

**ARTICLE 19**

# **Using access to information to combat corruption**

Guide on the Enforcement of Articles 10 and  
13 of the UNCAC by Governments and Civil  
Society

2022

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## EXECUTIVE SUMMARY

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**In this Guide, ARTICLE 19 shows how provisions of the United Nations Convention against Corruption (UNCAC) can be used as a strong basis to continue improving the implementation of the right to access to information (ATI) worldwide.**

The Guide begins with a focus on the role of ATI in fighting corruption. The first section seeks to present the magnitude of research and models applied in the analytical framework describing causal links between access to information and corruption. The effects of corruption are very much linked to the local contexts where the new laws and regulations promoting the ATI are introduced. The existing theoretical corpus shows us the importance of ATI in promoting transparency and the fight against corruption, but also reminds us of the importance of the general framework of its application and how the institutional environment, routines of the various political, economic, cultural and social actors attenuate or accelerate the changes to be expected. We conclude that the (dis)enabling environment where ATI is introduced is a major determinant for it to be a tool for promoting transparency and reducing corruption, or a lens for the public to see with more clarity how deeply corruption has pervaded their society.

The second section describes how the advent of the UNCAC and its different mechanisms has impacted the development of ATI legislation in States Parties to the UNCAC and the plethora of resolutions and recommendations that have emerged to strengthen the legal arsenal for fighting corruption in general. These later informed and gave rise to initiatives and expertise focused on specific sectors.

The subsequent sections of this Guide address several specific initiatives that emerged over the last two decades, attracting diverse constituencies and showing the importance of collaboration between States Parties to the UNCAC and non-governmental groups to improve the implementation and measurement of ATI, and to create synergies in the fight against corruption at the local, regional and international levels. As more and more countries adopt ATI laws with the aim to reduce corruption, it is important to analyse the causal link between increased transparency and the reduction on public sector corruption. A study showed that in India, the adoption of a right to information Act that by extension helped increase local participation improved underprivileged citizens' access to public goods and decreases corruption. However, we need to keep in mind that the adoption of legislation is not sufficient on its own. There is also a need for greater media freedom, free and fair elections and a dynamic civil society to hold governments to account.

The Guide identifies several general ATI measures to be considered and supported when the political will exists. Policy can only thrive if the environment enables it to. ATI cannot be a sustainable tool in the fight against corruption if no one can effectively and actively use that information. These measures can be supported by specific professions and activists and take time and resources to bear fruits (e.g. investigative journalism). Civil society and a strong independent media are key in the fight against corruption as they are the ones that will wield the access to information policies to hold governments to account.

That discussion is concluded by a brief section on the way forward in terms of the necessary inclusive partnerships to attract civic forces and improve citizen engagement in the fight against corruption. Collaborative efforts should improve the results of these initiatives and avoid duplication, especially given the scarcity of resources. This highlights the importance of the inclusion of access to information provisions in the UNCAC. Article 10 of the UNCAC reiterates the importance of public reporting which helps strengthen the public's trust in institutions as it facilitates the average citizen's access to official decision-making processes. Article 10 is complemented by Article 13 which requires States to take measures to promote

citizen participation. They need to be proactively engaging in anti-corruption efforts and not engage in practices that hinder the functioning of civil society or the freedom of the media. Initiatives such as the development of the “Transparency Pledge” and the Conference of the States parties Resolutions, help promote the importance of ATI at the international level. However, the initiatives also have their limits. In the case of the UNCAC’s Implementation Review Mechanism (IRM), a peer review process that contributes to the monitoring of States Parties effective implementation of the UNCAC, there is no obligation for the States Parties to publish the full country report following the review. The UNCAC Coalition’s Access to Information campaign showed that while several freedom of information requests were sent by civil society to States requesting access to the review documents, many went unanswered. This public participation wielded some results as some States did ultimately publish the information showing that these types of initiatives can help increase transparency. Articles 10 and 13 of the UNCAC do lay out the role that States have in increasing transparency but really highlights that the role of other actors is equally needed if the UNCAC wishes to achieve its goals.

The Guide concludes that States cannot improve the implementation of ATI alone. A multi-stakeholder approach is necessary and has proven to be the most effective. Many multi-stakeholder initiatives already exist to support anti-corruption work. For example, the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) and the Group of States against Corruption (GRECO) were created to fight corruption at an international level by identifying the gaps in national legal frameworks and, when necessary, exert peer pressure on its members to prompt institutional reforms. This goes hand in hand with ATI’s key role of increasing the disclosure of public information, whether that be through the publication of audits or increasing the use of open data.

ARTICLE 19 looks forward to informing the foundation for the development and implementation of a proper corruption risk mitigation strategy that encompasses human rights and anti-corruption efforts in the global effort to meet the objectives and goals of the 2030 Agenda. Ultimately, Articles 10 and 13 of the UNCAC could be used a driving force to increase public participation and transparency while fighting corruption.

## Summary of recommendations

1. **Ensure an effective right of access to information:** All States Parties to the UNCAC should adopt comprehensive access to information legislation and ensure its effective implementation to enable citizens, CSOs, journalists and other key actors.
2. **Assert the importance of political will and leadership on ATI within the public sector:** Willingness of high-level political authorities in the public administration to advance with reforms, such as the adoption and implementation of ATI is important, and its absence can be considered a substantial obstacle.
3. **Strengthen the capacity building of public information officers** There are many ways to support employees in their work to effectively apply ATI laws.
4. **Recognise that ATI is key for the implementation of the SDGs:** States with existing ATI laws should conduct a multi-stakeholder review to identify the existing gaps in legislation and the availability of key SDG-related information and work together with all stakeholders to improve the legal framework and coordinate efforts to improve its implementation.

5. **Ensure public access to information of the public for corruption settlement:** As described in this Guide, access to public information is crucial to increase the level of trust in the public sector.
6. **Advocate for the publication of accounting and financial information on a country-by-country basis.**
7. **Governments and other stakeholders should increase the publication of open data** to be more inclusive and improve access and quality of service delivery, especially for vulnerable groups, open data should be more developed and generalised.
8. **Establish an independent National Monitoring of ATI implementation:** Governments should enable an independent oversight body with the political and financial autonomy needed to accomplish its role of monitoring and supporting the ATI implementation at all levels and support all public bodies to enforce the legislation and inspire good practice.
9. **Increase Government Engagement with Civil Society:** Governments should engage new approaches in their ways of interacting with civil society and citizens, and they should be inclusive and respect diversity.
10. **Include more Stakeholders:** The inclusion of key stakeholders is important to identify information of general interest and to support proactive disclosure.
11. **Improving civic Space and protecting journalists, whistle-blowers, and anti-corruption activists:** The generalisation of RTI and the effective promotion of the SDGs by targeting the most vulnerable groups cannot be achieved without taking into consideration existing and emerging threats in many regions of the world.
12. **Increase donor coordination and access to Information in their programs:** The SDGs provide a general framework that should help international actors and donors identify clearly and in detail the local needs and share the information about their activities and their objectives, so other stakeholders can know where to invest and how to avoid cross effects and rapid changes in priorities.
13. **Multi-Stakeholder Platforms and benchmarking for promoting ATI:** International organisations and global actors can support initiatives and collective action by CSOs and citizens to improve the implementation of ATI and the realisation of the SDGs.

# TABLE OF CONTENTS

<b>Executive summary</b>	<b>3</b>
<b>Summary of recommendations</b>	<b>4</b>
<b>Introduction</b>	<b>8</b>
<b>Methodology</b>	<b>8</b>
<b>Findings on the use of ATI in fighting corruption and promoting transparency</b>	<b>10</b>
<b>Research on the effects of access to information on corruption</b>	<b>10</b>
Legislation on ATI and access to basic public goods	10
ATI laws and their effect on government transparency and accountability	10
Transparency in political institutions as a means to combat corruption	11
The role of records management in civil service reform for promoting transparency	12
Bribery and its impact on firm value	12
<b>The use of information by diverse stakeholders to promote transparency</b>	<b>12</b>
Citizen participation	12
Civil society	13
Journalists and media freedom	14
Parliamentarians	15
Independent Anti-Corruption Agencies	16
Whistleblowers as a source to the media and the public	17
<b>Access to information provisions in the UNCAC and other international and regional instruments</b>	<b>19</b>
<b>The UNCAC and its monitoring and review mechanisms</b>	<b>19</b>
Promoting access to information in the UNCAC	19
Conference of the States Parties Resolutions fostering the role of ATI	21
Trends in the Implementation of the UNCAC Review Mechanism	22
UNCAC Coalition Transparency Pledge	23
Asset recovery and importance of ATI	24
Asset disclosure of public officials: from theory to practice	26
Beneficial Ownership and ATI	27
Developments and gaps in lobbying regulation	29
ATI practices of the Judiciary branch and their gaps	30
<b>Other international standards and developments on ATI and their linkages to the UNCAC</b>	<b>32</b>
Access to information and other human rights	32
UNGA resolutions and Human Rights Council declarations related to ATI	33
Regional instruments supporting access to information and anti-corruption efforts	34
Jurisprudence of regional courts on ATI	36
<b>Stakeholders' initiatives impacting and improving the implementation of ATI</b>	<b>39</b>
<b>Multi-stakeholder Initiatives supporting anti-corruption work</b>	<b>39</b>
Access to Information in the SDGs (SDG 16.10.2)	39
FACTI Panel	40
The Group of States against Corruption (GRECO)	40
Partnering Against Corruption Initiative (PACI)	41
UN Working Group on business & human rights	41
<b>Sector and thematic based initiatives reinforcing ATI</b>	<b>42</b>
The Extractive Industries Transparency Initiative (EITI)	42
The Construction Sector Transparency Initiative (CoST)	42

The Open Government Partnership (OGP)	43
Open Contracting Partnership and Open Contracting Data Standard	44
Social Accountability and citizen engagement	45
<hr/>	
<b>Key roles of ATI in administrative processes and government work</b>	<b>46</b>
<b>Promoting proactive disclosure in core functions of the administration and the Public sector</b>	<b>46</b>
Audits	46
Open data	46
Procurement	47
Partnerships	48
Elections and Political parties	49
Grand corruption	49
Open Budget and Fiscal Transparency	50
<b>Developing the expertise and the resources needed for improving ATI implementation</b>	<b>51</b>
Training and specialisation on ATI in the civil service	51
Promotion and raising awareness on ATI	52
Monitoring, evaluation, knowledge and learning to inform reporting on ATI	53
Boosting ICT for citizen participation in anti-corruption efforts	54
International cooperation and provision of assistance	55
<hr/>	
<b>Conclusions and recommendations</b>	<b>57</b>
<b>Recommendations</b>	<b>58</b>
<hr/>	
<b>Endnotes</b>	<b>61</b>

## INTRODUCTION

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The right of access to information (ATI) held by governments and other state authorities empowers individuals and communities to participate in decisions that affect their lives. It has been widely recognised around the world as a fundamental human right, as well as an important tool for promoting the rule of law, fighting corruption and as an enabler of other rights, in particular social and economic rights, such as the rights to education and to healthcare.

Prior to the adoption of the United Nations Convention against Corruption (UNCAC) in 2003, only about one quarter of nations around the world had legislated and provided for ATI.<sup>1</sup> Since the UNCAC entered into force, the number of countries with national ATI laws has increased significantly – to close to 140, about 70% of the UN Member States – thanks to many regional and global initiatives aiming to increase transparency, openness and the accountability of public agencies, through open data, open government and other recent initiatives.

The advent of the UNCAC supported the ongoing efforts of ATI activists around the world to work with their governments, parliaments, and public administration to pass new laws to promote ATI. An increasing number of examples of policies, regulations and projects were designed during the last two decades to support ATI. If this was mainly considered as a tool to develop the performance of public administration, it also emerged as a preventive measure against corruption. Under Articles 10 and 13 of the UNCAC, on public reporting and civil society participation, respectively, the importance of publishing information and ensuring that the public has access to it is recognised to advance the fight against corruption. The UNCAC, however, falls short of recognising a right to ATI and while many of its provisions are binding, the provisions on public access to information are optional for States Parties.

Based on Articles 10 and 13 of the UNCAC as an entry-point, and building on recent developments in international human rights and multi-stakeholder initiatives focusing on anti-corruption, transparency and openness, this Guide documents the importance of ATI at the transnational and national levels to support efforts for preventing corruption, showcasing both existing and emerging practices. It presents examples of how proactive disclosure and reactive disclosure of information support anti-corruption efforts in terms of prevention and investigation. ATI is at the heart of many international and sector-based initiatives that build on citizens' participation to improve accountability and increase transparency in public life.

This Guide presents to all anti-corruption practitioners a body of examples and initiatives initiated by States Parties to the UNCAC, international organisations, civil society organisations and the private sector to promote ATI. It also exhibits how their combined or individual efforts contribute to fighting corruption and increasing transparency. It analyses the potential roles of independent ATI agencies, ombudsmen, and Information Commissioners to create synergies with anti-corruption agencies at the country level in designing and fostering the implementation of anti-corruption strategies.

ARTICLE 19 appreciates the support and input to this guide from the UNCAC Coalition, a global network of over 350 civil society organisations in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UNCAC.<sup>2</sup>

### Methodology

This Guide is a product of desk research and the selection of a set of international instruments and regional and national efforts conducted by diverse actors to showcase the importance of



ATI in the fight against corruption. Given the increasing number of actors and initiatives using ATI at the forefront of many transparency, accountability and openness initiatives, the major challenge associated with this work was the selection of those to be included.

The preparation of this Guide benefited from the expertise of the organisations that supported its development and the rich experience of their constituencies in promoting transparency and supporting the development and implementation of ATI.

# FINDINGS ON THE USE OF ATI IN FIGHTING CORRUPTION AND PROMOTING TRANSPARENCY

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## Research on the effects of access to information on corruption

Many academic studies have measured and showed what is the impact that access to information on corruption.

Various countries have recently implemented ATI laws confident that greater transparency can reduce public sector corruption. On this assumption, a study<sup>3</sup> analysed annual data from 128 countries between 1984 and 2003 using a variety of propensity score matching techniques, and overall found no significant relationship, with one exception: in the developing world, ATI laws are significantly associated with “rising” levels of corruption. Further investigation suggests this may happen because the effectiveness of ATI law appears to be conditioned by a country’s institutional arrangements.

## Legislation on ATI and access to basic public goods

Research sought to elucidate the question if ATI laws can be harnessed by underprivileged members of society and used to obtain greater access to basic public goods that are otherwise attainable only through bribery. Drawing on a field experiment<sup>4</sup> on access to ration cards among New Delhi’s slum dwellers, it was demonstrated that India’s adopted ATI law is almost as effective as bribery in helping the poor to secure access to a basic public service. The article tested the proposition that even the poorest and least privileged social actors can benefit from increased transparency in local governance. It supports the theoretical proposition that greater transparency and a strong voice lowers corruption even in highly hierarchical and unequal societies.

Specifically, the research uses the fact that India adopted the Right to Information Act (RTIA) in 2005 and asks whether New Delhi’s slum dwellers can use the RTIA to secure access to a basic public service without having to pay a bribe. The RTIA is of course a regulatory tool that, at least on paper, seeks to make policymaking more efficient by giving the citizenry greater ATI concerning government activities at all levels. In observing the urban poor apply for a ration card – a document that entitles the holder to subsidised food stuffs and serves as a universally recognised form of identification – the researchers could determine exactly how effective a recourse the RTIA is in comparison to bribery.

The main finding is that the RTIA could be used effectively by India’s most underprivileged citizens to gain access to public goods like ration cards. The finding confirms the emerging consensus in the literature on good governance: that any action that increases local participation in political and administrative processes and that exposes the work of civil servants to public scrutiny, inevitably improves the underprivileged citizens’ chances of obtaining public goods, and decreases corruption.

## ATI laws and their effect on government transparency and accountability

It is argued that ATI laws increase government transparency and accountability. Using panel data on 132 countries over the 1990–2011 period, research<sup>5</sup> on the impact of FOI laws on perceived government corruption finds that passing ATI laws is associated with an increase in perceived government corruption. Although it might initially appear to be contrary to

conventional wisdom, this is considered as a positive development, because it is attributed to an increase in more observed corruption driven by greater reporting. The long-term implications of adopting ATI laws show that perceptions of government corruption decrease when countries develop ATI laws, suggesting a decline in the probability of actual corruption in the long run, due to an increase in transparency.

The results suggest that ATI laws appear to increase the perception of government corruption if accompanied by a greater degree of media freedom, the existence of NGOs and greater competitiveness in political participation. These are important precursors to ATI, as they enhance transparency and make governments more accountable to their citizens. The policy implications of these results recommend that countries which have not implemented FOI laws should strive to do so, and those which have adopted these laws, should endeavour to ensure that other complementary mechanisms such as well-trained public officers, and proper institutional structures are in place, to promote greater efficiency in the implementation of these laws. Greater transparency can lead to lower levels of corruption and an environment that is conducive to long-term growth and development.

### **Transparency in political institutions as a means to combat corruption**

The commonly stated, but rarely investigated assertion of making political institutions more transparent as an effective method for combating corruption has been tested.<sup>6</sup> It is confirmed by cross-national data, but also specified and qualified in several respects. Moreover, it was found that looking only at average effects gives a misleading picture of the significance of transparency for corruption. Solely making information available will not prevent corruption if such conditions for publicity and accountability as education, media circulation and free and fair elections are weak.

Furthermore, it is shown that transparency requirements that are implemented by the governments themselves are less effective compared to independent institutions, such as a free press. One important implication of these findings is that reforms focusing on increasing transparency should be accompanied by measures for strengthening citizens' capacity to act upon the available information, if we are to see positive effects on corruption.

None of the supply-side changes are likely to be sustainable if no one is using the information. On the demand side, it is important to establish a service culture within public institutions that ensure that records and information systems are actively used. In too many cases, expensive information systems are introduced, but they deteriorate because the culture of information use is very weak. A related issue is that in public services where the prevailing institutional culture favours informal working methods, important decisions are not documented. Part of the demand will come through requests for information from revitalised monitoring institutions (supreme audit institutions, courts, commissions of inquiry, etc). However, the largest potential user of this information is the public and business community.

Research has shown that the public want the information, but many trends confirm that they do not believe the authorities are serious about making it available. What is needed is a change in the political will and the culture of the civil service. Reforms need to empower a shift in civil service culture from a culture of secrecy to a culture where reasonable disclosure of information about decision-making is the norm, rather than the exception. In the past, policy makers have tended to assume that improved record keeping will automatically come as a by-product of general civil service reforms. This will not happen unless active steps to strengthen the evidence base are incorporated in reform programmes, and it is necessary that the largely neglected area of records management is given greater attention.

## **The role of records management in civil service reform for promoting transparency**

Research<sup>7</sup> measuring the importance of record-keeping proposes that a two-pronged strategy is needed to build reliable record keeping systems that can bring change and improve the enabling environment. The first step consists in strengthening the supply side by ensuring there is an effective national regulatory and physical infrastructure for managing official records. In countries where there has been a widespread collapse of record keeping systems, experience has shown that substantial technical assistance intervention may be necessary to re-establish order and develop an effective government-wide records management programme. On a more basic level, public servants must be educated about their responsibility to maintain and use records. Furthermore, this should become an integral part of an employee's job description, which would be enforced and regularly appraised to monitor performance.

### **Bribery and its impact on firm value**

Information disclosure has been identified as decreasing benefits from corruption, especially in democratic countries. In fact, better informed voters have a higher tendency to reject incumbents if they are suspected of taking bribes and so, given a certain level of benefits, bribe payments to politicians need to be larger to compensate them for losing control if caught. These effects were not identified as having significant results for non-democratic countries where disclosure appears not to matter for governments that do not face elections and cannot be removed from power. A study,<sup>8</sup> focusing on information disclosure in the recipient's country of origin, showed that better information disclosure in the bribe-taking country is associated with smaller benefits for bribing firms. The evidence suggests that publicity may reduce the size of the benefits that firms receive from bribes as well.

Overall, the results indicate that among the factors that appear significant in explaining the size of the benefits are variables related to information disclosure, followed by the rank of the politician bribed, regulatory burdens, and legal efficiency. Equally, controlling for industry, country, and firm characteristics, a \$1 increase in the size of the bribe is associated with an ex-ante \$6-9 increase in the value of the firm, suggesting a correlation between the size of bribes and the size of available benefits. Proxies for information disclosure appear significant in explaining these benefits, with more disclosure associated with lower benefits. However, this result is driven by democratic countries where bribe paying firms receive smaller benefits relative to the bribes they pay. Information disclosure did not show as significant in autocratic countries.

## **The use of information by diverse stakeholders to promote transparency**

### **Citizen participation**

The UNCAC encourages citizen participation, which is key in the fight against corruption. An increasing number of tools and opportunities enabled by new Information and Communication Technologies (ICT) support more coordinated and results-driven participation. Citizens have been actively engaged through different means in the fight against corruption in supporting the role and responsibility of the media and civil society organisations, and their efforts nowadays can be fostered through ICT and social media. One crucial aspect of enabling citizen participation is by supporting access to information individually, through civil society groups and media in its different modes.

ATI legislation enables average citizens to access information and to contribute to increase transparency, and thus support the fight against corruption. In fact, ATI activists put pressure on governments to enact and implement laws enabling people to ask questions of any official body that is part of or controlled by the State and receive prompt and thorough answers. As public bodies respond to people's queries and proactively publish the information they create, people can see, better understand, and scrutinise the workings of the public bodies they fund through public finance. ATI is seen as a necessity for effective participation in public life and a tool to redress one sort of imbalance between people and the powerful institutions that govern them.

### **Civil society**

Since the mid-1990s, a growing number of civil society organisations (CSOs) around the world have developed the expertise and capacities of citizens and groups to advocate for ATI legislation and to enforce its use. If at its origins this emerging movement was seen as contentious by some governments, the adoption of the UNCAC brought more legitimacy to it and showed the importance of multi-stakeholder approaches in fighting corruption, given its holistic nature. To facilitate access to information requests, CSOs have developed online access to information portals in several countries (one such portal also covers the institutions of the European Union) that facilitate the filing of requests for information to authorities and make the responses from State bodies accessible to the public.<sup>9</sup>

Despite the Convention's emphasis on civil society participation through Article 13, the principle of inclusiveness is not consistently applied in the review mechanism or at global UNCAC fora. Each State Party has the discretion to decide the extent of non-governmental stakeholder participation in the review process. While UNODC has reported that the vast majority of States Parties have carried out country reviews for the 2nd cycle have "included meetings with other stakeholders", no further details are provided.<sup>10</sup>

Civil society organisations and other stakeholders are also not allowed to participate in the UNCAC Conference of the States Parties (CoSP) subsidiary bodies. This includes meetings of the Implementation Review Group (IRG) which oversees the UNCAC's Review Mechanism and where important updates are shared regarding the status of States Parties' efforts to implement country review recommendations. The working groups on asset recovery and prevention and the expert group on international cooperation would also benefit from the expertise and experience of civil society.<sup>11</sup>

ATI became widely recognised in international law and in administrative practice during the last decade, and many countries used constitutional provisions to guarantee this right. In those countries where specific legislation has not been adopted yet to guarantee ATI, other existing laws can provide for limited access including data protection laws that allow individuals to access their own records held by government agencies and private organisations, and specific laws that give rights of access in certain areas such as health, environment, government procurement, elections and consumer protection. However, there is much work to be done to reach full government transparency. The culture of secrecy remains strong in many countries and evolves according to many changing variables (change of government, security threats, economic and social crisis...). Many ATI experts consider that many laws are inadequate and when they exist, they often promote access in name only. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand. In others, the exemptions are abused by governments. Older laws need updating to reflect developments in society and technology<sup>12</sup>.

Civil society remains the driving force behind progress towards more effective access to information and stronger transparency – through litigation, new tools and platforms, as well as advocacy. Yet many CSOs and networks continue to contribute from the local level to globally advance advocacy on ATI legislation and its implementation<sup>13</sup> by developing advocacy activities to introduce new ATI bills or amend and improve the existing ones, comparing and benchmarking of country legislation,<sup>14</sup> and through technical assistance to develop capacities of the supply side, namely civil servants and public agencies, and the demand side including local CSOs and journalists.

### Journalists and media freedom

The media and journalism play a crucial role in bringing allegations of corruption to light and fighting against impunity<sup>15</sup>. The role of the media in detecting bribery cases<sup>16</sup> is enhanced by legal frameworks protecting freedom, plurality and independence of the press, laws allowing journalists to access information from public administrations and efficient judicial systems that keep journalists away from unfounded lawsuits.

Journalists and the media contribute to shaping the climate of democratic debate and shape good governance, and that is why accessing public information is crucial given their role. Freedom of the press is a fundamental human right, and several international treaties recognise its importance. The UNCAC acknowledges the critical role of media in fighting corruption in Article 13(d) asking State Parties to strengthen the participation of society in the fight against corruption by “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption” subject to certain restrictions as necessary and provided by law, to respect the rights and reputation of others and to protect national security, *ordre public*, or public health and morals.

Despite the international recognition of press freedom, journalists and the media continue to face obstacles in reporting, not only in the developing world but also in the rich countries, where obstruction takes different forms: restrictive regulations on journalism, active censorship, economic and physical security of journalists, in addition to often facing a censorious abuse or economic monopoly of essential media services (broadcasting, printing facilities, distribution systems, news websites licensing...). Democratic societies can be often characterised by a difficult relationship between professional journalists and political power, often more than in authoritarian regimes where restrictions on media tend to be more explicit and profoundly damaging to debate or public engagement. Where the affairs of government or powerful interest groups are protected by secrecy, journalists face considerable obstacles and sometimes substantial threats<sup>17</sup> if they embark upon revealing information that could lead to exposing corruption. During the last two decades, ownership concentration has had a serious impact on media pluralism. There has also been a decline on media ethics, in addition to the increase of free information portals and newspapers that do not adhere to internationally accepted standards of media reporting.

The relationship between media freedom and corruption is further underlined by data showcasing cases where journalists are killed while reporting on corruption. According to CPJ<sup>18</sup>, since 2017, 60 journalists have been killed for reporting on corruption. Among those 60 murdered journalists, two were in Russia, three in Brazil, four in Haiti, nine in India, and 13 in Mexico. Moreover, one in five journalists killed worldwide were investigating corruption-related stories. In 2022, the Council of Europe said journalists covering corruption are particularly at risk of secret government surveillance, along with journalists covering national security issues and human rights. In its 2022 report<sup>19</sup> on the protection and safety of journalists, the Council of Europe said surveillance has a “particularly baleful chilling effect on journalism” by hampering journalists’ ability to protect the confidentiality of sources.



In 2022, the Special Rapporteur on the situation of human rights defenders, Mary Lewlor, in her annual report, where she specifically focused on those exposing corruption, highlighted how journalists and bloggers are being attacked, jailed, beaten and murdered for their human rights work. In most cases, their killings are unlikely to be properly investigated or the perpetrators brought to account because of corruption and structural problems in criminal justice systems, which leads to high level of impunity.<sup>20</sup>

The wave of “Patriot Act” inspired anti-terrorism legislation, especially in authoritarian regimes, gave birth to legal actions to block, reduce or slow down the flow of information while surveillance increasingly threatens and restricts media freedom. To be able to combat corruption and its sources in the public and private sectors, journalists must be able to rely on access to information.

Within the media, conflict of interest legislation must be advocated for in order to counter the concentration of media ownership and ensure the continuity of multiple sources of information, while a clear distinction must also be established between editorial and advertising departments. Journalists’ initiatives to establish statutes of editorial independence should also be supported by media owners, governments, and donor organisations. Naming and shaming colleagues who take bribes or act as consultants to companies they cover can also go a long way towards reducing corruption. The international community, governments and civil society should step up efforts to train journalists to report and help curb corruption inside and outside their industry.<sup>21</sup>

## **Parliamentarians**

One of the key challenges for parliamentarians is to make the executive accountable, and to do so they should be accountable by implementing credible anti-corruption measures. Periodic public declarations of assets and income sources by MPs, ministers, and government officials, and their close families, are a good start for improving accountability of public office. MPs and political parties should be obliged to report and publish how they are funded, and their declarations and reports should be accessible to independent bodies for auditing. It is also important to reconsider MPs’ immunity against criminal prosecution in cases of corruption, moreover in countries where corruption is endemic.

MPs’ access to information is crucial so that they can control the executive and conduct investigations when needed by setting up parliamentary committees (or committees of inquiry). State capture and captured economies have not decreased since the adoption of the UNCAC and rulers, oligarchs, and interest groups still can influence policy formation and even shape laws and regulations to their own substantial advantage by funding political parties and politicians, and state officials through a patronage system. Privatisation programmes, tax reforms, IPO, import license and other processes such as court decisions in commercial and criminal cases can exemplify different forms of state capture. In many cases, MPs can find themselves facilitating these schemes or part of these influence games. Because powerful business people and firms use their influence to block any policy reforms that might eliminate these advantages, state capture has become not merely a symptom but also a fundamental cause of poor governance in some countries<sup>22</sup>. The “new wave” of protectionism growing in many parts of the world can contribute to engulfing the political system and the MPs in this vicious circle. All growing industries develop their own interest groups and aim to impact MPs and political power to stop legislation and controls that can threaten their interests.

A good example of what parliamentarians can do to fight corruption is the Global Organization of Parliamentarians Against Corruption (GOPAC), a worldwide alliance of parliamentarians

working together to combat corruption, strengthen good government, and uphold the rule of law. GOPAC has 57 national chapters in 5 regions. GOPAC supports its members' efforts through original research, global anti-corruption capacity building, and international peer support. GOPAC has submitted Recommendations to the first UN General Assembly Session Against Corruption (UNGASS 2021) after several consultations to capture the aspiration of the global parliamentarians on issues that need to be addressed. GOPAC recommended that the UNGASS 2021 Political Declaration should include<sup>23</sup>:

- A Parliament that is independent by nature and parliamentarians that are strong, representative, clean, and skilful.
- Stronger legislative frameworks to prevent and combat corruption as well as to promote good governance and address the pervasive impact and modus of corruption.
- A stronger and independent anti-corruption institution and a better justice system.
- An improved collaboration, stronger cooperation, and enhanced partnership among international stakeholders.

### **Independent Anti-Corruption Agencies**

The UNCAC, under Article 6, requires its States Parties to establish specialised bodies responsible for preventing corruption and for combating corruption through law enforcement. States should ensure that these bodies- often referred to as anti-corruption agencies (ACAs) – to ensure their effective independence from undue interference and sufficient mandates, resources and powers to implement their challenging tasks.<sup>24</sup>

Historically, one of the best known specialised anti-corruption institutions and successful model was established in 1974 as the Hong Kong's Independent Commission against Corruption. Inspired by its effectiveness in fighting corruption, many countries around the world have established ACAs. Before the emergence of international treaties against corruption, establishing ACAs was often seen as the only way to reduce widespread corruption, as existing institutions were considered too weak for the task. Since the adoption of the UNCAC, ACAs have become a standard practice and an important mechanism to prevent and investigate corruption. However, many ACAs remain under-resourced, unders-staffed or lack political independence, undermining their impact on tackling corruption, for example by investigating public officials who do not comply with transparency and accountability rules.<sup>25</sup>

Independence primarily means that the ACAs should be shielded from undue political interference. To this end, genuine political will to fight corruption must be embedded in a comprehensive country anticorruption strategy. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the structural and operational autonomy that is important, along with a clear legal basis and mandate for a special agency, department, or unit. Transparent procedures for appointment and removal of the director together with proper human resources management and internal controls are important elements to prevent undue interference. Independence should not amount to a lack of accountability; specialised services should adhere to the principles of the rule of law and human rights, submit regular performance reports to executive and legislative bodies, and enable public access to information on their work.

ATI is key for ACAs to ensure their prevention of corruption in power structures by promoting ethics inside public institutions, including the elaboration and implementation of special measures concerning public service rules and restrictions (conflict of interest, assets



declaration by public officials, verification of submitted information and public access to declarations...). In fact, preventive functions aim to promote transparency of public service and public access to information. An example of a good practice in a single multi-purpose agency is to employ special external oversight committees, which can include representatives of different state and civil society bodies<sup>26</sup>.

Many independent ACAs can receive and within their scope of jurisdiction investigate complaints from the public and can initiate investigation on the basis of information received. While performing investigations they have the right to access information and documents from all other institutions and may refer cases to the prosecution authorities or courts. In accordance with tax legislation of their country, the ACAs should be allowed to collect all information necessary for carrying out criminal investigations.

The importance of coordination and collaboration between an ACA and the Access to Information Commissioner can be illustrated by the Convention for the Prevention of Corruption (CPC) in Slovenia. This example highlights the practice of assistance and cooperation with other State Institutions. During the inception phase of its operations, the CPC has signed several Memorandums of Cooperation and Exchange of Information with state law enforcement, prosecution, inspection and financial bodies. Such agreement with the Commissioner for Access to Public Information provided regular and direct exchange of information and provision of expertise to each other from their respective fields in cases of violation of a regulation relating to public finance, public procurement, and corruption-related offences. It also provided for a monthly review of the effectiveness of this cooperation.<sup>27</sup>

### **Whistleblowers as a source to the media and the public**

In recent years, whistleblowers' role in uncovering corruption scandals has been key in many major international cases at the country and global levels. A growing number of countries have adopted legislation aiming to protect whistleblowers. The EU adopted a Whistleblower Protection Directive, and its member states were required to adopt it into national law by 2021. If this is a good step forward for Europeans, in many other parts of the world legislation is lacking, but even when it exists, anti-corruption activists know from experience that laws on the books alone will not guarantee comprehensive whistleblower protection. To drive implementation, understanding and widespread support for whistleblowing, it is crucial to guarantee a multi-stakeholder response that can provide protection for people who report wrongdoing, and implement effective approaches<sup>28</sup> to ensure the physical and economic security of whistleblowers. Under the UNCAC, the protection of whistleblowers is an optional provision (Article 33).

In most countries that have stand-alone laws to protect whistleblowers, these laws remain underused and whistleblowers experience poor success rates when trying to defend their rights in court, according to a 2021 report by the Government Accountability Project and the International Bar Association.<sup>29</sup> According to the OECD, two-thirds of Parties to the OECD Anti-Bribery Convention still do not provide satisfactory whistleblower protection despite significant progress made by several countries in recent years. Given the importance of whistleblowers and the protection of sources in bringing allegations of corruption to light, the OECD continues to work with countries to establish effective legislative frameworks for the protection of both public and private sector whistleblowers. A survey published by the OECD in 2018 indicated that whistleblowers are often the first source of information for journalists reporting on corruption stories.<sup>30</sup> Whistleblower protection was considered the second most valuable support for journalists investigating corruption (63%), behind strong editorial board backing (77%). Journalists also noted that their sources can work for law enforcement

agencies and considered that these sources should be protected as any other whistleblower. The media plays a potentially vital role in de-stigmatising whistleblower reporting.

Whistleblowers turn to journalists for various reasons including to protect their identity, to bring issues of concern to the attention of the public or government, or in the absence of effective responses by law enforcement or employers. However, journalists acknowledge the significant risks to sources because of non-existent or vastly inadequate whistleblower protection frameworks in many countries. Even in countries with whistleblower protection laws, protection rarely extends to whistleblowers who report directly to the media. To confront these situations, there are emerging good examples like Sweden's new Act on special protection against the victimisation of workers who are sounding the alarm about serious wrongdoings. It allows whistleblowers to report to the media or authorities if no action is taken following an initial internal report within their organisation or if there are justified reasons to disclose the information externally, for example in case of a situation of emergency, if the wrongdoings are of particularly serious nature, if the employee has a specific reason to expect retaliation or if the employer is responsible for the wrongdoings.

# ACCESS TO INFORMATION PROVISIONS IN THE UNCAC AND OTHER INTERNATIONAL AND REGIONAL INSTRUMENTS

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## The UNCAC and its monitoring and review mechanisms

### Promoting access to information in the UNCAC

UNCAC promotes globally accepted anti-corruption standards applicable and provides a comprehensive approach to preventing and fighting corruption. The UNCAC was a remarkable international achievement when adopted in 2003 and entered into force in 2005 to demonstrate the global extent of the problem of corruption. The UNCAC in its approach is considered the most universal anti-corruption instrument and, although it does not recognise the right of access to information, it promotes transparency and supports access to information. ATI can lead efforts to strengthen local systems to improve on a broad range of issues including prevention of corruption, international cooperation, and the recovery of assets generated by corruption. The United Nations Office on Drugs and Crime (UNODC) is the guardian of the UNCAC and has been entrusted with its advancement and implementation.

With the UNCAC, corruption has been redefined as a problem which exists in and concerns every country around the world. Efforts to prevent and combat corruption are now an obligation under international law. The UNCAC emphasizes the fact that the risk of corruption impacts all sectors of society and their joint efforts are needed to prevent it and fight against it in an efficient and effective manner. States parties to the UNCAC are expected to “endeavor to periodically evaluate relevant administrative measures with a view to determining their adequacy to prevent and fight corruption” (article 5 (3)). The States parties may find it useful to consider whether their existing legal frameworks and administrative procedures are sufficient to ensure access to useful and re-usable information in regard to public reporting or “proactive disclosure”, the UNCAC requests States parties to enhance transparency in public administration.

#### **Article 10: Public reporting**

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting 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; (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 10 of the UNCAC is intended to ensure that citizens understand the workings of public administration and have information on the decisions and decision-making processes of public officials and on the risks of corruption. Transparency enables citizens to review what the

administration is doing on their behalf and enhances their trust in public institutions. As pointed out in the Technical Guide<sup>31</sup> to the UNCAC, States parties seeking to increase transparency and accessibility in public administration may wish to conduct a review of existing regulations and the impact of new legislation, consulting with civil society and legal entities, such as professional associations. Reviews should cover the public's right of access to information, including how comprehensive, understandable and readily available information is.

**Article 13. Participation of society**

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (...) (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i) For respect of the rights or reputations of others; (ii) For the protection of national security or ordre public or of public health or morals.

The UNCAC provides the foundation for citizen participation in anti-corruption efforts in article 13(1), which requires States parties to "take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption". Article 13 requires that States should "[ensure] that the public has effective access to information" while Article 10 requires that States "take such measures as may be necessary to enhance transparency in its public administration" including adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, 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.

To operationalise the obligations under article 13, States parties to the UNCAC can take several complementary measures that include fulfilling the public reporting obligations under article 10 of the UNCAC, which requires a State "to enhance transparency in [its] public administration, including with regard to its organization, functioning and decision-making processes, where appropriate". It includes maintaining a robust freedom of information regime, providing citizens and civil society with the information needed to fight corruption, and ensuring that there is an enabling environment for the registration and functioning of civil society. The last measure requires the State, at a minimum, not to act in a way that represses or obstructs the work of citizens, CSOs and the media in their anti-corruption efforts. These international law obligations are critical in helping to foster social and civic forces, by removing the knowledge and resources barriers that citizens can encounter when seeking to engage in anti-corruption efforts.

Article 13(1) (d) of the UNCAC which covers the wider issues of the freedoms of opinion and expression in relation to corruption issues is reinforced by sub-paragraph (b) which requires that States parties specifically ensure "*that the public has effective access to information*".<sup>32</sup> Media reporting on corruption relies on the availability of data and information. States parties are increasingly sharing data and information using modern technology but there are various ways by which States can respect, promote, and facilitate the provision of information as

defined in article 13 (1) (d) of the UNCAC. Data can be made available proactively<sup>33</sup> through transparent public administration and reporting as well as by provision of specific information upon request. Guaranteeing ATI and being open about how the governments work is a crucial step to facilitate effectiveness of this right and support civil society and the media in preventing and fighting corruption.

States Parties to the UNCAC can also play their part in promoting more effective implementation of Article 13, and supporting the meaningful and active engagement of civil society and other stakeholders in the development and implementation of anti-corruption measures by:

- Providing a safe and enabling environment for CSOs, activists, the media and other stakeholders to carry out anti-corruption work without fear of harassment, intimidation or reprisal and to hold to account those who commit attacks.
- Engaging a diverse range of stakeholders, including those that are marginalised, in the development and implementation of anti-corruption measures through a participatory and inclusive process.
- Adopting and fully implementing legal frameworks that include laws on effective access to information, protection of whistleblowers and public participation in decision-making.<sup>34</sup>

Building on the important values reflected by Articles 10 and 13, the UNCAC Coalition has also developed a ‘Transparency Pledge’, which embodies a voluntary commitment for governments to meet minimum standards of transparency and civil society participation in the national UNCAC review mechanism. Through six simple principles and a more detailed Guide to Transparency and Participation in the review process, the Coalition encourages States Parties to the UNCAC to reaffirm the importance of transparency and public consultation in addressing corruption. Over 30 countries have committed to publishing and sharing the latest information about their country review, and proactively engaging with and supporting civil society participation in UNCAC subsidiary bodies.<sup>35</sup>

### **Conference of the States Parties Resolutions fostering the role of ATI**

The Conference of the States Parties (CoSP) to the UNCAC and its Intergovernmental Working Group on Prevention have regularly requested UNODC to collect information on good practices for promoting responsible and professional reporting on corruption for journalists.<sup>36</sup> The Working Group has also noted the possibility of other future work to promote responsible, professional and safe reporting in accordance with article 13 of the UNCAC, in particular paragraph 1 (d) of this article, and the respective laws of the States parties.<sup>37</sup>

### **2021 UNGASS against Corruption**

In June 2021, the UN General Assembly held its first-ever special session (UNGASS) on corruption. The political declaration “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”<sup>38</sup>, adopted there, represents the latest global consensus among States and their anti-corruption efforts. It arguably advances the agenda on a number of issues, including public access to information, protection of journalists and civil society groups investigating and revealing corruption, as well as the protection of whistleblowers.

In the political declaration, States commit to “respect, promote and protect the freedom to seek, receive, disseminate and publish information concerning corruption, and ensure that the

public has effective access to information” as well as “to increasing the transparency of decision-making processes” as a means to prevent and combat corruption and facilitate efficient processes, “including by adopting appropriate and necessary procedures or regulations and designating and enhancing bodies responsible for facilitating access to information, as well as through the use of digital tools, open data and Internet-based portals to help make information more accessible.”

The political declaration also includes commitments to increase transparency and accountability in the management of public finances and government procurement and contracting, including in the whole procurement cycle. States also commit to “strengthening data-collection systems and open databases that are accessible and user-friendly, in accordance with domestic laws, and to better understanding and better enabling oversight and accountability.”. Furthermore, the political declaration addresses several other important transparency-related issues, such as registries of beneficial owners, effective and transparent disclosure systems for interests of public officials, and transparency of political financing.

Commitments contained in the political declaration still need to be operationalised through resolutions adopted by the UNCAC Conference of the States Parties. In 2022, a voluntary follow-up process commenced, through which States and stakeholders can report on progress made towards implementing the commitments of the political declaration.<sup>39</sup>

### **Trends in the Implementation of the UNCAC Review Mechanism**

The UNCAC **Implementation Review Mechanism (IRM)** is a peer review process that assists States parties to effectively implement the UNCAC. In accordance with the terms of reference, each State party is reviewed by two peers which are selected by a drawing of lots at the beginning of each year of the review cycle. The first cycle of the Review Mechanism started in 2010 and covered the chapters of the Convention on Criminalization and Law Enforcement and International cooperation. The second cycle, which was launched in November 2015, covers the chapters on Preventive measures and Asset recovery. UNODC is the secretariat of the Review Mechanism.

The functioning and the performance of the IRM is guided and overseen by the Implementation Review Group (IRG)<sup>40</sup>, an open-ended intergovernmental group of States parties which is a subsidiary body of the CoSP and was created together with the IRM in Resolution 3/1. The CoSP decided that a comprehensive self-assessment checklist should be used as a tool to facilitate the provision of information on the implementation of the Convention (resolution 3/1). It provides for specific measures and data to be provided by State parties on the legislative and implementation aspects of ATI<sup>41</sup>:

- Examples in which requests received under access to information laws have led to the release of information about the organisation, and functioning and decision-making processes of government that would otherwise not have been made publicly available;
- Data (statistics and examples) on appeals against the denial of a request for access to information;
- Statistics on the number of access to information requests and the results of these requests;
- Description of steps taken to ensure that the existing laws, regulations, policies and procedures regarding access to information are widely known and accessible to the public;



UNODC elaborates in its guidance to State parties supporting access to information as follows:

For the measures dealing with the involvement of civil society and the wider public in anti-corruption efforts, legislation may be required, depending on the existing legal arrangements and tradition. National drafters may wish to review current rules on access to information, privacy issues, restrictions and public order situations to see whether amendments or new legislation are required in order to comply with the Convention.<sup>42</sup>

The review mechanism does not require States under review to publish their self-assessment checklist or the full country report – only a brief executive summary of each review has to be published. However, States are encouraged by the review mechanisms Terms of Reference to exercise their sovereign right to publish their country review report and their self-assessment. The country profile pages maintained by UNODC provide some information on the reviews, including the finalised documents that the country under review has agreed to publish.<sup>43</sup> Some States parties assess their implementation of UNCAC outside of the official review process by conducting gap analyses as a basis for informed policy decisions and law reforms and promote public consultations to this end. Increasingly, States are making their full country reports and other documents available – partially because of nudging from civil society.

The UNCAC Coalition's Access to Information campaign illustrates the limitations of ATI.<sup>44</sup> CSOs have sent Freedom of Information requests in over 30 countries (and counting) across the world to governments, asking for the release of official UNCAC review documents. In countries where ATI legislation is non-existent, requesters are able to refer to the transparency principles enshrined in the UNCAC, under articles 10 and 13. Nevertheless, initial campaign findings indicate that many countries do not react to incoming requests or refuse to disclose new information or sharing documents about their anti-corruption commitments and actions.

Through the campaign, more than ten UNCAC review reports and State's self-assessments that were previously secret have been released. While only three countries fully answered what was asked in the FOI request, in over five countries, appeals to national authorities, such as the Transparency Council or Information Commissioner, were made, with several still pending at the time of writing. Several States that did not (fully) comply with the information requests cited as reasons for their refusal: national security concerns related to confidential information, and concerns about prejudicing ongoing negotiations between the States parties involved in the UNCAC review process.

A handful of countries have only partially granted access to information and documents in response to these requests, largely due to the fact that the review process is still ongoing, or because they have limited documentation on file with regards to the first UNCAC review cycle.<sup>45</sup> In general, complex bureaucratic structures, with the UNCAC being the remit of several, or different, national Ministries, have impeded FOI requests from reaching the right authority, and delayed replies. In addition, where ATI legislation does exist, at least half of the countries did not feel compelled to respond to the FOI request within the stipulated legal deadline.

### **UNCAC Coalition Transparency Pledge**

The UNCAC Coalition's Transparency Pledge<sup>46</sup> embodies a voluntary commitment by States Parties to meet minimum standards of transparency and civil society participation in the UNCAC review process. More than 30 governments have signed the pledge and commitment to its principles, including the timely publication of the self-assessment and the full country report, organising a public meeting to discuss findings and follow-up on the report, and to publicly support the participation of civil society observers in UNCAC CoSP subsidiary bodies.

The Pledge was born out of the move initiated by a small group of countries in negotiations for the UNCAC review mechanism aiming to block the inclusion of adequate provisions for transparency and participation of civil society. In fact, the terms of reference of the implementation review mechanism<sup>47</sup> leave it at the discretion of each State Party to decide on the extent of civil society participation and transparency in their country reviews. This outcome is inconsistent with international human rights standards<sup>48</sup> and with the provisions of UNCAC itself, including its articles 10 and 13, which are the subject of this Guide.

In order to promote best practice and highlight those countries leading by example in promoting transparency and civil society participation, the UNCAC Coalition asks governments to commit to the Pledge's six simple principles.<sup>49</sup> The focus of the principles is on issues other than review team meetings with civil society representatives during country visits, because such meetings were established as the standard practice in the first review cycle.

Additionally, the UNCAC Coalition has also recently launched the UNCAC Review Status Tracker,<sup>50</sup> which provides an overview of the status of the UNCAC review in all States Parties to the Convention for both the 1st and 2nd review cycles. It condenses two years of efforts and outreach to reflect the most up to date information about the UNCAC review itself (including the status of the review, country focal point details and available UNCAC review documents, among others) as well as supplementary information about a country's compliance with the UNCAC Coalition's Transparency Pledge, their participation in the UNCAC Coalition's Access to Information Campaign, as well as whether a civil society organisation from this country has written a parallel report on UNCAC implementation.<sup>51</sup>

### **Asset recovery and importance of ATI**

Africa alone is losing more than USD 50 billion annually through IFFs, according to the UN High Level Panel on illicit financial flows (IFFs). Efforts deployed by the international community and civil society to stem IFFs do not seem to considerably change the situation. Global Financial Integrity<sup>52</sup> estimates that the annual value of trade related IFFs in and out of developing countries has amounted on average to about 20 percent of the value of their total trade with advanced economies.

The Stolen Asset Recovery Initiative (StAR), a joint endeavour by UNODC and the World Bank, estimated in 2021 that, based on data provided by governments, USD 9.7 billion in corruption proceeds have been either frozen, restrained, confiscated in a destination country or returned to a country that was harmed by corruption since 2010. This figure includes over USD 4.1 billion in assets that have been returned internationally since 2010 and USD 5.3 billion in assets frozen or restrained.<sup>53</sup> The returned amount is only a fraction of the estimated amounts that have been stolen each year – a 2014 estimate put that number at USD 20 to 40 billion of stolen assets per year.

Since 2011, the Human Rights Council has been considering the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation in this matter. In a recent resolution tackling this issue, the Council invited the UNCAC CoSP to consider ways of adopting a human rights-based approach in the implementation of the Convention, including when dealing with the return of proceeds of crime.<sup>54</sup> The OHCHR has developed draft guidelines on a human rights framework for asset recovery<sup>55</sup> and invited all Member States, relevant intergovernmental organisations, national, regional and global human rights mechanisms, NGOs and academic experts to review these guidelines and to share their comments and



views on them including good practices, national laws, bi- or multilateral agreements and jurisprudence relevant to the human rights aspects of asset recovery by the end of December 2020.

Additionally, with the SDG 16.4, Member States committed to significantly reduce illicit financial flows and to strengthen the recovery and return of stolen assets by 2030. A similar commitment is contained in the Addis Ababa Action Agenda on Financing for Development.

Since the second cycle of the IRM was launched in November 2015, covering the UNCAC chapters on preventive measures and asset recovery, two resolutions covering asset recovery emphasized the importance of States Parties making information widely available on settlements and legal procedures<sup>56</sup> and to improve "... lawful access to relevant information sources, including international databases, which would positively affect the quality and efficiency of the tracing of proceeds of crime, with due respect for personal data...".<sup>57</sup>

At the Global Forum on Asset Recovery (GFAR) supported by the StAR Initiative in December 2017, the two co-hosts and the four focus countries developed and adopted ten principles for disposition and transfer of confiscated stolen assets called the GFAR principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases. The 10<sup>th</sup> Principle restated the importance of encouraging non-government stakeholders "to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets."<sup>58</sup>

The Oslo Statement on Corruption involving Vast Quantities of Assets (VQA) has emanated from the Expert Group Meeting (EGM) on 14 June 2019 in Oslo, Norway, that followed up on the outcome of the Lima Expert Group Meeting to adopt forward looking policy recommendations to better prevent and combat corruption involving vast quantities of assets. The statement includes 64 recommendations including those on asset recovery, asset disclosure and beneficial ownership.<sup>59</sup>

Public disclosure is restated in the above instruments especially in the anti-corruption prevention efforts including asset disclosure and beneficial ownership. ATI remains key for citizens and main stakeholders to learn about the efforts made by their government to prevent their country from being the destination or source of IFFs. Even if the number of initiatives has increased considerably since the adoption of the UNCAC, their impact on decreasing the frequency and size of IFFs and the amounts of assets recovered appears still very marginal, based on estimations of specialised organisations. The preventive efforts described above are a good start, but more transformational changes are needed to deter and sanction the international dynamics of IFFs from becoming more complex and diversified.

An example of the importance of ATI in these efforts is the initiative conducted by the UNCAC Coalition in requesting the release of Ireland's agreement with Nigeria on the return of 5.5 million euros, and the emphasis on strengthening transparency and accountability in the return, disbursement and monitoring process of assets recovered.<sup>60</sup>

Another recent example<sup>61</sup> is the framework agreement signed between Switzerland and Uzbekistan with a view to the restitution of confiscated assets of some USD 131 million, and to any further assets that may be definitively confiscated in the future under ongoing criminal proceedings. The agreement emphasized that the assets shall be used for the benefit of the people of Uzbekistan and sets out the principles and stages for restitution, including:

- Transparency and accountability in the restitution process;

- Investment of the funds in projects which support sustainable development (in accordance with the UN's 2030 Agenda and Uzbekistan's development strategy);
- Establishment of a monitoring mechanism;
- Potential involvement of non-state actors.

### Asset disclosure of public officials: from theory to practice

Article 52, paragraph 5 of the UNCAC states that

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

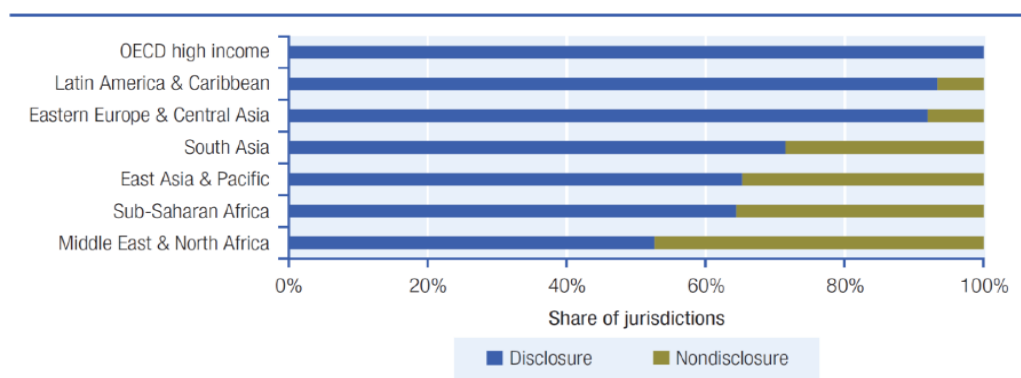
Aiming to promote greater transparency and accountability, numerous countries have introduced the requirement for public officials to file asset disclosures.

The UNGASS Political Declaration in 2021 has reinforced Article 52 by saying that States will strengthen their efforts:

[T]o prevent, identify and manage conflicts of interest, including by assessing and mitigating corruption risks and through effective and transparent financial disclosure systems, with information disclosed by appropriate public officials made available as widely as possible, and we will use innovative and digital technology in this field, with due regard for data protection and privacy rights.<sup>62</sup>

The adoption of the UNCAC in addition to other international and regional instruments have led to the introduction of a series of innovative approaches; however, their implementation is never free of challenges and complementarities and potential synergies are still to be explored (see Figure 2 below).<sup>63</sup> Specific efforts are needed in using asset disclosure information to identify Politically Exposed Persons (PEPs) through making the information on filers available and user-friendly, and structuring exchange of information between asset disclosure and anti-money laundering stakeholders.

**FIGURE 2** ■ Disclosure Requirements are Widespread Around the World

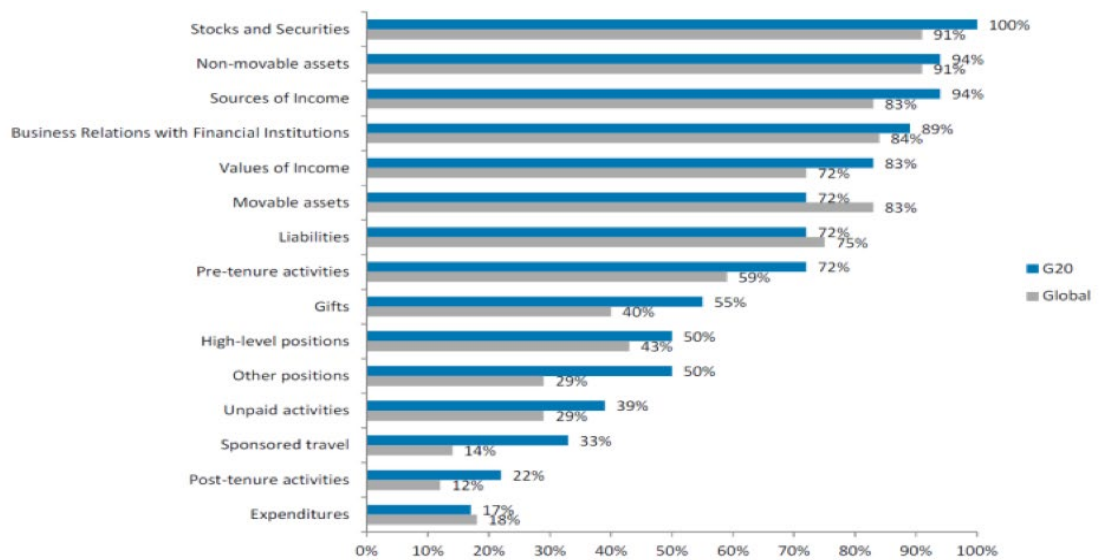


Source: Using Asset Disclosure for Identifying Politically Exposed Persons, p 6.

Disclosure legislation generally requires a certain range of public officials (such as members of parliament, heads of state, cabinet members, judges...) to declare their financial and business interests. The range of public officials obliged to file disclosures depends on the

jurisdiction’s legislation and varies among countries, but good practices recommend the target scope to not be very expansive so that the system put in place can be more effective. A variety of agencies collect, verify, and manage asset disclosures, and this also varies among States Parties to the UNCAC. The responsibility of implementing the disclosure system lies with supreme courts or audit courts, tax authorities, parliamentary commissions, anticorruption commissions, and often with commissions that focus exclusively on asset disclosure. These diverse agencies depend on access to information gathered by financial intelligence units to complement their work and could be useful in carrying out such tasks as verifying the content of disclosures to support investigating cases<sup>64</sup>.

The Indonesian Asset Declaration System is considered a robust example in terms of legal framework and implementation for detecting potential conflict of interest and illicit enrichment<sup>65</sup>. The Asset Declaration Registration and Examination Directorate (LHKPN) as part of the Corruption Eradication Commission (KPK) is the sole agency mandated by the law to manage assets declaration of public officials, spouse and dependent children that are required to declare all assets under their name or other people's name. The declared items include Land, Building, Vehicles, Financial Products (banks accounts, insurance policies, commercial papers), Intangible Assets, Income, Expenditures, and Interest. The Indonesian Asset declaration regime has provided channels to the public to monitor the assets of public officials. Within the anti-money laundering regime, asset declaration also has played a significant role in supporting money laundering investigation.



Source: World Bank analysis of 138 countries with disclosures systems.  
 Note: Please note that for G20, percentages are calculated only considering those countries that have a disclosure system.

Figure 3. Categories of information covered in the disclosure requirements<sup>66</sup>

Since the adoption of the UNCAC, many States Parties have introduced and improved their legal frameworks and rules governing asset disclosure, but more efforts are needed to make practices of financial and conflict disclosure by public officials and members of parliament more structured and efficient. Growing evidence and data shows that public disclosure and not only internal disclosure is positively related to governance quality, including lower corruption.<sup>67</sup>

### Beneficial Ownership and ATI

Wherever States do not require information about the beneficial owners of corporations, including limited liability companies or other similar entities, illicit activities such as money

laundering, financing of terrorism, tax fraud, trafficking, counterfeiting and piracy could be conducted anonymously through “shell companies” to evade detection. To combat similar situations, the UNCAC supported measures to prevent money-laundering through beneficial ownership:

- 12, para 2 (e) (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- 14, para 1 (a) on instituting “a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions”;
- 52, para (3) In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

At COSPs 9, resolution 9/7 specifically addressed the importance of enhancing the use of beneficial ownership information and ensuring access to information as one key aspect to fight against corruption. It recalled the applicable “international standards on beneficial ownership, in accordance with domestic law, in which, inter alia, countries are urged to enhance the transparency of beneficial ownership information through the provision of adequate, accurate and timely information on the beneficial ownership and control of legal persons, including, where appropriate and consistent with domestic law, through registries that can be obtained or accessed in a timely fashion by domestic competent authorities.”<sup>68</sup> This is the same language of the UNGASS Political Declaration reiterating the importance of access to information to beneficial ownership transparency.<sup>69</sup>

In addition to the UNCAC Resolutions 6/5 (5) on Beneficial ownership and 7/2 on grand corruption, the Oslo Statement on Corruption Involving Vast Quantities of Assets (VQA) in its Recommendation 7 states “For all contracts and sub-contracts involving vast quantities of assets concluded between public authorities and private contractors, the ultimate beneficiaries should be disclosed publicly, in line with national legislation”.

The Financial Action Task Force (FATF) recommendations are recognised as the global anti-money laundering (AML) guidance on transparency and beneficial ownership<sup>70</sup>. In fact, more than 200 jurisdictions are implementing the FATF recommendations against money laundering, placing compliance requirements on a wide range of businesses. Yet governments in haven countries, most frequently developed countries, have little incentive to block the inflow resulting from tax abuses, corrupt practices and other crimes. Banks find it profitable, and enablers such as lawyers and accountants often operate without effective oversight. There are weaknesses in information collection and verification, and there are systemic difficulties in accessing information. There are major gaps in the regulation and supervision of the enablers of corruption, tax abuses and money-laundering, with systemic implications from lapses in haven countries. On the other hand, cross-border access to beneficial ownership information is too difficult; major financial centers and developed countries should take more responsibility.<sup>71</sup> In 2021, FATF updated its guidance to include application to financial activities involving virtual assets and virtual asset service providers. The new Guidance provides

examples of risk indicators that should specifically be considered in a virtual assets context, with an emphasis on factors that would further obfuscate transactions or inhibit VASPs' ability to identify customers. Access to information is considered key to identify and assess risks.<sup>72</sup>

In recent years, and thanks to a long and continuous advocacy process by specialised CSOs and support to States Parties by international organisations, different legislations at the regional and national levels were passed to require corporate and legal entities to obtain and keep information of beneficial owners while more States Parties are holding central registers.<sup>73</sup>

The EU has been issuing directives mandating the creation of a significant number of registers currently in operation globally as early as 2015 with its fourth anti-money laundering (AML) directive.<sup>74</sup> The current AML directive<sup>75</sup> required Member States to establish “a clear rule of public access” to “beneficial ownership information on corporate and other legal entities in a sufficiently coherent and coordinated way.” Being a directive rather than a regulation, this has led to considerable divergence in how registers have been implemented and varying levels of accessibility. The EU has yet to recommend a data standard which would facilitate such coordination and, to date, Member States have implemented a patchwork of approaches. Many countries only offer closed or poorly accessible registers, where people have to pay a fee or be a resident to access individual beneficial ownership records. A proposed AML package currently being considered by the European Parliament and Council includes a draft sixth anti-money laundering directive<sup>76</sup> among a series of other measures.<sup>77</sup> It lays out plans for implementing acts to examine how beneficial ownership information is exchanged between registers across the EU and offers an opportunity for the EU to demonstrate global leadership on data interoperability as well as cracking down on “shady companies” across the EU. However, the new text continues to allow States to require registration or the payment of fees to access public beneficial ownership information, although it attributed powers for the European Commission to override this requirement.

Globally, over 100 countries worldwide have committed to beneficial ownership transparency, but less than 50% have actually created public central registers where information about beneficial owners is publicly available.<sup>78</sup>

Ukraine became the second country in the world after the United Kingdom to implement a public register of the beneficial owners of corporate entities registered in the country. Ukraine has made significant progress, with some beneficial ownership data now available on Ukrainian legal entities via its companies register – the Unified State Register (USR). Ukraine became the first country in the world to commit to integrating with the Open Ownership Register<sup>79</sup>, which links beneficial ownership data from around the world.

In January 2021, the US Congress passed the National Defense Authorization Act (NDAA) that contains in its Division F on Anti-Money Laundering, the Corporate Transparency Act (the CTA), which will require corporations, limited liability companies and other similar entities to disclose beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau within the US Department of the Treasury.<sup>80</sup> In fact, transparency of beneficial ownership is showing in practice how important resource it can be for journalists investigating corruption cases.<sup>81</sup>

## **Developments and gaps in lobbying regulation**

Undue influence can fuel the abuse of power and lead to state capture, not only in poor or developing countries, but also in countries considered corruption free. Several recent scandals, in different sectors and on all continents, illustrate the tools and methods used by those who wish to enrich themselves from public funds and advance private interests over the



public good. Fostering integrity and transparency in lobbying activities can be considered an important step in the right direction given all its implications and consequences on politics, government and private sector among others.

OECD and other international organisations advocate for a sound framework for lobbying transparency and consider it crucial to safeguarding the public interest and promoting a level playing field for different interests. In 2009, the OECD developed 10 Principles to provide decision makers with directions and guidance to foster transparency and integrity in lobbying<sup>82</sup>.

To increase transparency in the interactions between public officials and private actors, several G20 countries run lobbying registers. The amount and type of information disclosed to the public varies widely depending on the resources available, the country's specific concerns, and the maturity of the system in place.<sup>83</sup> ATI legislation is key to enforce lobbying rules and regulations and empowers journalists and other stakeholders to investigate and monitor the respect of the lobbying framework.

In some countries, the laws governing the behaviour of lobbyists have helped increase the transparency of governmental decision-making and have highlighted the challenges associated with drawing a line between unethical behaviour and legitimate lobbying practices. Even if national policies and procedures regulating the role of lobbyists exist, more clarity is needed to make policies regarding the prevention of conflicts of interest and unethical behaviour applicable to its relationships with lobbyists. In the absence of such laws and procedures, Anti-Corruption institutions should develop their own policies and procedures to prevent unethical behaviour and undue influence by lobbyists, and there must be timely and appropriate responses to any practices that are in contravention of these policies and procedures.

Pre-and post-public employment issues for example can include forms of lobbying, switching sides and abuse of insider information. To counter these situations, timely and proportionate restrictions should be enforced to support implementation of time limits or cooling-off periods. In Canada, the Lobbying Act prohibits "former designated public office holders" from carrying on most lobbying activities for a period of five years. In the European Union, the 2018 Code of Conduct for Commissioners extends the cooling-off period from 18 months to two years for former Commissioners and to three years for former Presidents of the European Commission.<sup>84</sup>

Making legislation on lobbying more transparent to enable tracking of lobbying efforts must be a priority. Stricter rules for political party financing, including monitoring should be equally promoted to avoid illegal lobbying.<sup>85</sup>

### **ATI practices of the judiciary branch and their gaps**

The UNCAC, in its Article 11, describes the measures relating to the judiciary and prosecution services stating that States Parties should promote its independence, take measures to prevent its integrity and prevent opportunities for corruption. In completing their self-assessment checklist on the implementation of chapters II (Preventive measures) and V (Asset recovery) and their review of the implementation of the UNCAC, States Parties should provide examples of the measures taken including related court cases, jurisprudence, reports, statistics (on total number of disciplinary cases and examples of disciplinary sanctions), the number of reports on corruption in the judiciary received and the resulted number of investigations and their outcomes, information about the system of asset declarations of judges and how they are used to prevent conflicts of interest... The efforts of States Parties in

reporting on the measures they promoted go hand in hand with effective measures led to minimise opportunity through systemic reforms designed to limit the situations in which corruption can occur. This includes focus group consultations conducted by the judiciary with court users, civic leaders, lawyers, police, prison officers and other actors in the judicial system, national workshops of stakeholders and judges' conferences.

States Parties should help strengthen the integrity of the judiciary by ensuring that the judicial process is open and accessible. Barring exceptional circumstances, which should be determined by law, judicial proceedings should be open to the public. To ensure the integrity of the judiciary, including the availability of an effective appeals process, the reasons for judges' decisions should also be recorded. The judiciary must take necessary steps to prevent court records from disappearing or being withheld and facilitate the computerisation of court records. They should also institute systems for the investigation of the loss and disappearance of court files. Where wrongdoing is suspected, they should ensure the investigation of the loss of files, which is always to be regarded as a serious breach of the judicial process. In the case of lost files, they should institute action to reconstruct the record and institute procedures to avoid future losses.<sup>86</sup>

If the measures and steps described above might seem basic given the time passing since the adoption of the UNCAC, the judiciary in many States Parties is still suffering from corruption. The recent FACTI Panel report<sup>87</sup> reminds us that: "Effective enforcement of anti-corruption policy is unlikely if corrupt public officials are responsible for implementing it. This problem of guarding the guardians is broad and deep — especially when law enforcement, prosecutors and the judiciary are themselves corrupt<sup>88</sup>. Member States have recognised the problem in the UNCAC CoSP Resolutions 4/4 and 5. In fact, a corrupt regime can undermine enforcement and weaken national legal frameworks, for example by attacking the independence of the judiciary and independent-minded judges and undermining independent anti-corruption agencies.

Another significant gap related to the judiciary or the justice framework, is the increasing use of non-trial resolutions and settlements that is starting to emerge as a significant issue for the public globally, at least since the financial crisis of 2008. Agreements between a legal or natural person and an enforcement authority to resolve foreign bribery cases, short of full criminal proceedings, are significantly limiting the strength of the sanctions to be imposed and contribute to parodying the concept of justice in the eyes of the public. When a company bribes its way in a poor country to exploit local resources and causes sustained economic, social and environmental damages, any settlement reached in its home country by principle should benefit the populations and institutions impacted by its wrongdoing.

Inadequacies and shortcomings in enforcement systems, such as heavy workload of the judiciary, inadequate training and expertise of enforcement authorities contribute to making grand corruption crimes rarely prosecuted and punished. An additional shortcoming as indicated by the European Court of Human Rights in 2016, is the systematic problem of ineffective criminal investigations in many countries.

Given the importance of the Judiciary in political and institutional terms, transparency and access to information reforms are relevant due to their potential impact on the administrative and jurisdictional operation of the judicial bodies themselves. It is proven that the adoption by Judiciaries of transparency reforms could have a positive effect on their institutional capacity, increasing their legitimacy, their authority vis-à-vis other political players, and their relationships with citizens. For example, the dissemination of court statistics would help citizens learn about the true performance of the courts and at the same time generate opportunities for academia and NGOs to analyse the challenges and to formulate reform proposals. In this case, a virtuous cycle is generated through the feedback between access to

judicial information, monitoring and analysis by civil society, and accountability by the judicial institutions. In turn, access to information and transparency reforms are also relevant since they can contribute to the improved operation of the Judicial Branch and hence foster inclusive governance.<sup>89</sup>

Improving the collection and publication of statistics by the judiciary, especially as it relates to investigations and cases of corruption, is a good practice and provides possibilities for benchmarking for many countries. In Mexico for example, the judiciary is required by law to publish resolutions and court decisions that are available online. Likewise, transparency of enforcement information through publishing statistics and their frequent update is a significant measure to support monitoring of the judiciary. In Spain, the data published covers investigations carried out by judicial bodies, indictments and final judgments for crimes related to corruption and categorised by the court that issued the decision, including both acquittal and conviction decisions.<sup>90</sup> The Spanish General Council of the Judiciary also publishes statistics on mutual legal assistance (MLA) requests sent and received including a separate category for requests sent by the Special Prosecutor for Corruption.<sup>91</sup> Publishing open data online can help to ensure higher degrees of accountability and transparency not only of national governments, but also of the judiciary, which will play an important role in the achievement of the SDGs. It should also use traditionally relevant means to ensure public access to key information through local media, public billboards, and other methods.

## Other international standards and developments on ATI and their linkages to the UNCAC

### Access to information and other human rights

The right of all persons to be able to obtain information from public bodies about their decisions and activities is well established in international law as a human right.<sup>92</sup> It has also been widely recognised as a means for the enabling of civil and cultural rights, and as a key tool to fight corruption and promote good governance. The primary source of this right in human rights law is found in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which provides that: *“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.”*

In the General Comment No. 34 adopted in 2011, the UN Human Rights Committee issued an authoritative interpretation on the scope and limits of the right to information under Article 19 of the ICCPR. According to the Committee, the article requires that all countries ensure public access to information and ensure that the access is “easy, prompt, effective and practical”. Countries must enact “necessary procedures”, such as legislation, to give effect to the right to information and set standards for such legislation, including that fees for access must be limited, responses to requests must be timely, authorities must provide explanations for withholding information and independent appeals mechanisms must be established. Countries must also proactively disseminate information in the public interest.

In 2022, the UN Office of the High Commissioner for Human Rights, at the request of the Human Rights Council, released a report focusing on good practices for establishing national normative frameworks that foster access to information held by public entities. It included Internet access as a vehicle for promoting access to information and a focus on the importance of the State as a provider of trustworthy information, goods and services and a promoter of integrity in public information as a key lesson during COVID-19. It emphasized how measures to keep the public informed should provide information in an accessible manner, including for vulnerable populations.<sup>93</sup>



The need for access to information has also been recognised in international law relating to social and economic rights. These include the right to water<sup>94</sup>, the right to health<sup>95</sup> and the right to education<sup>96</sup>. For social, economic and cultural rights, ATI is considered an enabler right, which facilitates public participation in decision-making related to these rights, or allows persons to better access these rights. ATI is also found in numerous international treaties and agreements relating to protecting the environment, inclusion and disability.

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention)<sup>97</sup> and its Protocol on Pollutant Release and Transfer Registers contributed to legally binding global instruments on environmental democracy that put Principle 10 of the Rio Declaration on Environment and Development in practice. More recently, a Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, the Escazu Agreement was adopted.<sup>98</sup>

### **UNGA resolutions and Human Rights Council declarations related to ATI**

Human rights law imposes duties on States to ensure enabling environments for freedom of expression and to protect its exercise. The duty to ensure freedom of expression obligates States to promote, inter alia, media diversity and independence and access to information.<sup>99</sup>

The Human Rights Council has also adopted a number of resolutions calling on countries to adopt RTI legislation. In March 2016, 47 Member States signed a Joint Statement on Access to Information and Transparency as part of discussions on a future resolution developing detailed standards on RTI for countries to incorporate into national law.<sup>100</sup>

The panel discussion on “the negative impact of corruption on the enjoyment of human rights” organised on 13 March 2013<sup>101</sup> showcased the strong link existing between anti-corruption efforts and human rights and examined how those efforts could receive the sustained attention of the Human Rights Council (HRC) to consider the need for regular reporting on HR and corruption. This highlighted the importance of assessing how corruption could lead to direct and specific human rights violations and that efforts to combat corruption are most effective and sustainable when coupled with an approach that respects all human rights putting people at the centre of the issue. It stressed the importance of a follow-up mechanism and for regular reporting on human rights and corruption.

The Final report of the HRC Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights<sup>102</sup> draws from a more substantive perspective parallels between the main anti-corruption principles (such as participation, transparency and access to information, and accountability) and the scope of human rights (such as freedom of expression and freedom of the media, access to information, and the principle of non-discrimination). According to the Office of the United Nations High Commissioner for Human Rights (OHCHR): “An efficient anti-corruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for successful anti-corruption strategies and for the enjoyment of human rights.” The report recalls that combining strategies for fighting corruption and for promoting human rights can bolster both objectives. Transparency and access to information empower individuals to make informed decisions — from exercising their voting rights, to monitoring how State expenditures are spent. At the same time, creating such openness limits opportunities for abuses by politicians, the police and judges. Businesses are thus provided with incentives to minimise their involvement in corruption.<sup>103</sup>

In July 2015, Resolution 29/11 requested the High Commissioner (HC) to prepare a compilation of best practices of efforts to counter the negative impact of corruption on the enjoyment of all human rights, and in June 2017, Resolution 35/25 requested the HC to organise an expert workshop, to exchange best practices on how the UN supports States in preventing and fighting corruption, with a focus on human rights.

In July 2019, Resolution 41/9 stressed the importance of policy coherence among the intergovernmental processes in Geneva, Vienna and New York on the issue of corruption and its impact on human rights. In this resolution<sup>104</sup>, the Council underlined the importance of its mechanisms, such as the Universal Periodic Review, and the treaty bodies in raising awareness and strengthening the commitment to tackle the negative impact of corruption. The HRC also requested the OHCHR to prepare a report on the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors.

On 15 October 2019, the 74th UN General Assembly (UNGA) proclaimed the 28 of September as the International Day for Universal Access to Information. The resolution was adopted by consensus following a presentation by the Permanent Representative of the Republic of Liberia to the United Nations, who led the proposal and negotiations for the resolution. The International Day for Universal Access to Information was initially adopted by UNESCO's General Conference in 2015. Following the 38 C/Resolution 57, UNESCO marked 28 September as the "International Day for Universal Access to Information" (IDUAI), to raise awareness of the right to seek and receive information, an integral part of the right to freedom of expression, and as key to sustainable development. Since 2016, UNESCO has celebrated the Day and highlighted how the right to access information is an enabler of all Sustainable Development Goals within the 2030 Agenda.<sup>105</sup>

### **Regional instruments supporting access to information and anti-corruption efforts**

In addition to the activities of UN bodies, regional human rights conventions in Europe, the Americas, and Africa all require governments to make information available to the public.<sup>106</sup>

#### The OECD Anti-Bribery Convention

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that support the implementation by Parties and their review. It is considered the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. The OECD Anti-Bribery Convention underlines the importance of providing regular information to the public on monitoring and follow-up of the work and activities of Member countries. The OECD initiated a review including a consultation of its Stakeholders in 2019 to strengthen this convention.<sup>107</sup>

#### Council of Europe Criminal Law Convention on Corruption

The Council of Europe Criminal Law Convention on Corruption<sup>108</sup> came into force in 2002. It develops common standards concerning corruption-related offences and requires its parties to create specialised authorities for fighting corruption. It aims at coordinating criminalisation of a large number of corrupt practices and provides for complementary criminal law measures for improved international cooperation in the prosecution of corruption offences. The

Convention is open to the accession of non-member States and its implementation is monitored by the Group of States against Corruption (GRECO).

#### Council of Europe Convention on Access to Official Documents or Tromsø Convention

The Tromsø Convention entered into force on December 1<sup>st</sup>, 2020. This Convention is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities. Limitations on this right are only permitted in order to protect certain interests like national security, defense or privacy. The Convention 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. The implementation of the Convention is to be monitored by a Group of Specialists on Access to Official Documents.

#### ACHPR Declaration on freedom of expression and human rights

The African Commission on Human and Peoples' Rights (ACHPR) has published in 2021 a new Declaration on Principles of Freedom of Expression and Access to Information in Africa<sup>109</sup>, which replaces its 2002 principles on freedom of expression, and expands the guidance to States on access to information and digital rights. The Declaration interprets Article 9 "*right to receive information and free expression*" of the African Charter on Human and Peoples' Rights and consists of 43 principles covering the Right to Freedom of Expression, the Right to Access Information, Freedom of Expression and Access to Information on the Internet and their Implementation. It includes principles on access to the Internet, internet intermediaries, privacy protections, and communication surveillance, as well as on the Declaration's implementation. The Declaration requires States to include information on their implementation of the Declaration in their periodic reports to the ACHPR. It refers to, and is intended to complement, the ACHPR's Model Law for African States on Access to Information<sup>110</sup> and its Guidelines on Access to Information and Elections in Africa.<sup>111</sup>

In the past, the changing structure of the African Commission on Human and Peoples' Rights has also improved the Commissioners' capacity to respond and alert, especially outside of the sessions, on urgent situations of human rights violations. Indeed, the Commission had designated Special Rapporteurs among the Commissioners who oversee protecting a specific duty including the Special Rapporteur on freedom of expression and access to information. The Rapporteur Commissioner may be contacted at any time by NGOs and they have the opportunity to act in public – including through statements – to condemn the violation of rights for which they are responsible, in any country<sup>112</sup>.

#### The Inter-American mechanisms relevant for the right to information

The Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) is the Anti-corruption Mechanism of the Organization of American States (OAS). Since its adoption, the MESICIC has adopted over 100 reports with recommendations for States to strengthen their legal frameworks and institutions to effectively combat corruption in areas such as civil society participation in the fight against corruption and the protection of whistleblowers among others. Article 13 of the American Convention protects the right of access to information<sup>113</sup>.

Moreover, the Office of the Special Rapporteur for Freedom of Expression has engaged in continuous efforts to ensure and expand access to information in the Americas, in the understanding that its effective implementation constitutes a benchmark for the consolidation of the right to freedom of expression and provides a framework for the establishment of policies of transparency necessary to strengthen democracies. As a pioneer, the Office

published back in 2001 a “Report on Action with respect to Habeas Data and the Right of Access to Information in the Hemisphere.”<sup>114</sup>

On the other hand, the Inter-American Commission on Human Rights (IACHR) has been an important pillar for the development and the promotion of Access to information. Although the Inter-American Commission has adopted several regional reports focused on access to justice and violence and discrimination against women, it has only recently begun to examine access to information in greater detail from a gender perspective<sup>115</sup>. The IACHR has emphasized that access to information is closely linked to women’s enjoyment of other fundamental human rights, such as the right to personal integrity, the right to privacy, the right to protection of the family, and the right to live free from violence and discrimination. IACHR’s report focuses on access to information as a right that is instrumental to respect and guarantee women’s rights to live free from violence and discrimination.

### Jurisprudence of regional courts on ATI

#### The European Court of Human Rights

The European Court of Human Rights (ECtHR) has in its case-law clarified how Article 10 of the European Convention on Human Rights (ECHR) encompasses a right of access to State-held information. In the case of *Magyar Helsinki Bizottság v. Hungary*,<sup>116</sup> the ECtHR clarified its principles in this area and what conditions should exist in order for Article 10 to be applicable:

- **The purpose of the information request:** The purpose of the person requesting access to the information held by a public authority is to enable their exercise of the freedom to receive and impart information and ideas to others. It must be ascertained whether access to the information sought was an essential element of the exercise of freedom of expression. The ECtHR has placed emphasis on whether the gathering of the information was a relevant preparatory step in journalistic activities or in other activities creating a forum for, or constituting an essential element of, public debate.
- **The nature of the information sought:** The information, data or documents to which access is sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention. Public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about.
- **The role of the applicant:** The particular role of the seeker of the information in “receiving and imparting” it to the public assumes special importance. The ECtHR has recognised that this role is played by journalists and NGOs whose activities are related to matters of public interest. A high level of protection also extends to academic researchers and authors of literature on matters of public concern.
- **The availability of the information:** The ECtHR considers that the fact that the information requested is ready and available ought to constitute an important criterion in the overall assessment of whether a refusal to provide the information can be regarded as an “interference” with the freedom to “receive and impart information”.

In essence, an applicant needs to demonstrate that they act as a “social watchdog”, such as a journalist, historian, NGO or even an online blogger who requires the information in order to contribute to “an informed public debate” on an “issue of obvious public importance”. In this case<sup>117</sup>, the ECHR found that the NGO’s request for information met the public interest test and considered that the denial of access to information prevented the NGO from conducting its investigation and engaging in public debate about the quality of state-funded lawyers in the criminal justice system, thus interfering with its right to freedom of expression in Article 10. The Grand Chamber held that the denial of access could not be justified on the grounds of privacy protection in Article 10(2).

This decision was a significant advancement in the ECtHR’s recognition of the right of access to information. The first major ruling on access to information was the Grand Chamber’s decision in *Leander v. Sweden*<sup>118</sup> in which the ECtHR held that the right to freedom of expression in Article 10 did not confer a positive right to request information or an obligation on the State to provide such information. However, since the *Hungarian Civil Liberties Union v. Hungary*,<sup>119</sup> the ECtHR has demonstrated a willingness to expand the scope of Article 10 and has started considering violations of the right to freedom of expression in circumstances where journalists, historians, and NGOs were denied access to public documents.<sup>120</sup>

### The InterAmerican Court of Human Rights

The Inter-American system was a pioneer in establishing the right of ATI. Its bodies have developed a number of standards related to its content and scope, the requirements for its restriction, as well as the State obligations to which it gives rise. The Organization of American States (OAS) Members have also affirmed in different occasions their commitment to adopt the legal and policy measures necessary to guarantee the right to access to information within their jurisdictions<sup>121</sup>.

ATI is protected by Article 13 of the American Convention and Article IV of the American Declaration. The InterAmerican Court of Human Rights (IACHR) established in *Claude Reyes et al. v. Chile*<sup>122</sup> that Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. With this judgment, the IACHR became the first international tribunal to recognise that the right of access to public information is a fundamental human right, protected by human rights treaties that bind countries to respect it. Both the universal and Inter-American human rights systems<sup>123</sup> have widely stressed the fact that access to information facilitates the exercise of other human rights.

The IACHR and the Office of the Special Rapporteur have emphasized that ATI generates obligations at all levels of government, including for public authorities in all branches of government, as well as for autonomous bodies. The IACHR has further noted that the right of access to information covers all of “the information that is in the care of, possession of, or being administered by the State; the information that the State produces, or the information that it is obliged to produce; the information that is under the control of those who administer public services and funds and pertains to those specific services or funds; and the information that the State collects and that it is obliged to collect in the performance of its functions.”<sup>124</sup>

The IACHR has defined the various State obligations generated by the right of access to information: the obligation to respond in a timely, complete, and accessible manner to requests made; the obligation to offer a legal recourse that satisfies the right of access to information; the obligation to provide an adequate and effective legal remedy for reviewing denials of requests for information; the obligation of active transparency; the obligation to produce or gather information; the obligation to create a culture of transparency; the obligation to

adequately implement the laws on the access to information; and the obligation to adjust domestic legislation to the demands of the right of access to information.<sup>125</sup>



## STAKEHOLDERS' INITIATIVES IMPACTING AND IMPROVING THE IMPLEMENTATION OF ATI

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### Multi-stakeholder Initiatives supporting anti-corruption work

#### Access to Information in the SDGs (SDG 16.10.2)

The Rio + 20 Declaration emphasized the importance of including access to information in a monitoring mechanism to ensure the broad public participation in the promotion of sustainable development and acknowledges the role and importance of engaging civil society in these efforts. The Secretary General's Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda further suggested two targets in its Goal 10 on Good Governance and Effective Institutions:

- Ensure that people enjoy freedom of speech, association, peaceful protest and access to independent media and information
- Guarantee the public's right to information and access to government data

The Open Working Group on the SDGs confirmed this trend and enacted the existing global recognition of the importance of access to public information and the need to incorporate it in the Sustainable Development Goals in a meaningful way. Moreover, there was a clear intent by Member States to ensure that both access to information and the protection of human rights would be monitored through an individual indicator.

Indicator 16.10 ensures public access to information and protects fundamental freedoms, in accordance with national legislation and international agreements. The final, approved in the 2017, reflect the two separate indicators for 16.10 related to access to information and human rights:

- 16.10.1 Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates.
- 16.10.2 Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.

The SDG Indicator 16.10.2 supports developing countries efforts to promote transparency of public authorities by providing public information online, appointing public information officers in each public authority, and setting up a mechanism for handling information requests from citizens.<sup>126</sup> Unfortunately, 89% of investigative journalists ranked lack of access to information as the main obstacle to investigating and reporting on financial crime and corruption around the world, followed by personal safety and security concerns for themselves and others (59%), defamation legislation (44%) and national security legislation (24%), in the surveys developed by the "Unsafe for Scrutiny report".<sup>127</sup>

UNESCO aims to develop the vital role of information commissioners in upholding information rights in the interest of sustainable development as well as integrating them into the monitoring of this SDG indicator. The International Programme for the Development of Communication (IPDC) has outlined several key actions to track ATI progress, as well as supporting Member States in fulfilling their obligation to report such progress.<sup>128</sup>

The UNESCO Survey on Public Access to Information monitors the implementation of SDG 16.10.2 by asking States' central oversight institution responsible for access to information (such as Information Commission or Commissioner, Data Protection or Privacy Commission or Commissioner, Human Rights Commission, Ombudsman, and Department or Ministry or Agency) to report on progress on the implementation of access to information laws.

The 2021 survey<sup>129</sup> revealed that out of the 91 countries and territories with Access to Information laws, only 44% (40) had data in 2020 on the number of requests for information received, while the remaining 56% (51) only had data from either 2018 or 2019, or no data at all. The low scores for data availability were also recorded on the number of appeals processed by oversight institutions. Out of the 91 countries and territories, only 57% (52) had data in 2020, while the remaining 43% (39) only had data from either 2018 or 2019, or no data at all. These figures in 2020 suggest that public bodies struggled to monitor how they treated and followed up Access to Information requests during the COVID-19 pandemic, when some countries suspended commitments to turn-around times. UNESCO has also launched the 2022 Survey.<sup>130</sup>

### **FACTI Panel**

The High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) aims to contribute to the implementation of the 2030 Agenda by identifying existing gaps and supporting reforms in the existing systems and frameworks.

The FACTI Panel published its Interim Report in September 2020 and its detailed Final Report with recommendations in February 2021.<sup>131</sup> Specific recommendations towards key stakeholders were developed targeting mainly the global financial system to integrate better accountability, legitimacy, transparency, and fairness. The 14 recommendations presented in the final report advocated for reforming and revitalising the global architecture to effectively foster financial integrity for sustainable development through strengthening coordination and global governance.

It is important to emphasize the recommendations addressing the need for the international community to develop and agree on common international standards for settlements in cross-border corruption cases and making the information public on anti-money-laundering measures consisting of all countries creating a centralised registry for holding beneficial ownership information on all legal vehicles. Another important measure for tax transparency consists in having all private multinational entities publish accounting and financial information on a country-by-country basis. Specific recommendations advocate for considering incorporating standards in a legally binding international instrument on protection for human right defenders, anti-corruption advocates, investigative journalists, and whistleblowers. The FACTI Panel recommended procedural aspects among others, the creation of the legal foundation for an inclusive intergovernmental body on money laundering including the existing FATF Plenary and designing a mechanism to integrate the UNCAC COSP into the coordination body under the auspices of ECOSOC.

### **The Group of States against Corruption (GRECO)**

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to improve the capacity of its members (48 European States, Kazakhstan and the United States of America) to fight corruption by monitoring their compliance with its anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It



helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption. Access to information and transparency of the law-making process are still areas that required GRECO's intervention, despite the numerous recommendations that countries received in the past.

GRECO had to recall the overall principle of transparency of public documents and that it should be guaranteed in practice. GRECO reiterated that any exceptions to the rule of public disclosure should be limited to a minimum and that outcomes of public participation procedures should be public information. It considers that public scrutiny is key also with respect to public procurement, especially concerning large public contracts, and therefore should not be under-estimated. GRECO recommended to many countries to ensure transparency in engaging with lobbyists or third parties seeking to influence the public decision-making process, and providing enough details by requiring disclosure of such contacts and the subject matters discussed. The European standard in this area is the Committee of Ministers Recommendation on the legal regulation of lobbying activities in the context of public decision making (2017).<sup>132</sup>

### **Partnering Against Corruption Initiative (PACI)**

Building on the pillars of public-private cooperation and responsible leadership, PACI was launched in 2004 and serves as the principal CEO-led platform in the global anti-corruption arena. With approximately 90 signatories from different sectors across the globe, PACI serves as one of the leading business voices on anti-corruption and transparency. PACI over the years became one of the World Economic Forum's strongest cross-industry collaborative efforts and is creating a highly visible, agenda-setting platform by working with business leaders, international organisations, and governments to address corruption, transparency and emerging-market risks. Driven by identified needs and interests of its member companies, PACI undertakes initiatives to address industry, regional, country, or global issues tied to anti-corruption and compliance.

Chief executives who want to fully commit to a higher level of leadership in anti-corruption through building trust and integrity eventually join the PACI Vanguard. The purpose of the Vanguard is to identify innovative approaches to anti-corruption and set global, regional and industry agendas together with leaders from civil society, academia, and government by meeting at the World Economic Forum Annual Meeting. The Vanguard leads the broader PACI strategy to achieve more meaningful dialogue and impact through sustaining high-level joint business and government engagement with a focus on collective action.

### **UN Working Group on business & human rights**

The UN Guiding Principles on Business and Human Rights (UNGPs) are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations.<sup>133</sup> For the 10-year anniversary of the adoption of the UNGPs, the Working Group has launched a new project to further drive and scale up implementation of the UNGPs more widely over the next 10 years. The project will take stock of achievements to date, review existing gaps, and develop an ambitious vision and roadmap for the decade ahead based on inputs of a wide range of stakeholders.

In terms of ATI, the guidelines emphasized the importance of ATI for affected stakeholders in their grievances or disputes with business enterprises to achieve fair process and durable solutions. They also recalled the importance of communicating with parties around the

progress made on individual grievances and providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, to demonstrate its legitimacy and retain broad trust.<sup>134</sup> The UN Working Group on business & human rights stated in its briefing of March 2021 the importance given to the two intertwined legislative proposals by the European Commission aiming to foster integration of sustainability in corporate strategies.<sup>135</sup>

## **Sector and thematic based initiatives reinforcing ATI**

### **The Extractive Industries Transparency Initiative (EITI)**

The EITI is a global standard to promote open and accountable management of natural resources. It has evolved during the last two decades thanks to its structure embracing civil society, private sector, and governments, seeking to strengthen government and company systems, inform public debate, and enhance trust. The EITI is currently implemented in 52 countries where it is supported by a coalition of governments, companies and civil society working together.

The EITI relates directly and indirectly to different SDGs, including 11, 12 and 16, and is an example of a multi-stakeholder approach to collaboration to develop transparency and ensure the participation of local actors in the evaluation of public policy. The EITI sustains the EITI Standard, which requires countries to ensure the full disclosure of taxes and other payments made by oil, gas and mining companies to governments. These payments are disclosed in an annual EITI Report which provides citizens with information to monitor these resources and the impact of their exploitation on the local population.

The EITI Standard contains a set of requirements that countries need to meet to be recognised first as an EITI Candidate, and ultimately an EITI Compliant country. The EITI Standard has been revised in 2013 to ensure among other objectives that it provides more intelligible, comprehensive, and reliable information. To make the EITI reports more understandable, they were required to contain contextual information such as the contribution of the extractive sector to the economy, production data, a description of the fiscal regime, an overview of relevant laws, a description of how extractive industry revenues are recorded in national budgets, an overview of licenses and license holders, and a description of the role of state-owned companies. Countries were encouraged to publish contracts and details of the beneficial owners of companies. The Standard required for the first time that EITI reports disclose the payments broken down by each company, and by each revenue stream and, in due course, by each project. The EITI reports were also made available electronically and codified to allow for international comparisons.

The 2016 version of the Standard included enhanced disclosure requirements on beneficial ownership, ensuring that the identity of the real owners of the oil, gas and mining companies operating in EITI countries would be public by 2020. It encouraged countries to disclose open data online to enable users to make better use of EITI data to inform public debate about the extractive industries and to draw more from existing and emerging online sources than developing separate systems from collecting data for the EITI process.

### **The Construction Sector Transparency Initiative (CoST)**

The Construction Sector Transparency Initiative (CoST) is a multi-stakeholder initiative launched in 2012 to get better value from public infrastructure investment by increasing transparency and accountability. It counts 15 participating countries where CoST is directed

by a Multi-Stakeholder Group that comprises representatives of government, private sector, civil society and local communities. CoST promotes transparency by disclosing data from public infrastructure investment to inform and empower citizens, enabling them to hold decision-makers to account. Informed citizens and responsive public institutions can lead to the introduction of reforms that will reduce mismanagement, inefficiency, corruption, and the risks posed to the public from poor infrastructure. In addition to contributing to monitoring efforts of SDG 9 directly and other SDGs more indirectly, including 11, 12 and 16, CoST works at the national and international level to facilitate the global exchange of experience and knowledge on transparency and accountability in public infrastructure.

CoST requests forty data points to be disclosed at key stages throughout a project cycle, as set out in the CoST Infrastructure Data Standard (IDS) to increase transparency by proactively disclosing data on public infrastructure projects. A national programme establishes a disclosure process for public infrastructure that is viable, sustainable, and appropriate to local conditions and that can achieve a credible and substantial level of compliance.<sup>136</sup> CoST aims for promoting accountability by reviewing and validating technical data and makes it more accessible so that stakeholders can understand the main issues and act as a basis for holding decision-makers accountable.

### **The Open Government Partnership (OGP)**

The Open Government Partnership (OGP) was initiated by the “Open Government Declaration” to promote transparency of governments through a multi-stakeholder approach. Transparency is referred to in the Declaration in these terms: “Governments collect and hold information on behalf of people, and citizens have a right to seek information about governmental activities. We commit to promoting increased access to information and disclosure about governmental activities at every level of government. We commit to increasing our efforts to systematically collect and publish data on government spending and performance for essential public services and activities. We commit to pro-actively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse...”.

The commitment of the OGP to RTI is strong for both reactive and proactive disclosure of information. One of the conditions established in the Articles of Governance of OGP for governments to join is to adopt “An access to information law that guarantees the public’s right to information and access to government data is essential to the spirit and practice of open government.” Even if this is an important step in recognising the importance of RTI for transparency and open government, some experts have criticised the fact that this focuses only on the existence of RTI legislation in the country, without paying attention to its effectiveness and its compliance with international standards. The dilemma here is that the adoption of strong RTI legislation does not guarantee its implementation, and therefore this metric can be insufficient. This is an important lesson for the monitoring of the SDG indicator 16.10.2.<sup>137</sup>

A study conducted to analyse the commitments of OGP countries to RTI concluded that all members made at least one commitment regarding open government data and less frequently there were commitments to improve the functioning of RTI laws. This is partially because OGP as an initiative is aimed at the executive branch of governments and can thus deliver proactive transparency (open government data) unilaterally, but the reactive part of RTI requires that other stakeholders take part in the process, including the legislature. Further, open data is often seen as easier and less contentious, as the release is under the control of the public bodies. The commitments made by those governments who included RTI in their plans fall within four broad categories that can be described as: Developing or strengthening a solid

legal RTI framework; Ensuring the correct enforcement of RTI; Training on RTI for public officials; and Developing or strengthening oversight bodies.

The OGP process provides a leverage opportunity for CSOs to influence the design and development of commitments that the Government will adopt and implement. Thanks to the OGP process, some of the CSOs focusing on RTI advocacy have become more visible, but more efforts are needed to ensure the participation of key actors in joint actions to support the RTI agenda and its implementation. Organisations working on the promotion of human rights in general are almost absent from these efforts, as are labour groups, professional associations, and bar associations.

An illustrative example of the OGP process and its impact on key stakeholders in promoting transparency and the specific RTI agenda is Tunisia. Tunisia adopted a presidential decree on access to administrative documents in 2011 and joined the OGP formally in 2013. A new Constitution adopted in 2014 recognised RTI and a new expansive RTI law was adopted in March 2016 after extensive consultation, and strong advocacy by civil society. One of the focuses of this advocacy was retaining the commitment to adopting RTI legislation in the first National Action Plan (NAP) of Tunisia. The OGP process in Tunisia enabled the development of various commitments in the first and second NAPs on RTI and its effective implementation and facilitated the adoption of open data portals. This process was highly consultative of civil society groups that were part of the OGP National Committee in the first NAP, further expanded consultations for the second NAP and set a very good example of collaboration between governments and local civil society. In taking a similar approach, the SDGs dynamic within countries could gain traction and effectiveness and become a way to promote civic space and multi-stakeholder collective action for achieving the 2030 Agenda.

### **Open Contracting Partnership and Open Contracting Data Standard**

Open Contracting Partnership (OCP) and the initiatives described above showcase the importance of ATI in practice. OCP was founded in 2012 by a community of policy experts, leaders and campaigners through a collaborative process that included hundreds of stakeholders across government, business, and civil society as an alliance to foster collaboration, innovation, and collective action. The Open Contracting Data Standard (OCDS) was launched in 2014 as a global non-proprietary standard structured to reflect the complete contracting cycle and enable users and partners around the world to publish shareable, reusable, machine readable data, and combine it with their own information to build tools to analyse or share data.

The OCP supports a network of partners to adopt the OCDS and implement open contracting projects to develop advocacy and to challenge vested interests and change global norms in public contracting from closed to open. This enables disclosure of data and documents at all stages of the contracting process by defining a common data model. Publishing and using structured and standardised information about public contracting helps stakeholders to deliver better value for money for governments and prevent fraud and corruption. It also creates fairer competition and a level playing field for business that should drive higher quality goods, works and services for citizens. Recent progress made in governments adopting the use of the OCDS have enabled the development of platforms promoting their adoption in different regions of the world. One example of this is Budeshi (meaning “Open it” in Housa), a platform that advocates for Open Contracting across Africa and aims to open-up the procurement processes of governments across the continent through sustained advocacy and accessible technology.<sup>138</sup>

## Social Accountability and citizen engagement

Information is a fundamental element of social accountability. In an accountable and responsive State that engages citizens in decision making, information flows are needed from citizens to the State, from the State to citizens, between the various parts of civil society, and within the State apparatus. A wide range of information is needed to ensure accountability, and it is often highly technical in nature (for example, laws, policies, standards, targets, performance, assets, budgets, revenues, and expenditures). In many cases the information needed for social accountability may not even exist. Informational constraints need to be considered in terms of information generation, simplification, presentation, accuracy, access, and, most important, use. Information asymmetry is rarely an accident of history, as is sometimes inferred from principal-agent models; rather, it is the result of authorities or other individuals in charge who intentionally withhold information or resist attempts to make it accessible. Ensuring that citizens and civil society have access to information, understand it, and make good use of it takes considerable efforts and skills. For these reasons, intermediaries—whether a person, an organisation, or the media—are almost always needed to improve access to information, simplify it, clarify it, and point out its implications.

The World Bank introduced the social accountability concept in the World Development Report of 2004 as a tool to fight poverty, and has supported in recent years the Global Partnership for Social Accountability<sup>139</sup> and development policy lending (DPL) in supporting the ecosystem for stronger social accountability by supporting the enactment of right to information legislation and, in some cases, its implementation regulations (for example, Latvia, 2000; India, 2004; Ghana, 2009; and Tunisia, 2011).

The Tunisia DPL series illustrates the use of such an instrument to support a transition government. The DPL promotes improved transparency and accountability and greater public participation in policy making. In 2011, the interim government introduced reforms aimed at improving accountability in public service delivery—for example, through participatory monitoring of public service delivery by third parties. This reform was supported simultaneously by two others: the Law of Associations was revised to remove any room for discretion in registration procedures, and a Decree Law was adopted, giving the public the right to access information, including economic and social data, held by public bodies. In most cases, the adoption of the law or policy constituted an important step forward but the implementation of such laws or policies also needs to be actively supported and sustained to make these frameworks effective.<sup>140</sup>

# KEY ROLES OF ATI IN ADMINISTRATIVE PROCESSES AND GOVERNMENT WORK

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## Promoting proactive disclosure in core functions of the administration and the Public sector

### Audits

Officially released audit reports can represent a significant move in terms of curbing corruption in public sector and local governments. The effects of proactively disclosing information by Audit courts or other types of inspection agencies could support media, civil society, and the public to fight corruption and impact electoral outcomes. Disclosing information is an important step, but it needs to be supported by informed public, media and civil society to analyse this information and share the conclusions with the public. These actions can deter other actors from developing corrupt practices and educate the public about the importance of disclosing public information contained in audits of public institutions and public financed projects and agencies.

A growing literature during the last two decades emphasized the role of media in divulging the findings of the audit reports. Even if local media exacerbates the audit effects when corruption is revealed, it also helps to promote non-corrupt actors. It seems that the disclosure of information enhances political accountability, but its interpretation can be ultimately influenced by the prior beliefs of voters. Moreover, the value of information disclosed is strengthened by the importance of local media in promoting political accountability. Thus, information disclosure about corruption may reduce capture of public resources through an alternative mechanism: reducing asymmetric information in the political process to enable voters to select better politicians.<sup>141</sup>

Another type of audit is social audit. It is considered a powerful social accountability tool based on its multi-stakeholder approach and its level of engagement of local actors and communities. In fact, social audit scrutinises public officials' decisions and actions, looking for administrative or financial irregularities, and seeks to uncover discrepancies by comparing public documents, processes, or services with how they should be. For example, it has led to the conviction of public officials for violating the right to information law in Guatemala, a 50 per cent reduction in the costs of public construction works in Peru, and cancelling an illegal education fee in Ghana.<sup>142</sup> In Bangladesh, the Journey for Advancement in Transparency, Representation and Accountability (JATRA) Project mobilised members and citizens to participate in open budget meetings, preparing them to prioritise community development priorities, encouraging community members to participate in reformed development and supervision committees, motivating them to pay taxes, and supporting communities to conduct social audits and other social accountability tools.<sup>143</sup>

### Open data

Open data is defined as digital data that is made available with the technical and legal characteristics necessary for it to be freely used, re-used, and redistributed by anyone, anytime, anywhere. Open data is considered an important enabler to the fight against corruption and promoting transparency, accountability and access to information which can help detect and address it.<sup>144</sup> In fact, there are several advantages of open data in terms of ATI. In fact, it reduces considerably the time taken to fulfill ATI requests by those interested in using the information, enhances their anonymity, and standardises their ability of re-using it.<sup>145</sup>



Open data activists build on these ideas and concern themselves with the re-use of data and information released by public bodies by generalising its use through online forums, social media, and blogs as a key part of their activities to learn and form opinions and seek advice. Open data advocates argue that public bodies should not only release information and data with modern online habits in mind, but they should do it in a way that removes technical, financial, and legal obstacles to any sort of re-use. In practice, this means designing methods and standards for releasing different sorts of information in ways that anticipate but do not preclude what people might want to do with it.

Civil society groups are advocating for the development of open data standards that could be inspired by open government standards to make all stakeholders support meaningful efforts in this area. Recent reports by the United Nations (UN) and the World Economic Forum (WEF) issued and emphasized Open Government Data (OGD) for their E-Government Survey reports, which summarised how governments utilised these data to better serve and protect their people. Opening data may then allow citizens and businesses to analyse various datasets and understand what governments are spending public resources on. However, affecting widespread impact through the release of OGD relies not only upon the supply of data, but also upon the capacity of users to work with the data, and the ability of government to engage proactively with those users.

The public sector produces, collects, processes, and disseminates a large amount of data. These can be re-used, combined, and integrated to create new value-added services and products with potentially significant impacts in the global economy. However, the importance of open data portals at various levels must be emphasized by governments in their Open Government initiatives. They are the main source of open data and without them no impacts can be achieved. It seems that the biggest impacts of open data can be found in the educational and social development, however, the attention of businesses is still lacking in this area.<sup>146</sup>

## **Procurement**

Public sector management requires a strong procurement capacity to ensure the timely acquisition of goods and services while achieving value for money and avoiding abuses in the procurement process. The prevention of corruption in procurement is usually based on designing procurement structures (delegating authority, assigning accountabilities, etc.) and a procurement process that enhances efficiency while minimising risks for corruption. The procurement structure and process must be designed to reduce opportunities for corruption and enhance efficiency, limit staff non-compliance with the process, and control out-of-process procurement. The procurement activities take place within the context of applicable legislation and governmental policies. Existing public procurement policies must be regularly revised and adapted to recent developments in technology and economy to mitigate any emerging threats of misuse of public monies.

Existing public procurement processes and criteria need to be adapted to the changing circumstances surrounding public management ensuring continuously that the used criteria are objective, transparent and publicly available. Public procurement rules must be published and establish the conditions of participation, including selection and award criteria. Moreover, time pressures and calls for efficiency and expediency should not in any way weaken existing procedures to properly document procurement decisions and allow for the subsequent verification of the application of the relevant rules and criteria. Some critical aspects of procurement practices which help to prevent corruption include robust mechanisms for monitoring all aspects of bidding; specific monitoring of single source procurement; and the

development of fraud indicators which might point to fraudulent and corrupt activities. Procurement involves discretionary decision-making and those having this discretionary authority fall within the high-risk group of members vulnerable to corruption. This function requires a higher level of assurance against misuse of public monies, and it is important to identify specific vulnerabilities.

Procurement activities must be supported by effective contracting policies and practices, as well as diligent contract monitoring, supervision and enforcement. In addition to broad, standardised and efficient contract management procedures, the proactive management of risks, including the risk of corruption, must become an inherent part of contracting activities.

The COVID-19 response required rapid and efficient procurement of life-saving goods and services to fight against the pandemic. Governments needed to resort to emergency procedures and negotiated arrangements to manage the emergency procurement, and this could be significant on the impact of COVID-19. The Open Contracting Partnership considers that this could be public procurement's moment in the spotlight, and they make the case that buying fast does not mean that it cannot be done openly. Some examples of using open procurement data to track and manage emergency spending can be found in Colombia, Moldova, Ukraine, and Paraguay.<sup>147</sup>

## Partnerships

Public sector management involves entering into various forms of partnership agreements. Given the limitless number of potential partners and the complexity of these contracts, public sector agencies need to systematically conduct due diligence exercises before entering into such agreements and ensure that potential partners have anti-corruption policies and practices that are consistent with its own. Formal contribution agreements, protocols, and memoranda of understanding should be subject to regular audits. Any partnership or joint venture with partners whose practices and policies are inconsistent with the public sector's own standards of integrity should be avoided. Potential conflicts of interest must be addressed in a proactive way and specific tools should be developed to monitor performance of partners and keep their track record on anti-corruption measures and experience.

The UNCAC Resolution 6/5 titled "St. Petersburg statement on promoting public-private partnership in the prevention of and fight against corruption" calls upon:

6. States parties to support public-private partnership in order to strengthen the understanding of both public officials and private sector actors that bribery and solicitation are unacceptable; and,
8. States parties, in accordance with the fundamental principles of their legal systems, to foster public-private partnership in the prevention of corruption by, inter alia, increasing dialogue and cooperation, developing initiatives to promote and implement appropriate public procurement reforms, addressing practices that generate vulnerability to corruption and promoting good practices and anti-corruption ethics and compliance programmes for private sector entities;

The World Bank in its framework for disclosure in public-private partnerships (PPP)<sup>148</sup> shows that the jurisdictions studied appear to be influenced by multiple drivers, such as reducing the risk of corruption, mobilising private capital for investment in infrastructure, increasing public confidence and awareness, and achieving value for money through PPP transactions. For example, in South Africa, the rationale behind the policy objective of transparency in procurement processes as set forth in the Constitution is the public's right to be informed that public money is being spent accountability. As the beneficiary of the service that is being procured, the public also has the right to be informed that the products that are being procured

through PPP demonstrate value for money. Where legislation is in place, especially overarching FOI legislation that includes clauses mandating some form of proactive disclosure, more information seems to be available in the public domain. FOI Acts are being increasingly interpreted as covering PPPs in addition to mandating proactive disclosure. And in most of the jurisdictions studied, FOI Acts appear to be powerful instruments inducing better proactive PPP disclosure.

### **Elections and Political parties**

Political corruption can be defined by political parties and elections facilitating corruption in a given country. Political parties can be organised and run in a way that is not transparent and accountable, which contributes to producing leaders who then approach their work in government in a similar way. Election campaigns can establish a pattern of vote buying, which then becomes the routine for politicians once in office. Moreover, individuals involved in organised crime sometimes seek election to Parliament simply to avoid prosecution based on parliamentary immunity. These trends weaken good governance values of accountability, transparency and participation.

Promoting ATI can represent a relatively inexpensive policy action to reduce capture of public resources through giving voters the possibility to know more on the financing of political parties, to access public budgets information and request public information that will inform their decisions. Increasing proactive disclosure of public information through campaigns and innovative channels supports public access to information as a tool to reduce the capture and corruption of public funds. Examples of local capture in education programs appear to build the case for the importance of providing information to the population because a common denominator in these programs is that, at best, users have limited knowledge about the public funding they are entitled to.<sup>149</sup>

### **Grand corruption**

The UNCAC resolution 7/2 on grand corruption calls for “preventing and combating corruption in all its forms more effectively, including, among others, when it involves vast quantities of assets, based on a comprehensive and multidisciplinary approach”. It also “Encourages States parties that have not already done so to consider establishing effective financial disclosure systems for appropriate public officials, consistent with article 52, paragraph 5, of the Convention, and to consider taking such measures as may be necessary to permit their competent authorities to share that information, consistent with the requirements of domestic law, with other States parties, when necessary, in order to investigate, claim and recover proceeds of offences...”.

The FACTI Panel report recalls grand corruption being a core concern of States parties in negotiating the UNCAC and considers that it has remained a major driver of the advocacy of civil society groups on corruption issues which points to vast sums allegedly stolen by heads of state and their families. “While corruption techniques have evolved as law enforcement improves, the elements have remained surprisingly constant: corrupt officials use businesses, family members and other associates to take bribes or steal resources and move the money via shell companies and inter-bank transfers to major financial centres with the help of professional intermediaries and enablers. The FACTI Panel report considers that exposing the real or “beneficial” owners of assets can prevent or reveal global financial crime or tax-abuse schemes. Beneficial ownership information is therefore a critical tool, but few countries comply fully with global standards, sometimes by design. There are weaknesses in information collection and verification, and there are systemic difficulties in accessing information”.

## Open Budget and Fiscal Transparency

All people in a country should have access to relevant information on how public resources are raised and spent; opportunities to contribute to policy decisions that affect their livelihoods, and an assurance of robust budget oversight by independent well-informed legislatures and audit institutions. The Open Budget Survey (OBS) was launched in 2006 as the first independent, comparative, and fact-based research instrument to measure budget information disclosed by countries.

The results of OBS 2021 edition,<sup>150</sup> co-developed in partnership with over one hundred civil society organisations and academic institutions across the world, include country-specific findings and recommendations on budget transparency, public participation, and oversight. In Guatemala for example, open budget combined with other measures of open government, reflecting years of civil society activism and the government's commitment to changing the ways of the past, seem to have contributed to considerably improve its score and ranking on OBS between 2008 and 2017. During this decade, responding to the corruption scandals and pressure from civil society, Guatemala's Ministry of Finance committed to shifting the culture in state institutions from closed to open, and made international pledges to expand public awareness and involvement in fiscal policy. The government included fiscal transparency as part of its commitments with the Open Government Partnership and built or expanded websites to share fiscal data with the public.

Starting in OBS 2017, the government began regularly publishing a Citizens Budget, and now publishes two versions that simplify and explain the budget proposal and the approved budget. Having reached the minimum benchmark for sufficient budget information in OBS 2017, the government has continued its efforts to engage and inform the public about fiscal policy. This round, a new publication has been made available: the Mid-Year Review that issues revised projections at the mid-point of the fiscal year for expenditure and revenues and explains changes from the approved budget. The addition of this new document increased Guatemala's OBS 2019 budget transparency score to 65, and Guatemala is now one of 18 countries in the world that publishes all eight key budget documents. In addition, a new public participation mechanism is being piloted by the Ministry of Finance through workshops to discuss the budget proposal and to seek public input. The changes in Guatemala's budget transparency practices can be credited both to the commitment of ministry officials and to the sustained dialogue and advocacy between the government and civil society. Both agree that more progress is needed, including better disclosure of fiscal risk, such as debt and contingent liabilities. As a culture of budget transparency takes hold in Guatemala, more people are using the budget data that is available. In recent years, youth and women's groups have been using fiscal data to inform and conduct social audits. These changes show a new path forward: one where everyone can know and have a say in how public monies are raised and spent, on the services that result, and how this improves people's lives.<sup>151</sup>

Recent rising global debt levels, which will likely be exacerbated by the effects of the COVID-19 pandemic, highlight a continued need for more detailed projections on the sustainability of debt levels and better reporting on tax expenditures to account for lost revenues. It seems that improvements in the availability of budget information contribute to greater civil society involvement in budget debates and advocacy. The trends described above are consistent with previous research on the benefits of open budgeting, which include reduced corruption, lower borrowing costs, enhanced electoral accountability, and an improved allocation of resources.<sup>152</sup>

Interestingly, the 2021 survey has shown that while accountability systems around the world remain weak, the pandemic did not undo hard-fought gains in transparent and accountable budgeting practices worldwide. Most countries were able to maintain, and in some cases build

on, earlier gains in their annual budget processes. Between 2019 and 2021, the global average score for transparency increased by 1 point; the global average score for oversight declined by 1 point; and the global average score for participation was unchanged.<sup>153</sup> On the other hand, the report shows that public participation is very weak and no progress has been made. Budgets remain a primarily elite conversation with few avenues for ordinary people to engage and have a say. The average global score for participation is just 14 out of 100, indicating that participation is scarce and meaningful participation is rare. Only four countries (South Korea, the United Kingdom, New Zealand and Georgia) offer moderate opportunities for public participation. While some countries engage with the public when formulating or approving budgets, very few do so during implementation and oversight phases. Only 8 countries worldwide have formal channels to engage underserved communities.

A 2019 study that looked at data from 95 countries between 2006 and 2014 provided evidence that more fiscally transparent countries are perceived as less corrupt on how public disclosure of budgetary information helps deter government corruption. It also found that fiscal transparency matters most at the final stages of the budget process when information disclosure reflects actual government spending. For example, data confirms that a Citizens Budget can serve as a strong anti-corruption tool. The importance of fiscal transparency at the budget execution phase stems from the abundance of corruption opportunities in the implementation process. When governments publicly disclose information about their actual spending, investigative journalists, watchdog organisations and even citizens can trace illicit transactions. Thus, public disclosure of actual spending increases the risk of illicit transactions being exposed. Also, requiring greater disclosure at the budget execution stage could deter public officials from strategically choosing to reveal more information about their intentions rather than their actual spending patterns.<sup>154</sup>

The multi-stakeholder Global Initiative for Fiscal Transparency (GIFT) created in 2011, has developed High-Level Principles that were endorsed by the United Nations General Assembly in December 2012. These principles enshrine the right of citizens to gain access to fiscal information and to have effective opportunities to participate in fiscal policy-making.<sup>155</sup>

### **Developing the expertise and the resources needed for improving ATI implementation**

All States Parties should adopt and implement strong access to information laws that comply with international standards, including by applying the law to all branches of government and all public or private bodies which perform public functions and/or operate with public funds. Moreover, the legal framework should ensure the availability of information and data held by public bodies, including on anti-corruption efforts, the functioning and activities of State entities, and the use of public funds and resources. It should also ensure the proactive publication of information, documents and data, including on anti-corruption efforts, and ensure that information is published in a timely, comprehensive, freely accessible and usable way, fit for the respective local contexts, including by using open data formats to facilitate analysis and reuse among stakeholders such as journalists, citizens, civil society, academia and private sector.<sup>156</sup>

### **Training and specialisation on ATI in the civil service**

Resources should be provided to train specialised and general staff to integrate the importance of access to information for the public and how it can be improved at the agency level. States Parties to the UNCAC that recently adopted ATI legislation, should develop efforts to assign and train the persons in charge of access to information and develop specific



guidelines and practices to support their work. Extensive training is needed to ensure proper implementation of ATI legislation. Training needs to be prioritised so that those who need it most – i.e. information officers – receive it first and in more significant measure, but over time a plan should be in place to ensure that all officials receive at least some sort of training.

The introduction of a new ATI legislation may require the review of the existing civil service legal framework to ensure that it is aligned with it, so it may be necessary to review internal rules to the same end. In many cases, internal rules establish various types of secrecy or place obstacles in the way of implementing ATI legislation. For example, the contracts concluded with employees (i.e. contracts of employment or personal rules of service) may need to be amended to ensure that they do not impose personal obligations of secrecy on officials, in breach of the ATI legislation. The legal framework should have a presumption of openness. Any exceptions to the right of access should be limited, in line with international standards, and be subject to a harm test (evaluating any specific damage caused by releasing information) and a public interest (establishing the public interest in access to information in a specific case). Information relevant to preventing, investigating or exposing corruption should be considered as an overriding public interest.<sup>157</sup>

In line with article 7 of the UNCAC, ATI processes could contribute to generalise principles of efficiency, transparency, and integrity in management of human resources in the public sector.<sup>158</sup> ATI as a tool can strengthen existing safeguards for the public service that promote those principles and support recruitment based on merit. Moreover, preventive measures could include the application of codes of conduct, financial and other disclosures, and appropriate disciplinary measures.

States Parties should ensure that ATI is integrated in public systems and practices and this could be mainstreamed through specific activities including:

- Senior public officials supporting ATI implementation and leading by example.
- Involving staff through training and in the development and implementation of comprehensive ATI guidelines and processes;
- Developing verification means to ensure compliance with the ATI policy by public officials.
- Enforcing ATI policy through disciplinary action when necessary;
- Providing incentives for good performance in terms of implementing the ATI legislation and existing policies and practices at the department level;
- Finally, ATI needs to be integrated into central planning systems, in fact time and resources need to be allocated to ATI work.

Civil servants' curricula should integrate ATI modules and adequate procedures should be promoted for selection and training of individuals for public positions. This should contribute to enhancing their awareness on the risks of corruption inherent in their functions, and how their institutions should proactively mitigate them, including through ATI practices. This gives values and standards more operational relevance and enables them to be built into management systems.

### **Promotion and raising awareness on ATI**

ATI can be invested in as a tool to promote transparency, integrity and fighting corruption within the public sector. Promotion of and awareness raising on ATI require developing external efforts for the general public, and internally within the public administration. States Parties should commit to establishing an independent and autonomous institutional body such as an Information Commissioner or an Information Commission to supervise the correct



implementation and application of access to information laws and transparency provisions and to increase awareness among all stakeholders on information rights. The role of the Information Commissioner or Officer is to ensure that all information which is not exempt is made available, even if it is not very positive for the public authority. Information officers ensure functions both internal and external including:

- Preparing a simple guide for the public about their rights under the ATI legislation and how to exercise them.
- Ensuring requests for information are processed in the most efficient way;
- Making sure that the proactive publication obligations are met by the public institution;
- Taking the lead in preparing an annual report on implementation of the ATI legislation for the public institution;
- Taking the lead in preparing the public institution's Action Plan for implementation.

In many States Parties to the UNCAC, networks of information officers exist and they develop their action plan to support training among information officers, share information with the public through guides, discuss problems and solutions, exchange experiences, and share tools. These networks could either be developed at the initiative of information officers or be led by a central body, such as the central ministry which is responsible for ATI implementation or the Information Commissioner. The promotion of ATI through similar channels helps in raising awareness of society and public institutions by practitioners who can provide examples and real-life experiences of existing obstacles and improvements in the ATI system.

The commemoration of the International Day for Universal Access to Information (IDUAI), celebrated on 28 September every year, by civil society and international organisations became a global event for the promotion of ATI. Many events including conferences, publication of guides, launch of ATI platforms, awards for best implementation of ATI legislation, among others, are organised at the global and the local levels to raise awareness of the importance of this human right and to improve its effectiveness. In some countries, Information Commissioners publish their annual reports to mark this event.

### **Monitoring, evaluation, knowledge and learning to inform reporting on ATI**

It is key to monitor and evaluate progress towards achieving the goals established by the public institution in terms of implementing ATI. A consecrated action plan or a set of measures to promote and implement ATI could translate the strategic goals and values of the public institution and the ATI legislation. Measuring the progress made by the public institution helps its leadership and its information officers to review their objectives periodically and set more ambitious targets. Based on the progress made, they can adapt accordingly the financial and human resources needed to achieve realistic goals that are set in an inclusive manner. In fact, setting targets and goals can be challenging given that some commitments can be quantitative as training 20% of the staff, but more qualitative processes for managing requests and increasing proactive disclosure can be hard to estimate and could require more resources in terms of time and expertise.

The monitoring and evaluation approach should be action-oriented and established to generate knowledge on what works and what needs to be modified or adapted to the contextual factors and changing conditions. The learning component by all parties involved in the design, implementation and evaluation of ATI implementation should lead to better

decision-making and inform other units and departments by producing recommendations which can be acted upon, rather than merely a report about what happened.

Recent ATI legislation often introduces specific categories of information which must be published proactively, and which must be kept current within a particular period. As a result, public authorities will need to develop systems for proactive publication that will work in the context of the public authority, considering the number of people involved in producing the relevant information and the way it will be approved and communicated. It is useful for public authorities to go beyond the minimum requirements set out in the ATI legislation as regards proactive publication. The Monitoring and Evaluation system could help in tracking these aspects to inform the reporting systems and improve their effectiveness. Experience in many countries has shown that laws can be ambitious in terms of proactive publication but that it can be difficult for public authorities to meet these obligations within the time limits imposed by the law.

In well-functioning ATI systems, every public authority produces an annual report which should be submitted to the Information Commissioner to produce a central report on the state of implementation of ATI in the country. These reports provide valuable information about what is happening pursuant to the ATI legislation without which even simple questions like how many requests are being made cannot be answered. They also provide a picture of the differences between different public authorities, including such things as which ones are getting more requests, which have taken more steps to implement the ATI legislation, and which are relying more heavily on certain types of exceptions. They thus provide a basis for assessing how well the system is working and whether certain types of adjustments may need to be made to improve implementation. Moreover, providing incentives for good performance in terms of implementing the ATI legislation and existing policies and practices at the department level can be a positive step. This can include incorporating performance in this area into the regular evaluations that take place for public officials.

### **Boosting ICT for citizen participation in anti-corruption efforts**

The UNCAC CoSP Resolution 6/7 emphasizes the importance of promoting the use of ICT as a tool for citizen participation in anti-corruption efforts. Information and communications technology (ICT) has become a useful tool for fighting corruption. The use of the Internet to share information has added a new dimension to the fight against corruption and become a catalyst for governmental action. Local CSOs and stakeholders can reach key actors globally and enable collective action to fight corruption. If these actions were relatively innovative a decade ago, a gatekeepers' culture would have emerged that supports governments in silencing and targeting anti-corruption activists similarly to environmental activists and other groups. It is important nowadays to consider ICT as a tool to enhance citizen participation in anti-corruption efforts, but also take stock of the dangers that it involves in terms of loss of privacy and security in many parts of the world.

The development of new technology and the movement towards e-government and digitisation automates government processes and reduces the personalisation of interactions with public officials, and the COVID-19 pandemic will probably accelerate this trend. Given the risks involved in terms of security of transactions and privacy, new technology is increasingly developed to tackle the safety of data transfers and making it transparent in the way it is managed and stored. Some solutions enable data storage in many devices and servers or integrate complex encryption methods to increase security. The automation and digitisation of government services ideally facilitates access to information and enables citizens and other key professions to monitor the transactions and detect any irregularities.

Innovative demand-driven approaches are supported through ICT to enhance people's ability to request information and enable governments to increase proactive disclosure and open data, and improve reactive disclosure of public information. Examples of software like Alaveteli<sup>159</sup> and platforms like AsktheEu.org<sup>160</sup> have been developed by civil society groups and in some contexts pioneered the potential of e-government in promoting transparency, accountability, efficiency, and citizen engagement in public service delivery. Digitisation has also revolutionised record management given how much easier computer files are to reorganise and manipulate. Other challenges include how to ensure the preservation and integrity of records over time and safeguarding the authenticity of final copies of records. In a digital context, it is easy to confuse drafts and final copies and to replace, overwrite or otherwise destroy records. At the same time, digitisation is clearly the way of the future and wherever possible it is crucial to focus energy and resources on digital record management systems.

ICT can play a role in facilitating reporting by public officials of acts of corruption especially when political will exists. The introduction of effective systems for reporting corruption can strengthen the anonymity of whistleblowers and encourage those individuals who might not be protected from possible retaliation for such reporting by superiors. Close attention must be paid to the security and confidentiality of any reporting of suspicions of corruption and malpractice to ensure protection against open or disguised reprisals.<sup>161</sup>

### **International cooperation and provision of assistance**

Foreign aid can represent a significant share in the economies of poor countries, and this can make donors often an important driving force in public sector and structural reforms. Donors' influence is considered an entry-point to push for reform and structural changes to support public sector modernisation and accountability in countries recipients of aid. However, research has shown that public sector reform activities pushed by donors have often led to increased bureaucratic power without a strengthening of its accountability towards the public.

It is important to ensure that donors "do no harm", and the means they provide for development do not undermine democracy, good governance and in-country stakeholders and activists. To succeed in anti-corruption efforts, it is important to sustain accountability between governments and citizens and not only between donors and recipient governments. Schemes like the International Aid Transparency Initiative (IATI) are crucial to ensure these goals. IATI is a global initiative aiming to improve the transparency of development and humanitarian resources and their results to address poverty and crises. It brings together governments, multilateral institutions, private sector and civil society organisations and others to increase the transparency of resources flowing into developing countries.<sup>162</sup>

Recent trends have consisted of reducing support to anti-corruption and accountability work in international cooperation that can result from political reasons, but often as a strategic shift by donors who consider other sectoral priorities. It is important to keep in mind that access to information, anti-corruption work and promoting accountability and good governance, are in general transversal, and key for succeeding in other major underlying priorities such as climate change, COVID-19 response, and democratisation, among others.

At the level of recipients of aid and cooperation funding, significant changes occurred during the last decade. If members-based organisations and relatively big ones were benefiting mostly from the international cooperation in the 1990s, the increase of private sector inspired initiatives and the emergence of research-oriented CSOs have benefited from these shifts in terms of funding and visibility. These micro-organisations that often count a small number of members or partners are easily manageable and do not require a big budget to cover fixed

charges for staff and country-based sections. These changes brought quick wins in specific contexts through smaller and more flexible funding, but sometimes impacted badly the well-established members-based international movements.

There is an important shift pushed by international donors to move from confrontational relationships with governments by NGOs and CSOs to move towards a more collaborative approach. This works in many global initiatives and has shown its potential when there are governments willing to open government, but in parallel to this dynamic, civic space has continued to shrink in many parts of the world, resulting in human rights abuses of journalists and civil society campaigners by governments and private organisations.

International consortiums of investigative journalists are a great example of an international cooperation that is leading to tangible results in bringing financial and economic crime to the attention of the public whistleblowers and law enforcement authorities. Media reporting and access to information are essential tools of detection and awareness in corruption cases. It is essential to guarantee safety and protection of anti-corruption activists and whistleblowers.<sup>163</sup> More funding by the public and private citizens is needed to support new models as those developed by international consortiums of investigative journalists to tackle corruption and support ATI of citizens everywhere.

## CONCLUSIONS AND RECOMMENDATIONS

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Since the adoption of the UNCAC, the progress in adopting access to information legislation around the world has continued and nowadays more than 90 percent of the world's population lives in a country with a right to information law or policy. The SDG indicator 16.10.2 is certainly sustaining this tendency to achieve by the end of the 2030 Agenda that all State Parties to the UNCAC will have specific ATI legislation. If the implementation of ATI is still challenging in many countries, more multi-stakeholder initiatives have started looking directly or indirectly into improving it and making information and data reach more people and especially those groups and individuals who need it most. Additionally, media reporting and investigative journalism, including by NGOs, have shown their potential to be useful sources of information for allegations of transnational corruption, but they are not fully exploited yet. The exposure given to recent financial and corruption scandals through effective international cooperation has increasingly raised awareness of cross-border financial crime and negatively impacted citizens' trust in those impacted governments and institutions or professions.

ATI Access to information as a tool enables different actors including public officials, journalists, citizens and CSOs to foster transparency and accountability in the public sector. Corruption is a complex crime that is often made possible by inconsistencies and loopholes in legal frameworks, and practically advances from insufficient co-operation across jurisdictions. Cooperation including multilateral legal assistance should be facilitated through different functions and integrate flexible frameworks to adapt to the fast-changing forms and means of corruption. Governments should support access to information to enable effective press freedom and open data and strengthen whistleblower protection frameworks to enable free and credible reporting. Given the importance of whistleblowers and the protection of sources in bringing allegations of corruption to light, States Parties to the UNCAC should strengthen their legislative frameworks and their implementation mechanisms ensuring the protection of both public and private sector whistleblowers.

The continuous developments of ICT combined with political will of governments to propagate Open Government should enable continuous development of favourable contextual factors and generating mechanisms to increase open data and access to information. The reuse of information produced, collected, processed, and disseminated by the public sector should be encouraged to create new value-added services and products with potentially significant impacts for the global economy. However, the respect of privacy and other exemptions to access to information should be protected and ensured for the public interest. In fact, these mechanisms and tools should help overcome gaps and shortcomings in enforcement systems, such as heavy workload of the judiciary, inadequate training, and expertise of enforcement authorities. The confrontation of these issues is crucial to confront grand corruption crimes that are rarely prosecuted and punished.

Given the importance of the Judiciary in political and institutional terms, transparency and access to information reforms are relevant due to their potential impact on the administrative and jurisdictional operation of the judicial bodies themselves. It has been proven in many countries that the adoption by Judiciaries of effective transparency reforms could have a positive effect on their institutional capacity, increasing their legitimacy, their authority vis-à-vis other political players, and their relationships with citizens.

It is observed that civil society was and continues to be a great engine driving progress or avoiding major setbacks in terms of ATI promotion and implementation. It has often fulfilled functions that correspond to the State, such as promoting ATI and monitoring its implementation. A key element in strengthening civil society advocacy activities has been the constant exchange of experiences globally and at the regional level. Journalists have emerged

as great users of ATI and contribute to exposing corrupt practices and misuse of public funds. By using transparency tools and collaborating, they have considerably improved the quality of investigative journalism and data journalism. Their protection and support must be strengthened by States Parties to the UNCAC.

Civil society groups and citizens are key as stated in articles 10 and 13 of the UNCAC to support efforts of their governments by participating in the design, implementation, monitoring, and evaluation of public policies. The fight against corruption could benefit exponentially from the increase of participation of the public in accessing information and data and reusing them to coproduce sustainable solutions in identifying and tackling different forms of corruption.

## Recommendations

**Effective Right to Information.** All States Parties to the UNCAC should adopt comprehensive access to information legislation and ensure its effective implementation to enable citizens, CSOs, journalists and other key actors. These efforts should be developed as a way to comply with international obligations including the UNCAC framework and international and regional human rights bodies and as well as other international commitments made as part of multi-stakeholder platforms.

These platforms should develop clear normative standards and practical opportunities for cooperation that can be used by Member States on access to information. It is crucial that UN bodies and specialised agencies adopt access to information policies as well. We note that many UN institutions have not adopted yet any comprehensive policy framework in line with international standards that allow for public access to information held by them, including UNODC.

**Importance of political will and leadership on ATI within the public sector.** Willingness of high-level political authorities in the public administration to advance with reforms, such as the adoption and implementation of ATI is important, and its absence can be considered a substantial obstacle. In fact, the presence of solid technical staff guaranteeing ATI implementation within the public administration makes regressions more difficult, even when the political leadership is pushing against openness. Similarly, there may be reformists within the administration who depart from their political guidelines to consolidate ATI even when they face significant internal resistance. Supporting these bureaucracies and reformists within the administration itself can result in steps forward in the consolidation of ATI or avoid steps backwards, even when the political will is scarce.

**Capacity building of public information officers.** There are many ways to support employees in their work to effectively apply ATI laws. In addition to the training courses that can be organised by the administration or in collaboration with civil society, some countries have integrated ATI modules in the administration curriculum and training of civil servants. We must point out the importance of training on ATI for the bureaucracy in general, but above all for those responsible for its implementation. Developing these capacities on a constant basis results in better technical cadres which are key to the institutionalisation of ATI. In some cases, the resistance to openness may arise due to the political sensitivity of the information that is intended to be published, or simply due to ignorance of ATI. It is precisely when it comes to the second case that a technically sound bureaucracy in ATI development can push for transparency.

**ATI is key for the implementation of the SDGs.** States with existing ATI laws should conduct a multi-stakeholder review to identify the existing gaps in legislation and the availability of key SDG-related information and work together with all stakeholders to improve the legal



framework and coordinate efforts to improve its implementation. As presented above, ATI as a right but also as a tool is key for the monitoring of the implementation of SDGs in general. To achieve the 2030 agenda and taking into consideration the delays registered now due to COVID-19 pandemic, governments should support all key stakeholders through different means and incentives including proactive and reactive information to create synergies and collaboration to achieve the SDGs.

**Public Access to information of the public for corruption settlements.** As described in this guide, access to public information is crucial to increase the level of trust in the public sector. When settlements are reached in cross-border corruption cases or at the national level, the content of these agreements should be accessible to the public to build trust and increase accountability of those involved. This will be a step forward in making existing legal systems more transparent and contribute to changing behaviours of all parties involved. For these measures to work and avoid a race to the bottom between countries, it might be necessary to adopt international standards that are accessible to all.

**Advocating for the publication of accounting and financial information on a country-by-country basis.** If Environmental, Social, and Governance (ESG) reporting, Corporate Social Responsibility (CSR) and Sustainability reporting for transnational companies have recommended country-by-country basis reporting and international initiatives as described above (e.g. EITI) are integrating these changes in their systems, there is still a lot to be done in terms of standardising these measures in terms of tax transparency and countering money-laundering. It is important that States Parties to the UNCAC develop and agree on common international standards for making the information public by creating a centralised registry for holding beneficial ownership information on all legal vehicles.

**Governments and other stakeholders should increase the publication of open data.** To be more inclusive and improve access and quality of service delivery, especially for vulnerable groups, open data should be more developed and generalised. Supporting multi-stakeholder platforms with incentives to develop innovative tools and mechanisms to analyse and use open data could impact the lives of the poorest and most vulnerable. Proactive disclosure of information and publishing open data online can help to ensure higher degrees of accountability and transparency not only of national governments, but also of parliaments and of the judiciary, which will play an important role in the achievement of the SDGs. It should also use adapted means to ensure public access to key information through local media, public billboards, and other methods.

**Independent National Monitoring of ATI implementation.** Governments should enable an independent oversight body with the political and financial autonomy needed to accomplish its role of monitoring and supporting the ATI implementation at all levels and support all public bodies to enforce the legislation and inspire good practice. Each public body should be able to count on the technical support of this entity to conduct a detailed classification of public information it produces or holds, and to set its level of responsibility for the proactive disclosure at all geographic levels. There should be procedures for an effective system for circulating information internally within departments and externally with other government agencies and the public. The implementation of ATI requires constant monitoring to identify failures, areas for improvement and to be able to promote corrective measures. Additionally, the publication of compliance indices or acknowledgments generates healthy competition among public bodies. In practice, these initiatives have so far been observed both from the government and among civil society sides and they need to be encouraged.

**Government Engagement with Civil Society.** Governments should engage new approaches in their ways of interacting with civil society and citizens, and they should be inclusive and respect diversity. If open data and open government are principles that many

governments declare to embrace and enforce, their efforts should initiate new ways to mobilise all actors and simplify their message and proceedings to reach out to all the public and go beyond those central organisations that are already engaged in these efforts. This work requires a serious development of transparent and independent approaches and criteria for selecting and collaborating with civil society. Political orientations or economic interests should not impact these efforts and not be the main goals behind the selection of partners.

**Inclusion of More Stakeholders.** The inclusion of key stakeholders is important to identify information of general interest and to support proactive disclosure. The government can mobilise CSOs to support its role of identifying the information of high interest to be proactively disclosed. These actors can also promote the use of new ICT in promoting ATI. Governments should ensure that key stakeholders play fully their role in developing the ATI agenda, its implementation and evaluation. By supporting the participation of diverse civil society in the discussion of strategic guidelines for ATI implementation and the creation of innovative solutions to facilitate the widespread proactive disclosure of public information, governments can increase considerably their outreach efforts through guides for raising awareness and simplification of ATI requests for vulnerable groups and people with specific needs (linguistic minorities, indigenous people, persons with disabilities, illiterate people, etc.). These efforts can be supported by CSOs if given the space and basic resources to play their roles as intermediary and relay between the population and public authorities.

**Improving Civic Space and protecting journalists, whistleblowers, and anti-corruption activists.** The generalisation of RTI and the effective promotion of the SDGs by targeting the most vulnerable groups cannot be achieved without taking into consideration existing and emerging threats in many regions of the world. The shrinking civic space in many regions and sectors around the world is counter-productive toward achieving the SDGs, and this requires a more consolidated and coordinated global response. Empowering civil society actors and promoting civic space are equally needed to guarantee safety and independence of these actors to contribute to multi-stakeholder approaches on the ground with firsthand data and experience. Countries should commit to allowing CSOs to act unhindered in their activities and ensure the effective protection of whistleblowers, journalists, and anti-corruption activists. The UN should monitor developments and actively promote a wide civic space.

**Donor Coordination and Access to Information in their programs.** The SDGs provide a general framework that should help international actors and donors identify clearly and in detail the local needs and share the information about their activities and their objectives, so other stakeholders can know where to invest and how to avoid cross effects and rapid changes in priorities. Donors should promote consultation and coordination with governments and beneficiaries and align their specific interests with the public interest. Access to information on budgets and programs of international cooperation is important for the public to monitor closely on the ground the projects benefiting from their support and avoid misuse of funds and corruption.

**Multi-Stakeholder Platforms and benchmarking for promoting ATI.** International organisations and global actors can support initiatives and collective action by CSOs and citizens to improve the implementation of ATI and the realisation of the SDGs. Supporting collaboration between different key actors can improve the level of trust between them and contribute to more openness and transparency. The coordination of existing efforts and the creation of synergies between innovative groups working on ATI, open government, open data, social accountability, sustainability and more established human rights groups and pro-accountability institutions can leverage the efforts of these actors in fighting corruption and promoting accountability to achieve better results in the 2030 Agenda and its effectiveness.

## ENDNOTES

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<sup>1</sup> In this Guide, the terms “freedoms of opinion and expression” and “right of access to information” are used as per the interpretation of the right to freedom of expression in the [General Comment No. 34 of the Human Rights Committee](#); this states that the right to freedoms of opinion and expression includes the right of access to information. Thus, when freedoms of opinion and expression is used here, it is meant to include the right of access to information.

<sup>2</sup> The UNCAC coalition was established in August 2006, it mobilises civil society action for UNCAC at international, regional and national levels. The Coalition’s office is registered and based in Vienna, Austria. The Coalition engages in joint action around common positions on the UNCAC, facilitates the exchange of information among members, and supports national civil society efforts to promote the UNCAC. Coalition members share views via the Coalition website and a mailing list and *ad hoc* working groups. The Coalition supports civil society organisations to engage in and contribute to the UNCAC review process, including through technical support. The Coalition, directly and through its members, advocates for greater transparency and space for civil society participation in all UNCAC fora – the Conference of States Parties, the meetings of the Implementation Review Group, working groups and the review process on the national level.

<sup>3</sup> Monica Escaleras, Shu Lin & Charles Register, [Freedom of information acts and public sector corruption](#), *Public Choice* 145, 435–460, 2010.

<sup>4</sup> L. Peisakhin & P. Pinto, [Is transparency an effective anti-corruption strategy? Evidence from a field experiment in India](#), *Regulation & Governance* 4(3): 261–280, 2010.

<sup>5</sup> *Journal of Development Studies*, K. C. Vadlamannati & A. V. Cooray, [Transparency Pays? Evaluating the Effects of the Freedom of Information Laws on Perceived Government Corruption](#), 05 January 2017.

<sup>6</sup> *International Political Science Review/Revue Internationale De Science Politique*, vol. 31, C. Lindstedt & D. Naurin, [Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption](#), no. 3, 2010, pp. 301–322.

<sup>7</sup> P. Cain, A. Doig, R. Flanary & K. Barata, [Filing for corruption: Transparency, openness and record-keeping](#), *Crime, Law and Social Change* 36, 409–425, 2001.

<sup>8</sup> Y. L. Cheung, P. Raghavendra Rau & A. Stouraitis, [What Determines the Return to Bribery? Evidence From Corruption Cases Worldwide](#), June 27, 2020.

<sup>9</sup> For an indicative list, see the Wikipedia page on [Alaveteli](#).

<sup>10</sup> UNODC, [Performance of the Review of the Mechanism for the Review of the Implementation of the United Nations Convention against Corruption](#), 28 September 2021, p. 10.

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