid legislation on Access to Information in Mozambique and its actual implementation. The project aimed at raising the level of awareness on the right to information by civil servants, CSOs and citizens in the domain of Education in two regions. Systems were set up to allow citizens to report via SMS, radio, or social media and communicate directly with service providers. Target groups were 325 Change Agents; 40 CSO representatives; 40 local authorities. Community radios and schools were associated with the action.

Objectives

- ▶ Raise awareness of citizens on their rights and their capacity to demand they are respected.
- ▶ Strengthen coalitions of CSOs and efficient advocacy on access to information on at local and national levels.

Activities

- ▶ Implantation of an interactive Open Source platform to measure and increase citizens' capacity to exercise their right to information; training of 325 change agents ATI and use of the platform; release of information about ATI to CSOs and local civil servants, consolidation and mapping of data, release of assessment reports at national and local levels.
- ▶ Training of CSOs on ATI (legal framework, best practices, human rights standards), advocacy strategies, collaborative network working methods, advocacy planning and campaigning, organisational development of coalitions.

Total Cost

386 808 €

Benefiting zone

Mozambique (Niassa and Maputo)

Duration

March 2013 to February 2016

Implementing organization

IBIS

Funding instrument

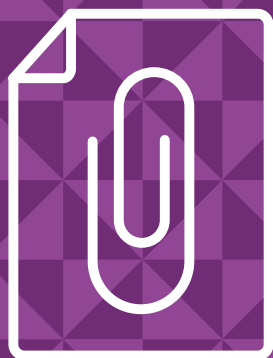
EIDHR

Nature

Action Grants

Sector

Media and free flow of information



ANNEXES

ANNEX 1: FOIA-NET METHODOLOGY FOR ASSESSING SDG16-10-2 IMPLEMENTATION:

Measuring RTI Implementation

The adoption, in 2015, of the Sustainable Development Goals (SDGs) represents an important opportunity for assessing the progress of States in a wide range of development areas. The SDGs cover a much broader set of issues than their predecessors, the Millennium Development Goals (MDGs). SDG 16, which is 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels', is particularly relevant for right to information (RTI) advocates. And, within that, SDG Indicator 16.10.2 (the indicators are the concrete achievements that will be monitored to assess progress towards the SDGs) is directly relevant to RTI, stating: 'Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.' Every country is expected to implement all of the SDGs.

This document contains a methodology prepared by the Freedom of Information Advocates Network (FOIANet) which is designed to be a simple tool to help civil society organisations conduct parallel assessments of the extent to which States have met SDG 16.10.2. Existing tools – such as the RTI Rating (www.RTI-Rating.org) – already tell us whether or not States have adopted right to information (RTI) laws and, if so, how strong those laws are. The purpose of this methodology is to provide a simple, standardised tool to assess the extent to which States with RTI laws are implementing them properly. Three main assessment areas for measuring implementation are included in this methodology, namely the extent to which a State is proactively disclosing information, the extent to which institutional measures have been put in place to assist with implementation, and the extent to which requests for information are being responded to properly (assessed via a simple request testing approach).

Most of the assessment tools focus on the performance of individual public authorities, since they are the primary duty-bearers under RTI laws. Because it is not realistic to assess every public authority, this methodology calls on reviewers to select five to ten different public authorities in each country being assessed. These authorities should be selected so as to represent different parts of the public sector (such as ministries, oversight or regulatory bodies, public corporations and so on).

This methodology is not designed to provide a ranking of States or public authorities. At the same time, a three-point final grade of red, yellow or green is awarded so as to provide some comparative measure, as well as some indication of whether

or not a State is meeting its SDG 16.10.2 obligations. We recognise that some of the assessment tools used in this methodology ultimately require judgement calls. However, the way that results are aggregated across many variables means that such judgements are averaged out, meaning that final aggregated grades will be fairly robustly reflective of the performance of a country (even if there will also necessarily be some borderline cases).

An excel sheet accompanies this methodology which facilitates the consistent recording of data collected. It also includes built-in formulas to calculate the scores in line with the scoring instructions. Additional information can also be recorded in a Word document.

Assessment Area One: Proactive Disclosure⁷⁷

Proactive disclosure is the release of information by public authorities without a request. This type of disclosure enables many people to access information from their government. As it is part of international standards relating to RTI, we also need to assess it as part of this methodology. Public authorities should publish on a proactive basis both institutional information and information about their procedures for releasing information. The two tables below set out the minimum categories of information that each public authority should disclose proactively.

To measure proactive disclosure, reviewers should assess whether or not the authorities that are being assessed make the information in the two tables below available, whether through their websites and/or in other ways. Many RTI laws include a list of information which must be made proactively available but authorities should be assessed against the full list, even if the national RTI does not require this information to be published.

The assessment of whether or not information is published should be assessed against a five-point scale: (1) Full; (2) Full to Partial; (3) Partial; (4) Partial to None; and (5) None. The assessment of which score should be allocated, apart from (1) and (5), which are clear, ultimately depends on an evaluation of the reviewer of both what should be published in each category and how well the public authority has done vis-à-vis this. However, to try to ensure some consistency in the way scores are allocated, 'Partial' should be awarded where the authority has published around one-half of all of the information, 'Full to Partial' where the amount is clearly above one-half, and 'Partial to None' where the amount is clearly less than one-half.

⁷⁷ This section draws heavily on the Right to Information chapter of the OGP's Open Government Guide.

Availability of institutional information

Type of information	Indicator	Published (Full/Full to Partial/ Partial/ Partial to None)	Data Source (website or location of information)
Institutional	Are functions of the authority and its powers published?		
Organisational	Is Information on personnel, names and contacts of public officials published?		
Operational	Are any authority strategies, plans or policies published?		
Legislation	Are the laws governing the authority's operations published?		
Service Delivery	Are descriptions of the main activities undertaken and services offered by the authority, including, for the latter, any forms required to be filled out and deadlines for application, published?		
Budget	Is information about the projected budget, actual income and expenditure, and/or audit reports published?		
Public Procurement and Contracts	Is detailed information on public procurement processes, criteria, outcomes of tenders, copies of contracts, and reports on completion of contracts published?		
Registers	Is information about the mechanisms and procedures for consultation and public participation published?		
Participation	Is information about the mechanisms and procedures for consultation and public participation published?		

Availability of information about the Right to Information

Type of information	Indicator	Published (Full/Full to Partial/Partial/Partial to None)	Data Source (website or location of information)
RTI information	Is an annual report on the status of implementation of the RTI law published including number of requests granted, refused and time taken to respond?		
How to make an RTI request	Is information on how to make an RTI request published, including contact details?		
Costs for publications	Is information about the costs/fees for paying for photocopies of information?		
List of information requested	Is information related to RTI requests which were granted published?		

Notes:

- ▶ The information listed above may not be available for different reasons. For example, the information may simply not have been disseminated. However, another reason is that a website might not be working or the authority might be building a new website. For purposes of this assessment area, unless the non-availability is very short term (for example because a website is temporarily taken down but so briefly that it is still possible to conduct an assessment during the period of evaluation), these reasons are irrelevant and scores should be allocated based on what information is actually accessible.
- ▶ All 12 of the categories on the two lists above are considered to be relevant to all public authorities. Some authorities will have more information falling within one or another category, but no authority should simply ignore a category. As a result, every public authority being assessed should be given a score for each category.

Scoring

Authorities should be given the following 'marks' for each result area:

Full	Full to Partial	Partial	Partial to None	None
100%	75%	50%	25%	0%

Individual authorities should then be awarded a global mark by averaging their scores for each result area (i.e. by adding their scores for each result area and then dividing by 12, the number of result areas). Individual authority's global marks should then be averaged to obtain an overall score (i.e. the global mark for each authority should be added and then divided by the number of authorities assessed).

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Assessment Area Two: Institutional Measures

This assessment area looks at the institutional measures that have been put in place to support implementation of RTI laws. It is divided into two sections. The first focuses on the overall framework for implementation (i.e. it assesses central government actions and only needs to be applied once for each country). The second focuses on measures by individual authorities (and should, as a result, be applied separately to each authority being assessed). The two tables below reflect the substance of what is being assessed in each area.

1. For both tables below, the first column lists actions which should be taken to ensure that an RTI law is being implemented properly. The second column indicates whether or not the listed action has been taken while the remarks column allows researchers to comment on how it has been done.
2. Both tables are considered to represent minimum requirements for the effective implementation of an RTI law. Therefore, the presence or absence of these actions should be assessed regardless of whether or not the law calls for them. Thus, a country should be allocated a mark of 'no' if there is no independent oversight body, even if the law does not create such a body.

Note:

- ▶ A Nodal Agency is a central authority, often located inside of government but it could also be an independent body, which has certain responsibilities in the areas of coordination, capacity building and/or standard setting relating to RTI, but which is not an oversight body because it does not deal with complaints about requests for information. In some countries, this is a ministry which leads on RTI, while in other countries it is a human rights commission.

Table 1: Overall Framework for Implementation

Question/ Issue	Yes/No/ Partially	Remarks
1. Has government established an RTI Nodal Agency? <i>(If yes, comment on its roles and functionality).</i>		
2. Has government established an independent RTI oversight body, such as an information commission? <i>(If yes, comment on its work and how effective it has been).</i>		

Table 2: Implementation by Individual Public Authorities

Question/ Issue	Yes/No/ Partially	Remarks
1. Has the authority appointed an Information Officer who is responsible for RTI implementation? <i>(If yes comment on how the mandate functions).</i>		
2. Does the authority have an RTI implementation plan? <i>(If yes, comment on the extent to which such a plan has been operationalised).</i>		
3. Has the authority developed/ issued guidelines for receiving and responding to information requests? <i>(If yes, comment on their usage).</i>		
4. Does the authority prepare and publish annual reports, including statistics on requests? <i>(If yes probe for the availability of the latest report and the period it relates to, otherwise the any hindrances to that effect).</i>		
5. Has the authority provided RTI training to its information officers? <i>(If yes, comment on when the most recent training programme was conducted).</i>		

The remarks column for both tables should be used to record relevant information which may be used for purposes of scoring. For example, where the independence or powers of the oversight body is limited, this should be mentioned. Where some training has been provided to information officers but this is limited in scope or depth (i.e. superficial), this could also be recorded.

Scoring

The following ‘marks’ should be allocated for each result:

Yes	Partially	No
100%	50%	0%

‘Yes’ should be awarded where the result is present and is of good quality. ‘Partially’ should be awarded where the result is present but has some weaknesses. For example, there may be an RTI Nodal Agency but it may have done nothing to support RTI, or the oversight body may not be independent or may lack the powers it needs to do its job properly. Alternately, there may be an RTI implementation plan, but it is of low quality or has not been updated for a long time. Annual reports may have been prepared only periodically or they may be very cursory in nature. ‘No’ should be awarded where the result is not present or is of such low quality as to be almost completely ineffective. In the case of appointment of an information officer, only marks of ‘yes’ or ‘no’ should be applied.

It may happen that it is difficult to find information about some of these institutional measures, such as whether an information officer has been provided with training. Although formally this might seem to warrant a ‘not applicable’ response, thereby removing the action from the scoring, the methodology calls for a ‘no’ to be allocated. This is because all of this information should be readily available (in the example above, the information officer should simply indicate to the reviewer whether or not he or she has received training) and the mere non-availability of this information is a serious RTI failing.

Average marks should then be generated for each of the seven (two plus five) actions being assessed here. For the overall framework, or central measures, the average will simply be the single mark obtained for the country. For the measures by individual public authorities, the average will be obtained by calculating the average mark for all of the authorities assessed. The overall score for this assessment area should then be obtained by calculating the average of all of the average marks for the seven actions.

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Assessment Area Three: Processing of Requests

This is the most open-ended of the three approaches for measuring implementation because we felt it was important to leave it open to participants to choose questions that not only assessed implementation but also were relevant to their work or that of their partners.

The basic methodology involves making two or three requests for information to each of the five to ten focus public authorities. Some care needs to be taken at this point to avoid alerting the authorities to the fact that a test is going on. If the number of requests is low, so that even making two requests to a public authority will raise suspicions, this could be cut to just one request. You might think about who should make the requests and about using different individuals so as not to raise suspicions.

Some attention should be given to the sensitivity of the requests in terms of whether or not exceptions are potentially engaged. The differences between requests in different countries in this regard will mean that the results will never be strictly comparative. However, to limit this, we suggest that you aim to ask a range of questions, from those for which it is absolutely clear that no exception is engaged to those where this is more arguable (although all requests should aim to ask for information that you do not consider to be exempt under the law).

Information about making the request and how it was responded to should be recorded, ideally along the lines of the table below (although in practice you should use the attached excel file for this).

	Date Request Submitted	How Request was Filed	Date Receipt Received	Submitted (Y/N)	Date, if any, of response	Result	How information provided	Fee charged, if any	Comments
Authority 1, Question 1		(i)	(ii)	(iii)		(iv)	(v)		
Authority 1, Question 2									
Authority 2, Question 1									

...

- (i) Post, e-mail, fax, hand delivered
- (ii) The date, if any, you receive an acknowledgement of or receipt for the request
- (iii) If you were unable to submit, provide an explanation in Comments
- (iv) See the list below
- (v) Electronic copy, hard copy, right to inspect, and so on

The following 'manner of processing' issues should be recorded in the comments:

1. Whether a receipt was provided (if the law provides for this and, if relevant, within the time limit set out in the law).
2. Whether the response was timely (again, in accordance with the time limits set out in the law and any extensions were appropriate)
3. Whether information was provided in the format desired (again, if the law provides for this).
4. Whether and any fee charged was appropriate (again, in accordance with the limits in the law).

The Result will be one of the following (explanations below):

1. **Oral Refusal**
2. **Written Refusal (in whole or in part)**
3. **Transferred**
4. **Referred**
5. **Mute Refusal**
6. **Information received**
7. **Incomplete Answer**
8. **Information Not Held**
9. **Unable to Submit**

From among these, (6) is a legitimate result, (2), (3), (4) and (8) might be legitimate results and (1), (5), (7) and (9) are never legitimate.

Scoring

The request processing approach generates two types of results, the four issues identified above as ‘manner of processing’ issues and the final result. For each of these five issues, the following ‘marks’ should be allocated:

Yes	Partially	No
100%	50%	0%

The following considerations should be taken into account when allocating marks:

1. Provision of a receipt will normally receive a ‘yes’ or ‘no’ mark although ‘partially’ might be awarded, for example if the receipt was provided outside of the time limit set out in the law.
2. For timeliness, ‘yes’ should be awarded for a response which is provided within the initial time limit or within the allowed period for extensions, if any extension claimed is deemed to be legitimate (see below). ‘No’ should be awarded where the time limits were formally not respected (whether the initial time limits or an extension), or perhaps where a claimed extension was, although formally proper (i.e. within the formal conditions of the law), deemed to be grossly excessive. ‘Partially’ should be awarded where breaches of the time limits were minor (such as responses being a few days late) or where formally proper extensions were not considered to be legitimate. There may be many reasons for this. For example, in some cases, the law sets out conditions for claiming an extension and these might not appear to be present. In other cases, the request could be too simple to need an extension. In yet other cases, the extension could be too long compared to the complexity of the request. Ultimately here, as in other cases in this methodology where judgement calls need to be made, common sense is needed.

3. For format, 'yes' should be awarded where the information is received in the format desired or any refusal to do so appears to be sanctioned by the law (for example because it would harm the record). 'No' should normally be awarded where the information is not provided in the desired format and this does not appear to be sanctioned by the law. A 'partially' score would be rare here but it might be awarded where, even though the information was not provided in the desired format and this does not appear to have been sanctioned by the law, the authority appears to have paid some attention to this issue and made some effort to comply.
4. For the fee, 'yes' should be awarded whether either no fee was charged or any fee was in accordance with the law. 'No' should be awarded where a fee diverges significantly from what the law allows, and 'partially' should be awarded where a fee diverges somewhat from what the law allows. Ultimately, these are judgement calls based on common sense.
5. 'Yes' should be awarded for Information Received (Result 6).
6. 'No' should be awarded for Oral Refusal (Result 1), Mute Refusal (Result 5) and Unable to Submit (Result 9).
7. An Incomplete Answer (Result 7) should get a 'no' where a significant part (i.e. 50% or more) of the information requested was not provided and a 'partially' where a significant part of the information was provided. Ultimately this is again a common sense judgement call.
8. The scoring of the result Written Refusals (Result 2) will depend on an assessment of the legitimacy of the grounds for refusal. Since the methodology calls for requests to relate to information which is not exempt, a 'yes' for this result will be rare and be awarded only where the grounds for the full or partial refusal appear to be legitimate. Where the grounds for the full or partial refusal appear to be somewhat reasonable, even if wrong, 'partially' may be awarded, while unreasonable refusals should earn a 'no'. In case of a partial refusal, where only a small amount of information has been removed, even based on an unreasonable refusal, 'partially' may also be awarded.
9. The scoring of the result Information Not Held (Result 8) will depend, first, on an assessment of whether or not this claim is accurate. If it is not deemed to be accurate – for example because it is simply not credible that the authority does not hold the information or because the authority is required by law to hold it – then a 'no' score should be given. If it is deemed to be quite unlikely to be accurate, 'partially' might be awarded. Even if the claim is correct, 'partially' should be awarded when the authority is supposed to transfer or refer the request to

another authority but does not do this (which again involves a judgement call as to whether or not the initial authority should know of another authority which holds the information).

10. The scoring of Transferred (Result 3) and Referred (Result 4) will depend on whether this action was, according to the law, legitimate. Where the underlying grounds for this action (normally that the authority does not have the information (see above) but sometimes also because the information is more closely connected to the work of another authority) are not deemed to be present, a 'no' will normally be appropriate, unless there are some mitigating circumstances which justify a 'partially'. Where the underlying grounds are present, a 'yes' will normally be warranted, unless the law calls for a transfer and a referral was given (which should get a 'partially').

The scores for 'manner of processing' issues and the final result should be calculated separately. An average manner of processing score should be calculated for each request by averaging the four individual processing scores. These should then be averaged among all requests to obtain an overall manner of processing score. Similarly, the result scores should be averaged among all requests to obtain an overall result score. To obtain a final overall score, average the two interim overall scores (one for processing and one for result). Note that this places one-half of the weight on the (single for each request) result score and one-half on the (combined) process scores.

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Explanation of Results

1. Oral Refusal

This is when an official from the authority informs you orally (spoken word or telephone) that they refuse to provide the information. If any reasons are given orally for refusing the request, these should be recorded under comments.

2. Written Refusal (in whole or in part)

This is when a refusal to provide the information, in whole or in part, is given in any written form (e.g. letter, e-mail or fax). Where the refusal is only partial, information may be blacked-out or “severed” or you are provided with only some of the relevant documents. The grounds given for refusing should be recorded under comments.

3. Transferred

This is when the authority transfers the request to another authority. Whether the authority informs you about this or not, and any reasons given, should be recorded under comments.

4. Referred

This is when the authority informs you that you should lodge the request with another authority (as opposed to transferring it itself). Once again, any reasons given for not responding directly to the request should be recorded under comments.

5. Mute Refusal

This is where the authority simply fails to respond at all to a request or where answers are provided which are so vague that they cannot be classified in any other category listed here. A mute refusal is deemed to apply when the period in the access to information law for responding to requests has expired.

6. Information Received

This is when access is granted and information which responds to the request and which is complete or relatively complete is provided.

7. Incomplete Answer

Information is provided but it is incomplete, irrelevant or in some other way unsatisfactory. This is different from a partial refusal inasmuch as the authority appears to be treating this as a complete response (even though it is not) and it has not indicated that it is refusing information.

8. Information Not Held

This is where the authority responds claiming that it does not hold the information. Whether this seems to be credible or not should be recorded in the comments.

9. Unable to Submit

This is where, for whatever reason, you are simply not able to make the request. This should be extremely rare but it does sometimes happen, for example, that an authority will just not accept a request.

Final Grading

Final grades should be assigned to States and may also be generated for individual public authorities if desired. For a country, there should be three overall colour grades of red, yellow and/or green, one for each assessment area (proactive disclosure, institutional measures and request processing). Similarly, for each individual public authority, three overall colour grades can be calculated, one for each assessment area.

From these three colour grades, the final grades should be allocated as follows:

# of Red	# of Yellow	# of Green	Final Score
3	0	0	Red
2	1	0	Red
2	0	1	Red
1	2	0	Yellow
1	1	1	Yellow
0	3	0	Yellow
0	2	1	Yellow
1	0	2	Green
0	1	2	Green
0	0	3	Green

ANNEX 2:



Public lecture held in commemoration of the World Press Freedom Day, organised by the Centre for European Studies (CES), in collaboration with Media4Democracy and the European Union Delegation to Ghana.

The Right to Information in 2018

It is important to have clarity on the core principles of the right of access to information, as Ghana is currently considering the adoption of a Right to Information Law. It is also important to understand how citizens' right to information is ensured in practice.

WHAT IS THE RIGHT OF ACCESS TO INFORMATION?

The right of access to information is a fundamental right of all persons to access information held by public bodies.

What this means, in practice, is that everyone has the right to ask for information from public bodies and, with only limited and duly justified exceptions, access must be granted by providing the requester with copies of the documents. In the digital age, copies may be digital or on paper, according to the preference of the requester.

What this also means, in practice, is that there is an obligation on governments to do two things. The first is to adopt an access to information law that sets out the mechanisms for requesting and receiving information. The second is to publish and disseminate key information about what different public bodies are doing.

Access to information is a right with two parts:

I. Proactive (Active Transparency)

The positive obligation of public bodies to provide, to publish and to disseminate information about their main activities, budgets and policies so that the public can know what they are doing, can participate in public matters and can control how public authorities are behaving. ➡

II. Reactive (Responding to Requests)

The right of all persons to ask public officials for information about what they are doing and any documents they hold and the right to receive an answer. The majority of information held by public bodies should be available, but there are some cases where the information won't be available in order to protect privacy, national security or commercial interests.

IS THE RIGHT TO INFORMATION REALLY A FUNDAMENTAL HUMAN RIGHT?

Yes! The UN Human Rights Committee in 2011 confirmed that this right is an inherent part of the right to freedom of expression and information set out in Article 19 of the Universal Declaration of Human Rights, as well as in Article 19 of the International Covenant on Civil and Political Rights.

Essentially, in order to be able to exercise my right to form and to express an opinion, I need information. And, in particular, when that information is in the hands of public bodies, it can be considered public information.

What did the UN Human Rights Committee say exactly?

In its General Comment No. 34 of July 2011, the UN Human Rights Committee said that the right to freedom of expression as set out in Article 19 embraces:

a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.

Media: The UN Human Rights Committee also made special mention of the role of the media, underscoring that 'the right of access to information includes a right whereby the media has access to information on public affairs.'

Human Rights: This is also the right to know about protection of other human rights: 'persons should be in receipt of information regarding their Covenant rights in general.'

DOES EVERYONE AGREE THAT THE RTI IS A FUNDAMENTAL RIGHT?

Yes! It's not only the UN Human Rights Committee saying this. Over 90 constitutions around the world – including Ghana in Article 21.f of the 1992 Constitution – recognise the right of access to information.

Other international human rights courts have also recognised this right. In September 2006, in the case of *Claude Reyes v. Chile*, the Inter-American Court of Human Rights ruled that the protection of freedom of expression and information under Article 13 of the American Convention on Human Rights also protects:

...the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.

The European Court of Human Rights has also confirmed that this is a fundamental right linked to freedom of expression, and that the right is especially strong where the information is needed by media and civil society groups wishing to play their important watchdog role in society. Key cases here include *TASZ v. Hungary* (April 2009), *Youth Initiative for Human Rights v. Serbia* (June 2013), and *Magyar Helsinki Bizottság v Hungary* (November 2016).

The right to participate in decision making by public bodies is also an essential feature of the right of access to information. Such a linkage also been made in the jurisprudence of the Court of Justice of the European Union, for example, in the case of *Council of the European Union v. Access Info Europe* (October 2013), where the Court underscored the relationship between accessing documents and participation in EU decision making, stating that ‘*If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process*’ and that they should ‘*have access to all relevant information.*’

THE RIGHT TO INFORMATION: PRINCIPLES & BENEFITS

The right of access to information is founded on the basic principles of the right to freedom of expression, the right to form and express opinions, and the right to receive and impart information without interference and irrespective of frontiers.

A key principle behind the right of access to information is that public bodies are elected by the people and sustained by taxpayers’ funds, so the public should have a right to know how that power is being used and how that money is being spent. Transparency thus contributes to the fight against corruption and to the defence and promotion of human rights.

Having access to information, related to the activities of public bodies, also permits the public to participate in decision making, by engaging in the debate and by contributing inputs and perspectives that decision makers can take into consideration, therefore contributing to better policies and laws.

Transparency has benefits for both public & governments:

Transparency for accountability: The public has the right to hold the government and public officials accountable for their actions and for the decisions they make. To do this, information is needed. The role of the media is particularly important here because journalists play the role of ‘public watchdogs’. Any government that cares about fighting corruption should care about transparency.

Transparency for participation: In a democracy it is essential that people can access a wide range of information so that they can participate in decision making about matters that affect them. That means not just participating in elections but also in public debate and decision making between elections. Governments that want to ensure that it makes decisions that best serve the public interest should care about transparency.

Transparency for efficiency: Responding to requests for information also has the benefit of encouraging public institutions to organise their information. In particular, proactive disclosure of information encourages better information management. This, in turn, should result in better, more fact-based decision making inside each institution, as well as more effective communication between public bodies. Governments that care about efficiency should care about transparency.

WHAT ABOUT RIGHT TO INFORMATION LAWS?

There are now 118 access to information laws around the world. Although they vary in quality, most of them respect the core principles of the right of access to information.

- › **Access to information is a right of everyone:** Anyone may request information, regardless of nationality or profession. Natural and legal persons have this right. There should be no citizenship requirements and no need to justify why the information is being sought.
- › **Public bodies should proactively publish core information:** Public bodies should publish information about their activities, as well as about how to request further information. This information should be current, clear, and in plain language. It should be published in an open format, with no limitations on reuse.
- › **The right applies to all public bodies:** The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.
- › **The right applies to all information:** The right applies to all information held by public bodies, which includes documents, new and archived, but also digital material such as emails, spreadsheets and databases; and it also includes

audio-visual material such as photographs or video or audio recordings. It doesn't matter when the information was created nor where it came from: the key is that the information is held by the public body to which the request is made.

- **Access is the rule – secrecy is the exception!** All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and codified in national law. Refusals must always be justified based on exceptions in the law. There must be a public interest test that can override secrecy.
- **Making requests should be simple:** Making a request should be simple! Both oral and written requests should be permitted. The requester should only have to provide a delivery address, (electronic or postal), and say which information or documents he or she would like.
- **It's a right so it must be free of charge:** Information should be provided free of charge except for very large numbers of copies where photocopying or postage is expensive; digital delivery should always be free.
- **Time is of the essence:** Information should be provided immediately or within a short timeframe.
- **Officials have a duty to assist requestors:** Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.
- **The right should be guaranteed by an independent body:** An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.
- **Everyone has the right to defend their right to information:** Everyone must have the right to appeal to an oversight body and/or the courts, when they believe that the right to information has, in some way, not been fully respected. This can include appealing against refusals, against long timeframes, and against failures to publish information proactively.

HOW IS THE RIGHT BEING RESPECTED AND PROMOTED GLOBALLY?

Government transparency is on the march with 118 countries now having laws that give a right of access to information (access to information or freedom of information laws).

For this reason, the European Union is promoting this right, as set out in the **EU Human Rights Guidelines on Freedom of Expression Online and Offline** (2014), which support the adoption of access to information laws 'in accordance with internationally recognised principles, underlining that in all democratic societies, transparency of public activities plays a crucial role for the confidence and trust of the population.'

It is also reflected in the **2030 Agenda for Sustainable Development**, with the specific goal 16.10 to 'ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.' Other development goals also impact and broaden the access to information in the digital era.

In the **New European Consensus on Development**, the EU and its Member States commit to promote accountable and transparent institutions, including national parliaments and foster participatory decision-making and public access to information.

In 2011, a new global alliance of democratic countries was formed, the **Open Government Partnership**, which is predicated on the principles of promoting transparency, accountability and participation, and which has as a membership requirement of having an access to information law or, at the very least, being in the process of adopting one and ensuring that this occurs, once a member of the partnership. To date, over 70 countries and 20 sub-national entities are members of the OGP, and between them they have made over 2,500 commitments to advance on opening up their governments working in collaboration with civil society organisations.

There is a vibrant global civil society movement promoting transparency, with activists, journalists and members of the public reporting daily on successes in obtaining information, as well as denouncing obstacles and frustrations in the implementation of this right.

All this is being done out of a recognition that the public's right to scrutinise how power is exercised and the right to participate in decision making, is a *sine qua non*, an essential feature, of a 21st Century democracy.

REFERENCES AND RESOURCES:

2030 Agenda for Sustainable Development: https://ec.europa.eu/europeaid/new-european-consensus-development-our-world-our-dignity-our-future_en

African Commission Model Law for African States on Access to Information: <http://www.achpr.org/instruments/access-information/>

Commonwealth Human Rights Initiative Ghana: <http://www.humanrightsinitiative.org/content/accra-ghana>

Council of Europe Convention on Access to Official Documents: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>

EU Human Rights Guidelines on Freedom of Expression Online and Offline: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf

European Commission transparency page: https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency_en

European Union Regulation 1049 on Access to Documents: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A14546>

Freedom Info: news and developments on the right of access to information: www.freedominfo.org

Freedom of Information Advocates Network: www.foiadvocates.net

Ghana Journalists Association: <http://www.gjaghana.org/>

Ghana RTI Coalition: <http://www.rticampaignghana.com/>

New European Consensus on Development: https://ec.europa.eu/europeaid/new-european-consensus-development-our-world-our-dignity-our-future_en

Open Development: Access to Information and the Sustainable Development Goals: <https://www.article19.org/wp-content/uploads/2017/07/Open-Development-Access-to-Information-and-the-SDGs-2017.pdf>

Open Government Partnership: <https://www.opengovpartnership.org/>

RTI Rating of all laws globally: www.RTI-Rating.org

The State of The Right To Information In Africa report 2017 by the Africa Freedom of Information Centre: <https://africafoicentre.org/download/the-state-of-the-right-to-information-in-africa-report-2017/#>

UNESCO International Day on Universal Right to Information: <https://en.unesco.org/iduai2017/about-day>

Contact:

Centre for European Studies University
of Ghana

ces@ug.edu.gh / +233 30 397 4621

Professor Ransford Gyampo:

vangyampo@yahoo.com / +233 24 427 7275

📍 Media4Democracy.EU

Ravensteingalerij 4, 1000 Brussels,
Belgium

✉ caroline.giraud@media4democracy.eu

🌐 www.media4democracy.eu/

🐦 twitter.com/media4dem

📘 www.facebook.com/Media4democracy.eu/

Media4Democracy is a technical assistance facility established by DEVCO B1 supporting Delegations in developing contexts to implement the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*. Media4Democracy provides advocacy support, capacity building and in-country technical support to Delegations.

Consortium: Article19 / DW Akademie / European Partnership Democracy /
Free Press Unlimited / Particip / Thomson Foundation

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of Media4Democracy.EU and can in no way be taken to reflect the views of the European Union.

ANNEX 3:

EXPERT RESOURCES AND ATI REFERENCE DOCUMENTS

- ▶ AccessInfo Europe: <https://www.access-info.org/>
- ▶ Access to Information – Lessons from Latin America (UNESCO 2017):
<http://unesdoc.unesco.org/images/0024/002498/249837E.pdf>
- ▶ AFRICA – Guidelines on ATI and Elections (Special Rapporteur, Africa CHPR):
http://www.achpr.org/files/special-mechanisms/freedom-of-expression/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf
- ▶ Article 19 – Access to Information & the SDGs (2017):
<https://www.article19.org/wp-content/uploads/2017/07/Open-Development-Access-to-Information-and-the-SDGs-2017.pdf>
- ▶ Atlanta Declaration on ATI & Action Plan for the Advancement of the Right of Access to Information (Carter Center 2008):
https://www.cartercenter.org/resources/pdfs/peace/americas/ati_declaration_text_en.pdf
- ▶ Democracy & Access to Information – EU4Democracy advocacy package (2017): <https://europa.eu/capacity4dev/eu4democracy>
- ▶ Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws (World Bank Institute 2009):
<http://www.freedominfo.org/wp-content/uploads/documents/WBI-Puddephatt.pdf>
- ▶ Freedom of Information Advocates Network: <http://www.foiadvocates.net>
- ▶ Freedom Info: news on the right of access to information:
<http://www.freedominfo.org>
- ▶ Global Rating of national ATI/RTI laws: <http://www.RTI-Rating.org>
- ▶ Legal Leaks – A guide for journalists on how to access government information (OSCE, AccessInfo Europe & The Network for Reporting on Eastern Europe n-ost): http://www.legalleaks.info/wp-content/uploads/2016/04/Legal_Leaks_English_International_Version.pdf
- ▶ Proactive Transparency – The Future of ATI? (World Bank Institute 2009):
http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf
- ▶ UNESCO International Day on Universal Right to Information:
<https://en.unesco.org/iduai2017/about-day>



ABOUT MEDIA4DEMOCRACY

Media4Democracy is an EU-funded Technical Assistance Programme strengthening the European Union Delegations' ability to implement the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*.

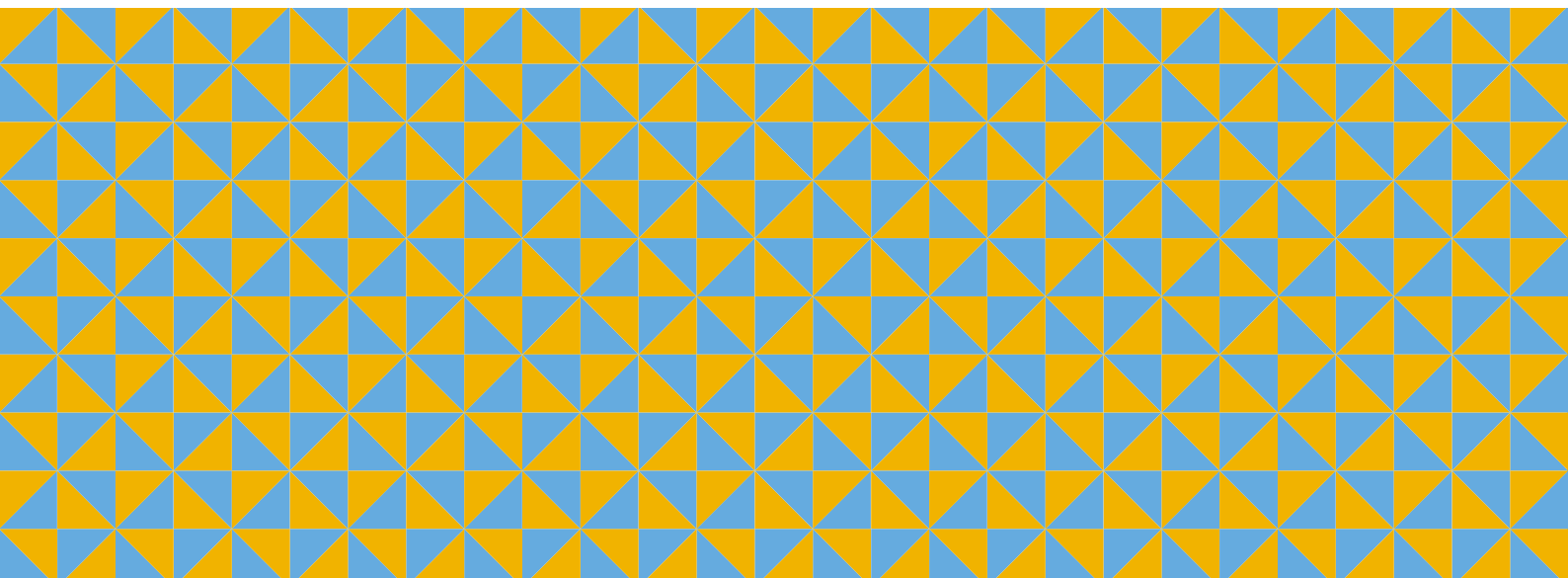
With free expression and open media increasingly under pressure, Media4Democracy supports EU efforts to strengthen these fundamental drivers of democracy and development. Media4Democracy help EU Delegations across developing contexts take appropriate actions freedom of expression, media pluralism and access to information, while developing near-, medium and long-term strategies, including as part of strategic cooperation development programmes.

Media4Democracy is based in Brussels and provides advocacy support and capacity building services to all EU Delegations (EUDs) worldwide, as well as customised technical support to individual EU Delegations.

The team of three senior experts also utilises and deploys a global network of leading freedom of expression and media professionals, working together to provide tailored support and expertise to EU Delegations.

Media4Democracy is backed by a Consortium of prominent European organisations from the field of freedom of expression, media development and democracy support: Article19, Deutsche Welle Akademie, European Partnership for Democracy, Free Press Unlimited and the Thomson Foundation.

Media4Democracy was established by the European Commission's Directorate-General for International Cooperation and Development (DEVCO) in January 2017 under the European Instrument for Democracy & Human Rights (EIDHR).



SUPPORTING ACCESS TO INFORMATION,
A PRACTICAL GUIDE FOR EU DELEGATIONS

Printed version
MN-03-18-378-EN-C
ISBN: 978-92-79-96543-2
doi:10.2841/78253

PDF version
MN-03-18-378-EN-N
ISBN: 978-92-79-96542-5
doi:10.2841/289739

© European Union, 2019

Contacts:

Media4Democracy.EU

Ravensteingalerij 4, 1000 Brussels, Belgium

info@media4democracy.eu

www.media4democracy.eu/

twitter.com/media4dem

www.facebook.com/Media4democracy.eu/

DEVCO B1: EUROPEAID-B1@ec.europa.eu

