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Access to Information:

A New Promise for Sustainable Development

In Focus Series | **World Trends in Freedom of Expression and Media Development**

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About the In Focus series

Access to Information: A New Promise for Sustainable Development

UNESCO is pleased to present this In-Focus report. It zooms in on a key issue of relevance to UNESCO's programme on freedom of expression, and it feeds into the Organisation's 2019 commemoration of International Day for Universal Access to Information.

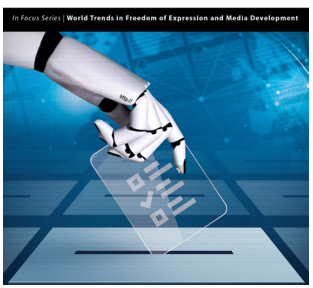
This Report also serves as a stepping stone towards the next full World Trends in Freedom of Expression and Media Development edition to be published in 2021. That edition will take further stock of the issues covered herein, and contextualize the developments within a holistic review of other trends in the field.

This In-Focus edition represents follow-up to UNESCO's 36 C/Resolution 53, wherein the General Conference requested UNESCO to monitor the status of press freedom and safety of journalists and to report on the developments in these fields to the Organisation's General Conference. In addition to the current In-Focus report, two more are being published in 2019 and reported to the 40th General Conference in November the same year.

In total, the three In-Focus reports cover the angles of media and elections, access to information, and safety of journalists. These, and earlier editions of the World Trends Report (including regional editions) can be found at https://en.unesco.org/world-media-trends

United Nations Educational, Scientific and Cultural Organization

Elections and Media in Digital Times



Elections and Media in Digital Times

The increasing digitalization of societies has led to unprecedented opportunities to seek, receive and impart political information and ideas, which are the lifeblood of elections. But there are also growing concerns about the effects on public debate arising from misuse of digital technologies and fragmentation in the communications environment. Political micro-targeting of individual voters is driven by aggregated personal data, which is not always obtained in lawful ways. New digitally-enabled tactics in political funding, campaigning and advertising, are often lacking in transparency. Meanwhile journalists, whose output can empower the electorate, are under increasing attack. It is against this backdrop that this Report identifies recent trends on disinformation, attacks on the safety of journalists, and disruption in election communications. The report lists possible responses in order to safeguard media freedom and integrity while strengthening news reportage on elections in digital times.

Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity

The aim of this Report is to provide a holistic assessment on the safety of journalists around the globe as well as a yearly update on the status of journalist killings. The study covers the period 2014-2018, as well as several developments in 2019. It takes stock of trends in journalist killings and other attacks faced by media professionals. It is based on information provided by Member States, as well as on studies published by international NGOs. Among the key findings, the Report emphasizes the continued trend of impunity for attacks against journalists and highlights the increased prevalence of digital threats and harassment online, including those targeting women journalists. It sheds light on new reporting and monitoring initiatives on the safety of journalists, notably within the framework of SDG indicator 16.10.1, and looks at good practices reported by Member States to enhance efforts to monitor, prevent, protect and prosecute in relation to safety of journalists.

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Preface

UNESCO is proud to present the first in-focus report on access to information (ATI), which serves as a kick start for the series to be produced in 2019-2020 and as a stepping stone towards the next full *World Trends in Freedom of Expression and Media Development* edition to be published in 2021.

Since its creation in 1945, UNESCO has promoted and advocated for access to information all over the world. In recognition of this, the UN General Assembly in September 2015 appointed UNESCO as the custodian UN agency for global monitoring of Sustainable Development Goal (SDG) indicator 16.10.2 "number of countries that adopt and implement constitutional, statutory and/or policy guarantees for 'public access to information.

The surge of ATI laws in recent times has provided ample material to identify the trends and assess their trajectory. Analysing more than 120 ATI laws and their implementation, and identifying good practices, can improve the world we live in tremendously. In the 21st century, information has become one of the most important factors affecting human rights, development, democracy, and the private life of the citizen. Access to information serves as an integral part of freedom of expression has become increasingly recognized as important in strengthening health and gender equality, building efficient and accountable institutions, and countering corruption.

The 2030 Agenda for Sustainable Development has recognised this and has been part of the momentum for promoting legal codification and improved implementation of access to information.

The central aim of this study is to unpack the major trends in the field of ATI laws and their implementation, to identify the issues where rights to information and privacy could compete, and to analyse the potential impact of new technology on our ability to receive reliable and trustworthy information. In order to understand the trends, the report also examines the agendas of the trendsetters - UNESCO, Member State recommendations in the Universal Periodic Review, the commitments of the Open Government Partnership, and the standard-setting activities of regional intergovernmental organizations.

I believe that this study makes a significant contribution to the existing research on freedom of information and that it will be a valuable resource for governments, civil society organizations and activists all over the world who wish to promote effective legal guarantees and effective implementation of ATI in their respective countries.

Moez Chakchouk,
UNESCO's Assistant Director-General for Communication and Information

Glossary of Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AI	Artificial Intelligence
AN	Access Now
ATI	Access to Information
AU	African Union
COE	Council of Europe
CLD	Centre for Law and Democracy
CSO	Civil Society Organixation
DWA	Deutsche Welle Akademie
FOIA	Freedom of Information Advocates Network
FPU	Free Press Unlimited
GDPR	The European Union's General Data Protection Regulation
GFMD	Global Forum for Media Development
HLPF	United Nations High-Level Political Forum
HRC	Human Rights Council
ICIC	International Conference of Information Commissioners
ICT	Information and Communication Technology
IDUAI	International Day for Universal Access to Information
IPDC	International Programme for the Development of Communication at UNESCO
NGO	Non-governmental organization
OAS	Organization of American States
OGP	Open Government Partnership
RTI	Right to Information
SDG	Sustainable Development Goal
UIS	UNESCO Institute of Statistics
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
VNR	Voluntary National Review

Introduction

Democratisation of political systems,[1] evolving norms favouring transparency and new technological possibilities to digitize the public domain have brought a global upsurge of freedom of information laws in the past 25 years. As noted in the 2017/2018 edition of UNESCO's report on World Trends in Freedom of Expression and Media Development, the trends continue to be positive in terms of the right to seek and receive information. However, going in the opposite direction is the increase in restrictions on the right to impart information, meaning that attacks against journalists, legislative curbs on media, and online blocking and filtering, reduces the volume of information in circulation. However, at a time when disinformation[2] is increasingly in play, there is growing importance of the public enjoying access to official information – whose provenance is evident, even in cases when the quality, timeliness or comprehensiveness sometimes fall short.

The first Access to Information (ATI) law was adopted in 1766 in Sweden and contemporary Finland, which at that time constituted a united country.[3] Thirty-five years ago, only ten countries had laws that specifically guaranteed the rights of citizens to access government information. Ten years ago, in 2009, the number of such laws went up to 40. In 2019, according to UNESCO data, this number reached 126 laws adopted worldwide.

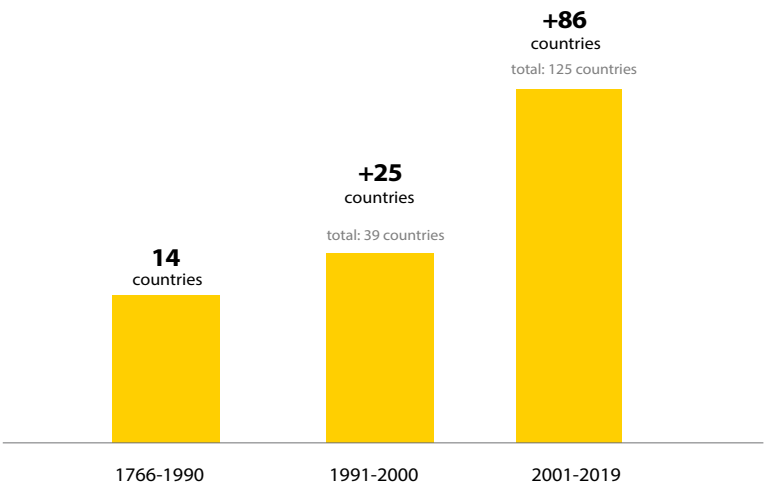
It is an extraordinary surge, marking an increase of more than threefold in one decade.[4] Since 2013, 31 countries (close to 25%) have adopted ATI laws.

Close to 90% of extant laws passed before 1990 were enacted in UNESCO Member State Group 1 countries (Western Europe and North America).[5] A second wave of laws was observed at the turn of the century in Group 2 countries (Central and Eastern Europe). By 2005, there was a strong concentration of ATI laws in Latin America and the Caribbean and by 2015, one could also observe that the ATI laws had a growing presence in the legal systems of Asia and the Pacific and Africa.[6]

Currently, according to the NGOs Centre of Law and Democracy (CLD) and Access Info Europe[7], the following number of countries had an access to information law:

[1] Samuel P. Huntington, The third wave of democratisation in the late twentieth century, https://www.ned.org/docs/Samuel-P-Huntington-Democracy-Third-Wave.pdf
[2] Information that is false and deliberately created to harm a person, social group, organization or country. https://en.unesco.org/fightfakenews
[3] https://wipolex.wipo.int/en/legislation/details/11805
[4] https://www.rti-rating.org/historical/
[5] See Appendix for UNESCO member State Groups
[6] John M. Ackerman and Irma E. Sandoval-Ballesteros, The Global Explosion of Freedom of Information laws, Administrative Law Review, Vol. 58, No. 1 (Winter 2006), pp. 85-130
[7] https://www.rti-rating.org/

Number of countries with ATI laws by period



Against this background, UNESCO has produced this in-focus edition of the World Trends in Freedom of Expression and Media Development Report to identify trends in ATI legislation and implementation from across the world during the past three years. This period correlates with the UN's 2030 Agenda for Sustainable Development adopted by world leaders in September 2015, which encourages continued momentum in ATI.

Scope of the study: themes and trends

The central aim of this study is to unpack the major trends in the field of ATI laws and their implementation. In order to understand the trends, the report examines the activities of trendsetters. It focuses on awareness-raising by UNESCO, Member State recommendations in the Universal Periodic Review, the commitments of the Open Government Partnership, actions of civil society organizations, and the standard-setting activities of such regional intergovernmental organizations as the Council of Europe, the African Union and the Organization of American States.

UNESCO was designated as the custodian agency for global monitoring of progress on the Sustainable Development Goal indicator A UN agreed indicator that UNESCO uses to monitor progress on reaching this target is known as SDG 16.10.2 and refers to the "number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information".[8] Working with the UNESCO Institute of Statistics and experts from civil society and academia, UNESCO developed a methodology in 2018 for researching and monitoring this indicator, and in 2019 commissioned research using this instrument. The findings from the data collected in 43 countries are included in this report. Also analysed here are Member States' priorities in the field of ATI by looking into their reports for the UN's High Level Political Forum, held in 2019.[9]

Finally, the report looks into the impact of advanced digital technologies on access to data as well as information, highlighting also the relevance of the UNESCO Internet Universality indicators,[10] which potentially could be significant for the expansion of guarantees for and implementation of ATI , both universally and on the national level.

International Human Rights Law Framework

There has been debate in academia and civil society and among legal experts about whether ATI is equivalent to a right to information (RTI). One can say that the Council of Europe Convention on Access to Official Documents and, at the domestic level, the constitutions of Member States, which contain a stand-alone right to information, do treat ATI as an intrinsic right.[11] This right is founded on the broader right to freedom of expression, which encompasses not only the right to impart opinion and information (and the corollary of press freedom as making content available to a public either online or off-line), but also the right to seek and receive such content. ATI as a right is particularly relevant as regards official information held by public authorities, but in many cases, it is also interpreted as covering information held by private actors that is necessary to the exercise of human rights. As a right, ATI is closely intertwined with other rights, and is seen as an overarching guarantor of some of them, such as the right to association, to political participation and to be free of discrimination.

[8] https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.10
[9] https://sustainabledevelopment.un.org/inputs/?str=access+to+information+
[10] https://en.unesco.org/themes/internet-universality-indicators
[11] Maeve McDonagh, The Right to Information in International Human Rights Law, (Human Rights Law Review, 2013).

It is now widely recognized by all actors involved that a right to information (RTI) is protected by the main human rights treaties and has developed into a norm of customary international law.[12,13] A number of international bodies have authoritatively recognised the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These include the UN, the Organization of American States, the Council of Europe and the African Union.

Well-crafted ATI legislation and its rigorous implementation promotes development as well as democracy.

It is worth noting that the SDG Agenda, in the wording of Target 16.10, expressly implies ATI as a fundamental freedom linked to public access to information. This is especially evident (as will be elaborated later) in the agreed indicator 16.10.2, in terms of which progress on public access and fundamental freedoms can be measured by, inter alia, the existence and implementation of guarantees for ATI, meaning ATI as a matter of enforceable law.

At the same time, by being included within the SDGs, ATI can also be considered as a means to an end, and not only as a right in itself. It is a prerequisite to achieving sustainable development as a whole. For example, ATI means improving access to healthcare and water by empowering people with knowledge to assess services, enabling stakeholders to hold governments and companies accountable for delivery. Well-crafted ATI legislation and its rigorous implementation promotes development as well as democracy.

The UN and ATI

Increased ATI has required from legislators and governments that they ensure quality law and effective implementation mechanisms. Establishing special bodies responsible for implementation of ATI laws, capable of reacting to new challenges, and providing independent redress authority, are part of the developments that have gained impetus.

[12] Toby Mendel, Freedom of Information: A Comparative Legal Survey (UNESCO, Paris, 2008).
[13] Jonathan Fox, "The Uncertain Relationship Between Transparency and Accountability", Development in Practice, (Vol. 17, No. 4/5, 2007), pp. 663-671.

According to a 2017 report by the UN Special Rapporteur for Freedom of Opinion and Expression, David Kaye, "at the domestic level, States have increasingly opened up the workings of government as a matter of law, if not always achieving the best implementation practices".[14] The report references a 2016 resolution by the UN Human Rights Council that calls on states to ensure disclosure of information held by public authorities and "to adopt transparent, clear and expedient laws and policies that provide for the effective disclosure of information held by public authorities and a general right to request and receive information, for which public access should be granted, except within narrow, proportionate, necessary and clearly defined limitations."[15]

The same report describes UN entities as beginning to get on board in terms of adopting ATI policies themselves. It states that "adopting robust access-to-information policies, is one step towards better understanding, accountability, oversight and protection of the missions of intergovernmental organizations." In reference to the issue of policy provisions for public interest overrides for refusals to release information, the document urges the presumption, "consistent with emerging norms governing State access to information policies," that "information about threats to the environment, health, or human rights and information revealing corruption should be released because of heightened public interest in such information."

However, the Rapporteur also notes in relation to UN ATI policies: "There remains real room for improvement, especially in the need for disciplinary sanctions when officials retaliate against whistle-blowers and for greater institutional commitment to promoting whistleblowing and the protection of the people involved". Further, he states: "Particularly in an era of misinformation and propaganda, I urge the UN and other international organizations, as well as States and civil society, to take up the cause of freedom of information. Too much doubt and distrust, for good reason, have infected governments worldwide, and one key remedy may be found in the kind of transparency and accountability that freedom of information can provide".

For its part, UNESCO adopted an access to information policy in 2017.[16] This is part of a long record in championing ATI through research, advocacy and technical support to Member States. The annual declarations at the global World Press Freedom Day conferences over the past several years have all highlighted ATI. In particular, the Brisbane Declaration of 2010[17] and Finlandia Declaration of 2015.[18]

[14] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/72/350 https://www.un.org/ga/search/view_doc.asp?symbol=A/72/350
[15] Human Rights Council resolutions 31/32, and 34/20.
[16] https://en.unesco.org/this-site/access-to-information-policy
[17] http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/2010/brisbane-declaration/
[18] https://en.unesco.org/sites/default/files/finlandia_declaration_3_may_2016.pdf

In 2011, UNESCO was a supporter of the Pan African Conference on Access to Information that took place in Cape Town, South Africa. This event called on the Organization to recognise each 28 September as a special day to mark the importance of access to information. This came to pass in 2015, when UNESCO's General Conference adopted 38 C/Resolution 57 declaring 28 September of every year as the International Day for Universal Access to Information (IDUAI).

In the same year, 2015, the UN General Assembly, as noted above, adopted 17 Sustainable Development Goals (SDGs). Goal 16 calls on all UN member states to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. The Target 16.10 on public access to information and fundamental freedoms can be understood as a key contributor to the wider of objectives Goal 16. UNESCO has frequently made the further point that the same target can also have positive multiplier impact on other SDGs as well. For example, it is difficult to imagine monitoring progress in combating climate change, let alone shaping evidence-based policy to help accelerate this objective, without having access to information on this topic.

Unpacking ATI in the SDG agenda

The normative acknowledgement of ATI in the development agenda has practical back up through the specific indicator, noted above, as agreed by the UN. The indicator reflects input from UNESCO, its International Programme for the Development of Communication,[19] the UNESCO Institute of Statistics (UIS) and the civil society formation titled the Global Forum for Media Development (GFMD). According to the UN Statistical Commission,[20] the core categories of the indicator are the following:

- Constitutional and/or statutory guarantees of public access to public-sector information;
- Effective implementation of statutory guarantees of public access to public sector information;

These points are further elaborated within the indicator framework adopted by the UN General Assembly in 2017 (A/RES/71/313). he metadata document for Indicator 16.10.2 states: "Conceptually, 'public access to information' refers to 'the presence of a robust system through which information is made available to citizens and others'." It adds: "Such a system represents a combination of intellectual, physical, and social elements that affect the availability of information to individuals. In other words, in discussing the issue of public access to information, it is important to recognize that any measurement of its practical outworking needs to take into account how individuals perceive the

[19] See decision No. 4: https://unesdoc.unesco.org/ark:/48223/pf0000266235/PDF/266235eng.pdf.multi
[20] https://sustainabledevelopment.un.org/inputs/?str=access+to+information+

quality of information in the public domain, the nature of the communicative infrastructure in place to facilitate access, and how that information is ultimately utilized by individuals as members of a particular polity."[21]

The metadata document also notes that law and policy on public access to information tend to take the form of "freedom of Information laws (FOI laws) which are aimed at allowing access by the general public to data held by national governments and, increasingly, by private companies whose work intersects with government operations." It adds that these laws establish a 'right-to-know' legal process in terms of which "requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions".

Further, the metadata document elaborates specifically that in this SDG indicator the operative words are "adoption" and "implementation". As such, it states, it is stated that the indicator establishes::

a. "whether a country (or at the global level, the number of countries) has constitutional, statutory and/or policy guarantees for public access to information;

b. the extent to which such national guarantees reflect 'international agreements' (e.g. Universal Declaration of Human Rights, etc.); and

c. the implementation mechanisms in place for such guarantees, including the following variables:

   - Government efforts to publicly promote the right to information.
   - Citizens' awareness of their legal right to information and their ability to utilize it effectively.
   - The capacity of public bodies to provide information upon request by the public."

In a nutshell, the metadata document sets out the methodology for assessing the indicator as follows:

1. Does a country have constitutional, statutory and/or policy guarantees for public access to information?

2. Do those constitutional, statutory and/or policy guarantees reflect known international agreements (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc.)?

[21] https://unstats.un.org/sdgs/metadata/files/Metadata-16-10-02.pdf

3. What implementation mechanisms are in place to ensure that such guarantees work optimally?

To address these questions, according to the metadata document, the following should serve as performance sub-indicators:

- National law or constitutional guarantee on the right to information
- Country has signed and ratified relevant treaty obligations, with no significant exemptions, and these are reflected, to the extent possible, in domestic FOI legislation
- Public is aware of and exercises right to access official information
- Public bodies release information both pro-actively and on demand
- Effective and efficient appeals mechanism via independent administrative body e.g. information commissioner or ombudsman
- Any restriction on grounds of protection of personal privacy is narrowly defined so as to exclude information in which there is no justifiable public interest.

The means of verification will include, according to the metadata document:

- Any law or policy on right to information that accords with international standards
- Reports from credible agencies/experts about right to information guarantees and the extent to which they reflect international standards/agreements
- Policies of public bodies concerning release of information (which ensure readily, freely available public access to information, including online)
- Evidence of state commitment to open government e.g. publication and dissemination of laws, court decisions, parliamentary proceedings, spending programmes (vis-à-vis SDG undertakings)
- Statistical information about public requests for official information and their fulfilment or rejection-Statistical information about appeals or complaints over information requests that have been refused.

This detail provides an elaborated basis for assessing trends in ATI in recent times. Using this metadata, and drawing on a range of data sources, UNESCO has to date conducted three global monitoring exercises on adoption of ATI guarantees and, to a limited extent, on the quality of ATI laws. The Organization contributed its findings to the UN Secretary General's annual report on SDG progress (in 2017, 2018 and 2019).[22] The report presents an overview of progress towards the SDGs that informs the HLPF, as mandated by the General Assembly to review developments around the SDGs.

> **Without affordable internet and independent media, information would not reach most people in the world**

At the same time as ATI is expressly designated in SDG 16.10.2, it is worth noting that the wider ecosystem relevant to the issue also appears elsewhere within the SDG framework. Thus, the related issues of press freedom and the safety of journalists are implicated in Target 16.10 "public access to information and fundamental freedoms", and a specific indicator (16.10.1) tracking attacks on journalists, trade unionists and human rights defenders.

Affordable, effective Internet access is also increasingly a precondition for public access to information and this is reflected in indicator 4.A.1 on connected schools and indicator 9.C on universal affordable internet access in least developed countries by 2020. Without affordable internet and independent media, information would not reach most people in world, and UNESCO works with partners such as the International Telecommunication Union (ITU) in the Broadband Commission for Sustainable Development to advance these targets.

Progress in these associated areas can self-evidently contribute towards achieving the cause of "public access to information and fundamental freedoms".

[22] 2019 Report: https://unstats.un.org/sdgs/files/report/2019/secretary-general-sdg-report-2019--EN.pdf; Glossy Report containing Goal 16 and Indicator 16.10.2: https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf);

Country responsiveness to SDG 16.10.2

The inclusion of ATI in the SDG Agenda corresponds to, and may be helping to amplify, the trend of increasing numbers of Member States working to provide statutory guarantees as well as improve implementation of ATI laws.

Much advocacy has been done by UNESCO, along with civil society groups such as the Global Forum for Media Development (GFMD), Free Press Unlimited (FPU) and Deutsche Welle Akademie (DWA), to encourage UN Member States to respond to the 2030 Agenda's recognition of ATI as a factor for development.[23] One activity in particular has been the IPDCTalks, subsequently called the Open Talks, which have been organized in 22 countries and widely amplified on social media around the world over the past three years to mark the IDUAI on 28 September.

Informing this awareness raising is the fact that the 2030 Agenda encourages UN Member States to "conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven". These national reviews can be done annually for domestic purposes, and they can also take the form of Voluntary National Reviews (VNRs) that are presented to the UN General Assembly on a periodic basis. The UN's High-level Political Forum on Sustainable Development (HLPF) plays a central role in the follow-up and review of the SDGs through the VNR process.

In 2019, 47 countries presented their VNRs during the HLPF.[24] Of these, 28 countries[25] reported on SDG Indicator 16.10.2 on public access to information. From the 28 countries, 20 have specific ATI laws. Of these countries with ATI laws, 55% (11) reported on both "Adoption of ATI guarantees" and "Implementation of ATI". The other eight countries do not have specific ATI laws. Of these, 38% (three) reported on both "Adoption of ATI guarantees" and "Implementation of ATI".

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[23] https://en.unesco.org/news/information-commissioners-key-successful-monitoring-and-reporting-sdg-16102
[24] https://sustainabledevelopment.un.org/vnrs/
[25] Reports of Fiji, Guatemala and Nauru are not yet available in VNR database as of 27 August 2019

Voluntary National Reviews (VNRs)

Country	Existence of specific ATI laws	Reported on adoption of ATI guarantees	Reported on implementation of ATI	UNESCO's involvement
Algeria		●	●	Data collection (2019)
Azerbaijan	●	●		Data collection (2019)
Cameroon			● ***	Data collection (2019)
Chad		●		Data collection (2019)
Chile	●	●	●	Data collection (2019)
Côte d'Ivoire	●	●	●	Data collection (2019) Specific ATI project
Congo (Republic of the)		●	● ***	Data collection (2019)
Croatia	●	●	●	Data collection (2019)
Ghana	●	●		Data collection (2019) Specific ATI project
Guyana	●	●	●	Data collection (2019)
Iceland	●	●	●	-
Indonesia	●	●	●	Data collection (2019) Specific ATI project
Israel [26]	●	●	●	-
Kuwait		●	●	-
Lesotho		●	● ***	-
Mauritius			● ***	Data collection (2019)
Mongolia	●	●		Data collection (2019) Specific ATI project
New Zealand	●	●	●	-
Palau	●	●		Data collection (2019)
Philippines		●		Data collection (2019)
Rwanda	●	●		Data collection (2019) Specific ATI project
South Africa	●	●	●	Data collection (2019)
Timor-Leste	●	●	● ***	Data collection (2019)
Tunisia	●	●		Data collection (2019) Specific ATI project
Turkey	●	●	●	Data collection (2019)
United Kingdom of Great Britain and Northern Ireland	●	●	●	-
United Republic of Tanzania	●	●		Data collection (2019)
Vanuatu	●		● ***	-

*** The implementation aspect reported by these countries is more related to 'access to media' and other human-rights issues, rather than 'access to information held by public authorities'.

[26] Israel withdrew from UNESCO 31 December 2018
https://en.unesco.org/news/declaration-unesco-director-general-audrey-azoulay-withdrawal-israel-organization

Earlier, during the period of 2016-2018, close to 40 countries[27] reported on access to information in one way or another in their VNRs.[28] In these, a number of countries, while strengthening guarantees of ATI and bettering their implementation, recognised explicitly that such progress helps to achieve the other SDGs. Albania in its VNR 2018 placed access to information within the context of judiciary reform.[29] Azerbaijan noted in its VNR report that ATI is necessary to develop women's entrepreneurship.[30] The Czechia's VNR mentioned 16.10.2 as essential for building efficient and accountable institutions.[31] Lithuania reported on its pledge to "significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020."[32] The United Arab Emirates presented ATI as an important force behind increasing the efficiency of healthcare providers and as what is "needed for planning and decision-making".[33] Spain saw ATI as one of the key reasons leading to its "open government" plan.[34]

A number of countries in their VNR submissions report on ATI as a fundamental human right important for freedom of expression and other rights. Sweden recognized that public access to information protects fundamental liberties.[35] Kenya noted that: "As part of adopting and implementing constitutional, statutory and/or policy guarantees for public access to information, Kenya is implementing the 2010 Constitution. Kenya passed Access to Information (ATI) legislation aimed at fostering transparency in government and underlines the Government's willingness to enhance citizen engagement, transparency and accountability."[36] Thailand stated that "Another important issue is public access to information. Thai constitutions have provisions to ensure citizens' rights in access to information as part of the civil rights since 1997. Although the performance to implement this provision is at satisfactory level, there is still a need to continuously maintain the efforts towards the year 2030."[37]

Sri Lanka "has passed two significant Acts in order to strengthen democracy in the country; the Right to Information (RTI) Act, No. 12 of 2016 and the Office on Missing Persons (OMP) Act, No. 9 of 2017. The Right to Information Act fosters a culture of transparency and accountability in public authorities by providing all citizens the right of access to information (Target 16.10)."[38]

[27] Albania, Armenia, Azerbaijan, Bahamas, Bangladesh, Belgium, Belize, Cabo Verde, Canada, Czech Republic, Dominican Republic, France, Georgia, Germany, Ghana, Hungary, Indonesia, Ireland, Jamaica, Kenya, Lebanon, Lithuania, Mexico, Montenegro, Nigeria, Norway, Romania, Sierra Leone, Singapore, Slovenia, South Africa, Spain, Sri Lanka, State of Palestine, Sweden, Switzerland, Thailand, United Arab Emirates, Viet Nam.
[28] https://sustainabledevelopment.un.org/inputs/?str=access+to+information+
[29] Page 66, https://sustainabledevelopment.un.org/content/documents/20257ALBANIA_VNR_2018_FINAL2.pdf
[30] Page 54 https://sustainabledevelopment.un.org/content/documents/16005Azerbaijan.pdf
[31] Page 43 https://sustainabledevelopment.un.org/content/documents/15717Czech_Republic.pdf
[32] Page 62 https://sustainabledevelopment.un.org/content/documents/19673VNR_Lithuania_EN_updated.pdf
[33] Page 60 https://sustainabledevelopment.un.org/content/documents/20161UAE_SDGs_Report_Full_English.pdf
[34] Pages 98 & 122 https://sustainabledevelopment.un.org/content/documents/203295182018_VNR_Report_Spain_EN_ddghpbrgsp.pdf
[35] Page 39 https://sustainabledevelopment.un.org/content/documents/16033Sweden.pdf
[36] Page 44 https://sustainabledevelopment.un.org/content/documents/15689Kenya.pdf
[37] Page 56, https://sustainabledevelopment.un.org/content/documents/16147Thailand.pdf
[38] Page 102 https://sustainabledevelopment.un.org/content/documents/19677FINAL_SriLankaVNR_Report_30Jun2018.pdf

Nigeria[39] and Sierra Leone[40] see 16.10.2 in the context of human rights and noted that its achievement ensures "public access to information" and "protects fundamental freedoms, in accordance with national legislation and international agreements." Mexico observed that ATI laws address several human rights, including privacy: "the National Transparency System in charge of coordinating efforts in terms of transparency, access to information and the protection of personal information."[41]

Norway saw value in 16.10.2 beyond national borders and stated that "Access to information is one of three thematic priority areas in Norway's new strategy for promoting freedom of expression and independent media in foreign and development policy (2016-2018)."[42]

One may conclude from the above that the Member States report valuing ATI for two reasons – it strengthens human rights and contributes to development. In this way, SDG 16.10.2 serves as an incentive for many countries to improve their legal regulatory frameworks, and/or their administration of the public sphere, based on a combination of the relevance for human rights and developmental significance of ATI. UNESCO's ongoing monitoring, national SDG reports, and the upcoming VNRs from 2020 onwards will demonstrate in time if tangible progress is being made.

If the trend is maintained, it will signal further growth in recognition of the importance of ATI and the relevance of legislative and administrative action to make it a reality.

Universal Periodic Review – further reinforcement of ATI

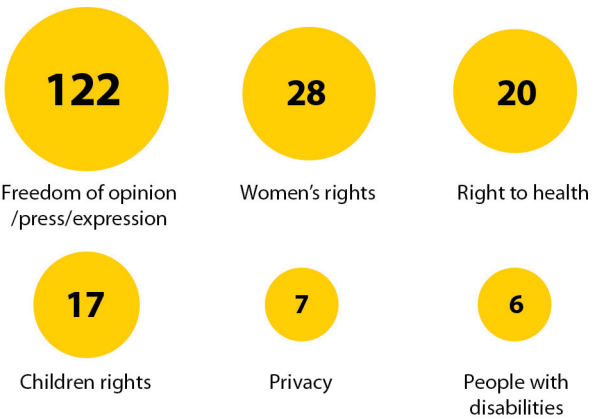
The Universal Periodic Review (UPR) involves a scheduled review of the human rights records of Member States of the Human Rights Council. It provides an opportunity for all States to declare what actions they have taken to improve the situation of human rights in their countries and to receive recommendations from their peers. The State has the primary responsibility to implement those peer recommendations to which they agree.[43]

[39] Page 46 https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf
[40] Page 37 https://sustainabledevelopment.un.org/content/documents/10720sierraleone.pdf
[41] Page 70 : https://sustainabledevelopment.un.org/content/documents/20122VOLUNTARY_NATIONAL_REPORT_060718.pdf
[42] Page 26 : https://sustainabledevelopment.un.org/content/documents/10692NORWAY%20HLPF%20REPORT%20-%20full%20version.pdf
[43] UPR recommendations can be "supported" or "noted" by the State under Review (SuR). Supported recommendations indicate that the SuR is committed to implementing said recommendations. Noted recommendations mean the SuR has made no such commitment; however, these recommendations can still be implemented and monitored. https://www.upr-info.org/en/glossary#s

UPR recommendations that were made during the first UPR cycle (2008-2011) mainly focus on the adoption of ATI laws and policies (17 recommendations), while six address the issue of improvement or better implementation of ATI laws. Recommendations made during the second cycle (2012-2016) mainly focus on upgrading or bettering the implementation mechanisms of existing laws (35 recommendations).

Analysis of the UPR data shows that many Member States have interests in strengthening links between access to information and women's and children's rights, health, education, rights of persons with disabilities, and the right to privacy. All these aspects are important and are likely to continue to inform trends going forward. The analysis also shows that governments are investing politically and in other ways into ATI improvement.

Number of UPR recommendations on ATI broken down by theme



Since 2006, according to analysis of the UPR database, 152 recommendations have mentioned access to information in one context or another.[44] Out of these, two-thirds (98) were supported by the respective Member States under review.[45]

Among the 152 recommendations, there are 122 that link ATI to freedom of opinion and expression and/or freedom of the press. There are also other references in 20 recommendations of the link between access to information and the right to health, 17 with rights of the child, seven to privacy and six to

[44] Accessed 25/07/2019 https://www.upr-info.org/database/
[45] The level of support is much higher than in the case of recommendations regarding defamation (21 recommendation supported out of 49), but lower than in the case of recommendations regarding the safety of journalists (29 recommendations supported out of 36. UNESCO monitors these three issues, amongst others, in its regular contributions to the UPR process.

assisting persons with disabilities. One recommendation mentioned access to information in the context of the right to education.[46] It is also worth noting that women's rights feature in 28 recommendations among the reasons cited for strengthening ATI. This aligns with the perspective of the NGO ARTICLE 19 in its publication titled "Tackling Gender Inequality through Access to Information", which affirms that ATI is fundamental for women's empowerment. Judging by the UPR recommendations, advocacy for women's rights can be a driver of ATI. In this regard, the ARTICLE 19 publication highlights the synergy between advocacy of ATI and women's rights.[47]

Improving ATI through the multi-stakeholder highway of OGP

The Open Government Partnership (OGP) is a multilateral initiative that aims to promote open government, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a steering committee including representatives of governments and civil society organizations. It lists 79 states as members and an increasing number of local government participants.[48]

ATI is integral to OGP's activities, since it leads to more open, accountable, and participatory government. Committing to be in the OGP means a government is committing to improve ATI legislation and/or implementation. Through OGP, effectiveness can be improved, such as by removing additional barriers to information and by creating platforms to report on fraud or corruption.

The improvement process is based on multi-stakeholder approach. Upon joining OGP, governments work with civil society to co-create two-year action plans, with concrete steps – "commitments" – across a broad range of issues. This model recognises that civil society organizations have value to add through assigning them a formal role in the process.

Since OGP was founded in 2011, there have been almost 4,000 of these open government commitments from its members. In total, 273- ATI-related commitments have been included in OGP action plans since 2011, with 63 OGP members making such commitments. By mid-2019, 28 members were implementing ATI commitments. In total, 227 ATI commitments have been assessed by OGP's Independent Reporting Mechanism (IRM)[49] with the following key takeaways:

[46] https://www.upr-info.org/database/
[47] Tackling gender inequality through access to information, ARTICLE 19, (2019).
https://www.article19.org/resources/tackling-gender-inequality-through-access-to-information/
[48] https://www.opengovpartnership.org/campaigns/global-report/member-pages-stories-of-ogp-journeys/
[49] https://www.opengovpartnership.org/wp-content/uploads/2019/07/Right-to-Information-Fact-Sheet-May-2019.pdf

1. Right to information (RTI) commitments are highly impactful, yet the proportion of members working on RTI through their OGP action plans is decreasing.

2. There is a need to reanimate RTI work in OGP by focusing on effective implementation of legislation: OGP members can establish structures for carrying out RTI legislation and train officials on records management and information provisioning.

3. A move toward proactive publication of government-held information is needed: OGP members could commit to publishing landholding information regarding politically exposed persons as well as environmental pollution permits. RTI systems should also mandate publication of metadata on the system performance, disaggregated by agency and level of government.

4. More opportunities should be created for citizens to use information: Future commitments could establish mechanisms through which citizens can monitor and provide feedback on the RTI system.

Analysis of the ATI commitments demonstrates that 42 of them were particularly aimed at improving access by strengthening implementation capacities. Among these cases was the commitment of Sri Lanka focused on improving access, whereby "the Ministry will establish an online disability-friendly ATI request portal with 50% of public authorities listed. Having such online request portal run by the government, where many public authorities are listed, will increase accessibility to citizens, including disabled persons."[50]

Ukraine put its commitment's aim in the following way: "In 2011, Parliament adopted a new Law on Access to Public Information. It did not provide for a separate mechanism for supervising its enforcement, notably through an extrajudicial review of complaints. Lack of the relevant provisions was one of the main deficiencies of the new law. The commitment aimed to address this deficiency by establishing a supervisory mechanism for enforcing the access to information provisions."[51]

[50] https://www.opengovpartnership.org/members/sri-lanka/commitments/LK0026/
[51] https://www.opengovpartnership.org/members/ukraine/commitments/UA0039/

Morocco committed to developing a training plan for the persons in charge of delivering information and conducting a training programme in collaboration with civil society for the designated information officers.[52]

Other countries mentioned improving mechanisms of implementation, introduction of proactive disclosure, and use of novel information and information technology (ICT) solutions to improve record management and their accessibility, as well as complementing ATI laws with protection of whistle-blowers.

International Conference of Information Commissioners

A number of other platforms besides the SDG HLPF, UPR and OGP are working to strengthen international cooperation in the field of ATI. One of them is the International Conference of Information Commissioners (ICIC), which is constituted by information commissioners and ombudsmen from close to 40 countries across the globe. It met in South Africa in 2019, where 20 commissioners and their equivalents also joined a UNESCO training session about the relevance to their work of the monitoring processes for SDG 16.10.2.[53] They will meet in Brazil in 2020.

Chairperson of the ICIC Governance Group Elizabeth Denham stated that the conference in South Africa "marks the ICIC's rebirth … that will help build the ICIC's capacity and strengthen our voice in the key debates that matter."[54] The ICIC has adopted the Johannesburg Charter constituting ICIC as the forum for information rights across the world with a stable secretariat and principles underpinning membership.

[52] https://www.opengovpartnership.org/members/morocco/commitments/MO0002/
[53] https://www.up.ac.za/icic2019/article/2738628/-international-conference-of-information-commissioners-icic-2019
[54] https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/03/international-conference-of-information-commissioners-2019/

Assessing ATI laws in terms of international standards

As of 2019, there were at least 126 laws[55] establishing the right of, and procedures for, the public to request and receive government-held information. ATI laws vary in strength and nature. The increase in adoption of laws has provided an opportunity to compare and improve against model standards.

International standards have been proposed by the African Commission on Human and Peoples Rights (ACHPR), which in 2010 developed a Model Law on Access to Information for Africa.[56] This continues to be promoted by, inter alia, the African Freedom of Information Centre (AFIC) headquartered in Kampala, Uganda. The Model Law says that it takes into consideration factors such as poor record-keeping, a culture of secrecy and high levels of illiteracy and poverty which impact on ATI on the continent. The model legislation includes access to information held by both public bodies and relevant private bodies where the latter hold information relevant to the exercise or protection of any human right. It references the need to "promote transparency, accountability, good governance and development by educating people about their rights". Amongst its elements are: duty to create, keep, organise and maintain information records; proactive disclosure, implementation plans; designation of information officials; forms of access; and the issue of fees. It further deals with grounds for exemptions; the issue of potential public interest override of any refusal to disclose information; and the powers of an independent oversight mechanism to promote, monitor and enforce access to information.

Another standard to emerge is the ACHPR's Guidelines on Access to Information and Elections in Africa, agreed in November of 2017.[57] These guidelines cover the role of Election Management Bodies, political parties and candidates, election observers, law enforcement agencies, media and internet regulatory bodies, civil society as well as media and online media platform providers.
The NGO Transparency International has summarised these standards in a recent study according to which an optimum ATI law should adhere to the following principles:

[55] UNESCO data (02/2019) submitted for the 2019 UN Secretary-General Progress Report on SDGs. After this data, one additional country (Ghana) adopted a law.
[56] http://www.pulp.up.ac.za/edited-collections/model-law-on-access-to-information-for-africa-and-other-regional-instruments-soft-law-and-human-rights-in-africa
[57] https://www.achpr.org/legalinstruments/detail?id=61

Principles to make strong ATI laws according to Transparency International

1 **Authority**

- All public bodies, as well as those private entities that receive public funds or exercise public authority, should be covered by the law.
- Disclosed information can be freely disseminated and used without any restriction.

2 **Requesting procedures**

- Everyone can exercise the right to request, receive and disseminate information. National or foreigner, individual or legal person. Anonymous requests are allowed and the requested bodies do not ask for more than a contact address for the response.
- No one has to give reasons for the request.
- There are reasonable deadlines to receive information, all refusals have to be reasoned and all are appealable.
- The default presumption is maximum disclosure and there can be narrow and clearly defined exceptions

3 **Exceptions**

- No information is excluded from the coverage of the law.
- Each exception contains a harm test and public officials have to apply public interest tests and overrides set by law when deciding on disclosure.

4 **Implementation provisions**

- Public bodies have obligations to publish without any request and to regularly update information on their functioning, regulations, finances, service, and staff.
- Information commission(er) is required to train public officials, promote the law and monitor its application.[58]
- There are effective and timely appeal procedures before independent forum(s).

[58] Right to Information in Asia Pacific, Transparency International, (2019), https://www.transparency.org/whatwedo/publication/right_to_information_in_asia_pacific

Besides Transparency International cited above, other civil society organizations have also developed a comprehensive set of principles that legislators can utilise while adopting their ATI national legal frameworks. A civil society consortium comprised of Deutsche Welle Akademie (DWA), Free press Unlimited (FPU) and the GFMD, in consultation with the Centre for Law and Democracy (CLD), has underlined the importance inter alia of the elements of: proactive disclosure; the ability of public authorities to receive and deliver on information requests; and the timely processing of information requests. In their perspective, full implementation of public access to information laws can be considered as present only if these elements are part of the legal framework. [59]

The NGOs Access Info Europe and CLD, and their RTI Rating Methodology evaluate national ATI frameworks based on seven key elements.[60] These are Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures.

The rating measures the strength of these elements in terms of 61 discrete indicators.[61] The table below is based upon the NGOs' assessment of the dynamics in ratings of ATI laws adopted during the last 20 years, comparing scores for laws adopted in 2017-2018 and those during 1997-1999:[62] In each selected period, only seven countries adopted ATI laws.

NGOs' assessment of the dynamics in ratings of ATI laws during the last 20 years

Countries with laws adopted in **1996/98**

512 points

Countries with laws adopted in **2017/18**

687 points

[59] https://gfmd.info/gfmd-content/uploads/2019/07/Road-to-2030-ATI-in-the-Drivers-Seat.pdf
[60] https://www.access-info.org/uncategorized/11077
[61] https://www.rti-rating.org/country-data/by-indicator/
[62] https://www.rti-rating.org/country-data/

The total accumulative rating of 2017-2018 laws equals 687 points, compared to 512 points for the laws adopted 20 years earlier. This constitutes an improvement in 25 percent in ratings awarded to the most recent laws. In summary, from the analysis above it appears that ATI laws are increasingly improving in their formal quality. Implementation is a different issue to be considered, and it is dealt with in the next section.

Understanding ATI implementation

A number of issues arise in relation to the implementation bodies for ATI. One is whether it is a specialised body or bodies (i.e. focusing only on ATI) or a multi-purpose body (i.e. an ombudsman or human rights commission which also takes on the various functions). Trends show that specialisation is far more effective, albeit also slightly more expensive. When ATI is added to the functions of an existing body, the information function normally takes second place to those pre-existing functions.[63]

Research published by the Organization of American States[64] and a study by the World Bank Institute[65] provide more insights on effective institutional design of the bodies responsible for implementing and enforcing laws on access to public information.[66]

Whatever the institutional arrangement, the trend is to promote independence of government, which is especially relevant when the body involved reviews decisions by public authorities to refuse to disclose information. Independence is complex, but it relates to who may be appointed as a member of the body, the way these members are appointed, in law and in practice, the way the budget is allocated and the way the secretariat is run. Where review functions are involved, the entity needs to have appropriate powers to investigate appeals. Normally, this involves the power to review information, including classified documents, to call witnesses and order them to testify, and, in appropriate cases, to conduct inspections of public authorities.

[63] Ibid.
[64] Edison Lanza, 2015, The Right to Access to Public Information , Washington, Organization of American States http://www.oas.org/en/iachr/expression/docs/reports/ACCESS/Thematic%20Report%20access%20To%20public%20information%202014.pdf
[65] Newman Laura, 2009, Enforcement Models Content and Context, Washington, The International Bank for Reconstruction and Development/The World Bank). http://siteresources.worldbank.org/EXTGOVACC/Resources/LNEumanATI.pdf
[66] http://www.oas.org/en/iachr/expression/showarticle.asp?artID=994&lID=1

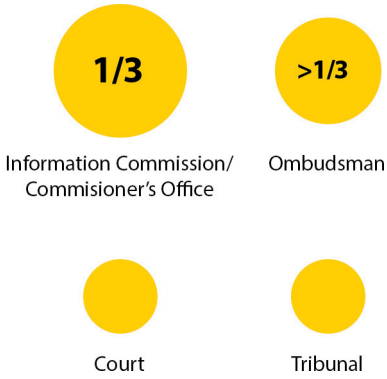
ATI laws typically include an implementation infrastructure among their provisions, with at least one oversight body such as an Information Commission. The remit of such an institution as the nodal entity for implementation typically covers promotion, monitoring, standard-setting and capacity-building of officials. Some oversight bodies also play a range of crucial secondary roles in the implementation of ATI policies, which include providing support to the administration and offering their expertise to both requesters and the administration, and monitoring implementation. Fulfilling these roles is essential to alleviating implementation problems on the part of the administration.[67] Entities also need to have the power to remedy problems where they find these exist. Normally, this involves the power to issue binding orders to public authorities to do such things as disclose information, appoint a dedicated officer to process requests, train such officers, manage their records better and so on.[68] In a number of instances, the nodal body also serves as the country's data protection body.

In some cases, the functions of an Information Commissioner or equivalent also include consideration of appeals against refusal to disclose. In other cases, as is recommended by the UN Special Rapporteur on Freedom of Opinion and Expression (2017), decision-making authority on such issues resides in an independent actor.

There are four main types of bodies independent of government that resolve information requesters' complaints under ATI – an ombudsman's office, a commission's/commissioner's office, a tribunal, and a court. Of the roughly 90 countries that had passed an ATI law by 2011, approximately one third had given enforcement responsibility to an information commission or commissioner, less than one-third to an ombudsman, and the remainder to a tribunal, the courts, or an administrative office.[69] Thus, requesters have the right to lodge an (external) appeal with an oversight body (e.g. an information commission or ombudsman) in close to half of the countries analysed.

[67] Holsen, S., 2012, Insight on oversight: the role of Information Commissioners in the implementation of access to information policies. Journal of Information Policy, pp. 214-241.
[68] Comments made by Toby Mendel of the CLD, while on UNESCO assignment to consult Armenian authorities on FOI law.
[69] Holsen s. and Pasquier M. 2012, Insight on Oversight: The Role of Information Commissioners in the Implementation of Access to Information Policies, Journal of Information Policy 2, page 222.

On who do countries rely to resolve information request's complaints?



Between 2011 and mid-2019, 31 new countries adopted ATI laws.[70] Of these, 23 (74%) provide requesters with the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).

When an appeals function and appropriate body are not established, the only recourse individuals have in relation to ATI cases is to the courts; This is time-consuming as well as too expensive to be accessible to many. A 2016 report by the Organization of American States' Special Rapporteur on Freedom of Expression noted in relation to ATI requests: "This office has on numerous occasions underscored the right of individuals to a remedy that is simple, easy to access and that its exercise only demands the fulfilment of basic requirements, effective, quick, free or have a low cost enough so as not to discourage request for information, and that allows them to challenge the decisions of public officials that deny the right of access to specific information or simply fail to answer the request."[71]

Institutional arrangements have key significance but on their own do not always translate into an effective guarantee of ATI in practice

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[70] https://www.rti-rating.org/country-data/

[71] Edison Lanza, 2015, The Right to Access to Public Information , Washington, Organization of American States http://www.oas.org/en/iachr/expression/docs/reports/ACCESS/Thematic%20Report%20access%20To%20public%20information%202014.pdf

Actual implementation: UNESCO's surveys tracking progress on SDG 16.10.2[72]

As the custodian agency for global monitoring of SDG Indicator 16.10.2 on ATI, UNESCO developed a two-part methodology to help measure and report on what has been done to implement ATI rules.[73] The first part (SURVEY 1) concerns central oversight or support bodies for the right to information and focuses on what has been done at the national level. This includes issues such as what bodies have been established, how many appeals have been lodged and what has happened with them, public awareness-raising efforts, and records management standards. The second one (SURVEY 2) covers selected public authorities (two ministries and a city) and looks into what these specific entities have done to implement the law, including appointing information officers, helping requesters make requests, receiving and processing requests, and disseminating information proactively. Implementation of the survey conducted was by CLD. The exercise, along with support from DWA, FPU and GFMD, helped encourage states to include 16.10.2 in their 2019 VNR reports (as per the earlier analysis of country responsiveness to 16.10.2).

Forty-three countries in the VNRs in 2019 were covered by the UNESCO research.[74] The data collection exercise (see the graph below) generated a wealth of information about the state of implementation of ATI laws. It can therefore serve as a good baseline for measuring change and trends going ahead. With some adjustments to the surveys and data collection approach, the methodology will enable ongoing assessment of progress by States towards meeting the 2030 deadline for achieving SDG 16 Target 10, as part of the sustainable agenda package. The findings recorded below are presented in three categories: (i) 26 states with ATI laws; (ii) 17 of these states where key ministries and cities were surveyed; (iii) 17 states without ATI laws.

[72] This chapter is based on the UNESCO IPDC report Highlights from the 2019 UNESCO Monitoring and Reporting of SDG Indicator 16.10.2 – Access to Information. https://unesdoc.unesco.org/ark:/48223/pf0000369160

[73] https://unesdoc.unesco.org/ark:/48223/pf0000366967

[74] The basis of the mandate of UNESCO's Member States in the IPDC and the designation of the UN General Assembly of UNESCO as convening agency was shared with the UNESCO delegations and the relevant officials in the surveyed 43 countries, whose subsequent co-operation in providing data underpins these findings is appreciated. At the time of writing, UNESCO was in discussion with UIS to make country-level data available online.

UNESCO's 2019 Data Collection exercise

SURVEY 1

Public bodies that play a central role in supporting or overseeing the implementation of RTI laws

COUNTRIES WITH RTI LAWS

Group A

17 countries where Survey 1 and Survey 2 were carried out by local partners

Group B

9 countries where Survey 1 was carried out by the Centre for Law and Democracy

COUNTRIES WITHOUT RTI LAWS

17 countries (researched through desk-based methods)

SURVEY 2

Selected public authorities that are tasked with applying RTI laws

Core authorities:
1. Ministry of finance
2. Ministry of the environment
3. Council of the Capital City

COUNTRIES WITH RTI LAWS

Group A

17 countries where Survey 1 and Survey 2 were carried out by local partners

Group A

Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, Croatia, El Salvador, Indonesia, Kenya, Mongolia, Pakistan, Palau, Philippines, Rwanda, Serbia, Sierra Leone, South Africa, Tunisia, Côte d'Ivoire

Group B

Azerbaijan, Fiji, Guatemala, Guyana, Kazakhstan, Rwanda, TAnzania, Timor-Leste, Turkey

Countries without RTI laws

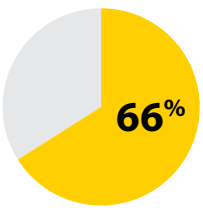
Algeria, Cambodia, Cameroon, Central African Republic, Chad, Congo (Republic of the), Eritrea, eSwatini, Ghana, Iraq, Lesotho, Mauritiania, Mauritius, Nauru, Saint Lucia, Tonga, Turkmensitan

(i) Key findings from central bodies in 26 of the 2019 Voluntary National Report countries[75] which have ATI Laws:

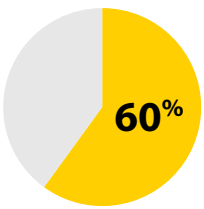
1. National regulation systems are increasingly conducive to freedom of information.

   - The countries surveyed demonstrated strong performance in regard to having both binding and nonbinding rules and policies relating to ATI, with an overall average among the 26 countries for the nine separate types of rules and policies assessed at 60% compliance.
   - 66% of these countries responded that they have constitutional ATI guarantees.
   - 60% also responded having secondary rules on ATI, which are often necessary to pave the way for practical implementation of the ATI law.
   - 66% of countries responded having non-binding rules on ATI, with 82% of the total reporting having rules on open government and an Open Government Partnership (OGP) action plan.

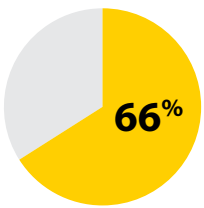
National regulation systems



countries with ATI constitutional guarantees



countries with secondary rules on ATI



countries with non-binding rules

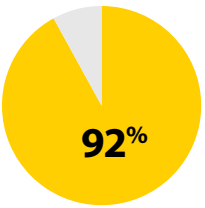
[75] Countries surveyed - Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, Croatia, El Salvador, Indonesia, Kenya, Mongolia, Pakistan, Palau, Philippines, Rwanda, Serbia, Sierra Leone, South Africa, Tunisia, Azerbaijan, Fiji, Guatemala, Guyana, Kazakhstan, Rwanda, Tanzania, Timor-Leste, Turkey.

Please note that not all survey respondents provided information on all questions.

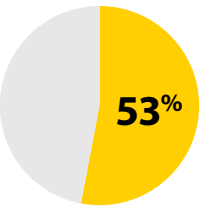
2 Countries have established mechanisms to monitor implementation of SDGs in general, but less than half specifically monitor and report on ATI in Indicator 16.10.2.

- 92% of the 25 countries which responded on this point reported having a national body responsible for reporting on the SDGs.
- From among these countries, nine (representing 53% of the total number of 17 countries, which responded to this particular question) responded that they have bodies which specifically reported on SDG Indicator 16.10.2.[76]

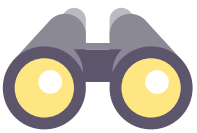
Percentage of countries with bodies reporting to SDG



Percentage of countries with bodies reporting to SDG 16.10.2 , specifically



3 Dedicated ATI oversight bodies are well established in most countries.



23 countries responded having oversight bodies for ATI.

- 23 countries responded having oversight bodies for ATI.
- In 17 cases (65%), the oversight bodies are also the same bodies that hear ATI appeals.
- 12 of the 15 appeals bodies (80%) responded about having binding decision-making powers, which is generally deemed to be more effective by ATI observers.

In two of the three that did not, this was because appeals had been allocated to a pre-existing body (in one case an ombudsman and in the other a human rights commission), which did not have binding powers. This seems to reinforce claims often made by ATI observers that it is more effective to create dedicated ATI appeal bodies with relevant authority to enforce decisions.

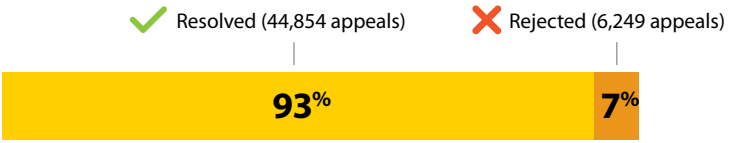
- 11 of these 15 bodies (73%), excluding the three that did not have binding decision-making powers and one other, also had the power to impose sanctions.

[76] Côte d'Ivoire, Chile, Indonesia, South Africa, and Philippines included progress on access to information in their 2019 VNRs. Tunisia only mentioned about its 2014 Constitution that guarantees right to information, with no details on its progress. As with Brazil, El Salvador and Kenya, these countries later dropped their plans to submit VNRs, so there are no information available on their ATI progress.

4 Most appeals are resolved, according to responses.

- There was a huge range in terms of the number of appeals among the 13 countries responding on this, from a high of 3,500 per year to just three.
- 93% (44,854) of all appeals were reported to have been resolved, from among which only 6,249 appeals had been rejected. if this response is accurate, it is very positive.

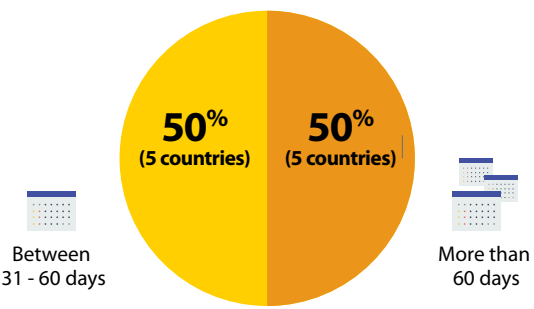
Status of appeals



5 Requests for information are processed within reasonable time limits.

- Ten countries responded on this, but none indicated that appeals were, on average, resolved in 30 days or less.
- The group was evenly spread with five indicating that appeals were resolved in between 31 and 60 days and five in more than 60 days.
- It is obviously good for appeals to be decided as quickly as possible but these time reports seem reasonable, given that processing appeals can be quite complicated.

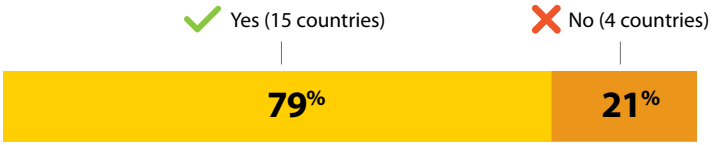
Average number of days to resolve requests for information



6 Most ATI oversight bodies and appeals bodies publish public annual reports.

- From among all the 19 different oversight and appeals bodies in the 19 countries, 15 responded that they produced annual reports. Although high, the figure should ideally be 100%, given that these are not just statutory entities but also directly dealing with ATI.

Does your ATI oversight body publish annual report?



7 Public awareness takes place; weaker performance for binding standards, record management and provisions on human rights violations.

- A survey question on public polling to assess awareness about of ATI, had just four positive responses from among 26 countries (15%). This was probably over reported as some of the elaborations suggest that respondents did not really understand the polling that the question was looking for. However, experts regard opinion polls on these issues as good practice, and as per the SDG 16.10.2 metadata, discussed above which references measuring "how individuals perceive the quality of information in the public domain".
- The figure for conducting public awareness activities scores 100%.
- Significantly, in only 67% of the 12 countries that reported having produced records management standards, were those standards binding.
- A low of 47% was recorded as regards the percentage of countries having a legal rule to the effect that information about human rights violations may not be classified.

(ii) Findings from individual public authorities in 17 of the 2019 Voluntary National Report Countries[77] with ATI Laws:

A total of 73 SURVEY 2 questionnaires were completed in 17 countries. In terms of the core public authorities sought to be covered – namely the ministries responsible for finance and the environment, and the governing council of the capital city – the first two were covered in, respectively, 16 and 15 of the 17 countries (94% and 88%), whereas the capital city was covered in only 11 countries (65%). In five countries, the three core public authorities were covered along with some additional authorities. The findings show that:

1. Public authorities have appointed individuals with dedicated responsibilities for implementing ATI, but specialised training on ATI for these officers is still lacking.

    - 86% of this survey group responded that they make the contact details of information officer's public, but fewer (58%) for training for information officers.
    - 27 (37%) of the 73 public authorities responding got a top score on having specialised officials.
    - An average of 67% said that they made the form for requests available online.

2. Much needs to be done by public authorities to keep good records of the requests they are receiving and how they are processed.

    - For 2015, 2016 and 2017, the number of requests received, answered, answered in time and information provided, in whole or in part, mostly averaged above 2,000 for each public authority which responded. This figure was significantly influenced by the reportedly very high number of requests coming from Jakarta Province in Indonesia, which was above 100,000 in 2017 (accounting for two-thirds of all requests). However, record keeping can be stronger.

[77] Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, Croatia, El Salvador, Indonesia, Kenya, Mongolia, Pakistan, Palau, Philippines, Rwanda, Serbia, Sierra Leone, South Africa, Tunisia

3. Public authorities consider they are responsive and timely in regard to information queries.

   - Respondents reported high figures for requests being answered. Information was provided, in whole or in part, in 81% of all requests (92% of the requests that were answered), according to the responses. For 2017, for example, 88% of all requests were reportedly answered, 80% of all requests were reported as being answered in time (91% when limited to the requests that were answered).
   - However, these results do not correspond to testing exercises that have been conducted by independent actors such as civil society bodies.[78] It could be that public authorities are not keeping good records, or that some are not providing accurate responses.

4. Official record-keeping systems appear to fall short of records being made, captured and maintained in accordance with legal and regulatory frameworks.

   - Looking at 2017, the figures for refusal or delay in responding to requests hardly ever went above two percent of all requests. These figures do not correspond to figures obtained through independent testing exercises. This again suggests a need for better record-keeping.

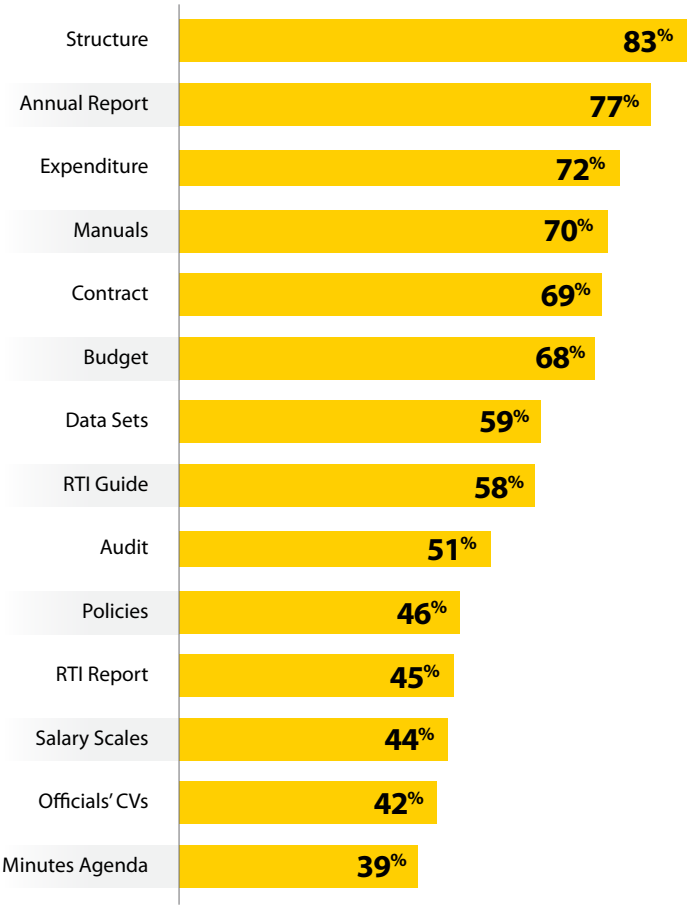
5. Public authorities have pro-actively released information in general, but more needs to be done to ensure that the public receives guidelines on how to use their right to information.

   - Positive responses, as outlined below, for a question about type of information proactively disclosed were generally high. This may reflect the use of digital technologies.
   - Four sub-categories of information had an average 'Yes' response rate at or above 70 percent for proactive disclosure of Structure and Function, Annual Report, Report on Expenditure and Core Manuals. Five had an average 'Yes' rate of less than 50 percent, namely, Ministers' Agendas, Senior Officials' CVs, Salary Scales, Annual Report on ATI and Policy Reports. This might be expected in regard to information that is easier or difficult to disclose.

[78] Road to 2030: Access to information in the driver's seat (2019)
https://gfmd.info/launch-of-the-report-road-to-2030-access-to-information-in-the-drivers-seat/

- Information on Budget, at 68%, should clearly be improved, given the importance of disclosing this sort of information. The same is true of Audit Reports (51%) and Administrative Data Sets (59%). Performance in terms of issuing Guidelines for Requests (58%) is of concern, since such guidelines can be invaluable in terms of helping requesters make better requests (in turn, saving public authorities time and effort).

Types of information made available on a proactive basis



(iii) Findings in 17 countries[79] without ATI legislation

These countries lacking ATI laws were also analysed by the survey with the following key findings emerging:

- A clear ATI public policy, as would inform a law and ensure its implementation, is lacking, with evident adverse effect on public access to information;
- Out of 17 countries without specific ATI laws in February 2019, only one had a provision guaranteeing the right to information in its Constitution.
- Two countries had other strategies and non-binding policies.
- 16 countries have national mechanisms that monitor and report progress towards the SDGs. However, the monitoring and reporting on SDG Indicator 16.10.2 (access to information) seems yet to be included in any of these mechanisms.
- Ghana[80] has set common minimum standards for records management, while Turkmenistan has a legal provision in which information about serious violations of human rights may not be classified.

In overview, the following observations regarding implementation of ATI can be drawn, based on data collected in the three categories (countries with ATI laws, ministries and capital cities in countries with ATI laws, countries without ATI laws):

- Binding and non-binding rules of legal frameworks on access to information define the implementation of ATI. Existence and clarity of these rules with a related law based on universal standards is essential for the development of ATI.
- Regarding an oversight body, the trend is to combine functions of oversight and appeals, although this is not regarded as best practice.
- Time limits of responding to requests for information should become one of the key criteria to measure effectiveness of the implementation.
- Guidelines for requesting information should be available and accessible to the public.
- Oversight bodies should be recommended to lead the proactive disclosure practices. Proactive disclosure is important for efficiency of implementation, since it helps reduce the number of requests that they have to process and other administrative burdens.

[79] Algeria, Cambodia, Cameroon, Central African Republic, Chad, Congo (Republic of the), Eritrea, Eswatini, Ghana, Iraq, Lesotho, Mauritania, Mauritius, Nauru, Saint Lucia, Tonga, Turkmenistan.
[80] Since the writing of the IPDC publication, Ghana has since adopted an access to information law.

- Effective ATI implementation also depends on the ability of citizens to assert their right. In this regard, countries should accelerate their efforts in raising public awareness of the issue, including through public campaigns, media exposure, and dissemination of communication materials.
- Proper record-keeping on ATI is key to assessing implementation.

Civil society monitoring of ATI in the SDG framework

A civil society partnership of DWA, FPU and GFMD, in consultation with CLD, produced a report[81] in mid-2019 looking at the state of public access to information in 10 countries.[82] According to the report, "Indicator 16.10.2 is one of the few indicators that give developing countries an advantage over developed countries because it is easier for them to achieve progress and they often have laws in place to support implementation." It urged countries to include ATI in wider SDG monitoring.

This study concluded that while ATI laws helped to strengthen anti-corruption activities and transparent governance, public authorities could do more proactively to make more information available, rather than keeping it "behind closed doors", such as on topics like budgets, public procurement and contracting. Additionally, the report identified weakness in authorities keeping track of granted and denied information requests, and in publishing this information. Based on its assessment of structures for implementation, the report proposed that as optimum practice to have a separate nodal agency for co-ordination, capacity building, setting of standards, and development of implementation plans, and different and independent body to consider complaints and with the authority to order the release of information where exemptions did not apply. A further finding was that while official online channels often did not provide information on the processes to request information, independent media and investigative journalism played a vital role in raising awareness for the broader public, which was not aware of the right and how to exercise it.

[81] Road to 2030: Access to information in the driver's seat, (2019).
https://gfmd.info/launch-of-the-report-road-to-2030-access-to-information-in-the-drivers-seat/
[82] Canada, Indonesia, Mongolia, Pakistan, Serbia, Sierra Leone, South Africa, Tanzania and Ukraine.

Another civil society report[83] issued in 2019 covered eight countries in Latin America.[84] While its main focus was SDG 16.10.1 on safety of journalists, it also assessed restrictions on the right to access public information such as refusal, partial or incomplete delivery, and omission, as well as obstruction of journalistic work. and recorded 84 alerts in this category. The report recommended the formation of national platforms/coalitions for measuring and promoting SDG 16, covering actors from government, media and human rights organisations. It urged the UN system to strengthen national statistics offices for monitoring SDG 16. The study concluded that reporting on SDG progress "should not be viewed merely as an instance of international accountability but also as a key policy-making element…". Accordingly, it argued reports only made sense if they fostered opportunities and dialogue among local actors and had an impact on local contexts.

These civil society reports of trends in selected countries align with the funding in the UNESCO surveys on implementation discussed earlier.

Heightened attention to ATI

Overall, participation in international fora to share good practice and reporting/monitoring mechanisms, such as Open Government Partnership action plans, and mechanisms to monitor implementation of SDGs (VNRs), as well as other factors covered in this report such as civil society and IDUAI events, show heightened ATI attention in a number of countries.

[83] A region split between light and shadows. Shadow report on the compliance of the SDG 16.10.1 in 8 LAC countries. By Voces del Sur. https://www.vocesdelsurunidas.org/wp-content/uploads/2019/07/Informe-1-Ingles-espa%C3%B1ol-1.pdf
[84] Argentina, Bolivia, Ecuador, Honduras, Nicaragua, Peru, Uruguay and Venezuela.

Country	OGP plan on ATI[85]	UPR accepted recommendation	Has held IDUAI event	Country-level programmes by UNESCO and/or civil society	Reported in 2016-18 VNRs[86]	Reported in 2019 VNRs
Algeria	NM[87]					✓
Armenia	✓		✓	✓	✓	
Azerbaijan	✓					✓
Bahamas	NM				✓	
Bangladesh	NM		✓		✓	
Belgium	NM				✓	
Cameroon	NM					✓
Canada	✓	✓			✓	
Chad	NM					✓
Chile	✓					✓
Côte d'Ivoire	✓		✓	✓		✓
Colombia	✓		✓		✓	
Congo (Republic of the)	NM					✓
Costa Rica	✓				✓	
Croatia	✓					✓
Czechia	✓	✓			✓	
Ecuador	NM				✓	
El Salvador	✓				✓	
France					✓	
Ghana	✓	✓		✓		✓
Guyana	NM					✓
Hungary	✓	✓			✓	
Iceland	NM					✓
Indonesia	✓	✓		✓	✓	✓
Ireland	✓	✓			✓	
Israel [88]	✓					✓
Jamaica		✓			✓	
Kenya	✓	✓			✓	
Kuwait	NM					✓

[85] http://www.opengovpartnership.org/explorer/all-data.html
[86] Based on keyword search of 'access to information' in VNR Database (2016-2018) https://sustainabledevelopment.un.org/vnrs/index.php?str=access+to+information#results_area
[87] Does not hold membership in OGP
[88] Israel withdrew from UNESCO 31 December 2018
https://en.unesco.org/news/declaration-unesco-director-general-audrey-azoulay-withdrawal-israel-organization

Country	OGP plan on ATI[85]	UPR accepted recommendation	Has held IDUAI event	Country-level programmes by UNESCO and/or civil society	Reported in 2016-18 VNRs[86]	Reported in 2019 VNRs
Lebanon	NM				✓	
Lesotho	NM					✓
Lithuania		✓			✓	
Mauritius	NM					✓
Mongolia	✓			✓		✓
Montenegro	✓	✓			✓	
New Zealand	✓					✓
Nigeria	✓				✓	
Norway	✓				✓	
Palau	NM					✓
Philippines	✓	✓				✓
Romania	✓				✓	
Rwanda	NM	✓		✓		✓
Sierra Leone	✓				✓	
Slovenia	NM				✓	
South Africa		✓				✓
Spain	✓				✓	
Sri Lanka	✓	✓			✓	
Sweden		✓			✓	
Thailand	NM	✓			✓	
Timor-Leste	NM					✓
Tunisia	✓	✓		✓		✓
Turkey	NM	✓				✓
United Kingdom of Great Britain and Northern Ireland	✓					✓
United Republic of Tanzania	✓	✓				✓
Vanuatu	NM					✓
Vietnam	NM	✓			✓	

New Digital Challenges and Opportunities

Digitisation of increasing aspects of life has generated growing volumes of data, which give rise to many new issues for ATI.

On one hand, technology can convert such data into meaningful information that can in turn assist with sustainable development. According to the 2019 report of the UN Secretary-General's High Level Panel on Digital Co-operation, the world needs to generate more data relevant to the SDGs, including sex-disaggregated data.[89] For example, improved digital cooperation on a data-driven approach to public health has the potential to lower costs, build new partnerships among hospitals, technology companies, insurance providers and research institutes and thereby support the shift from treating diseases to improving wellness. Such data is not only relevant to achieving the SDGs, but also to monitoring them. To achieve this, the report highlights the need for new models of collaboration.[90]

On the other hand, given that most data today are owned by private actors, the potential remit of ATI beyond state institutions is increasingly relevant. This ownership also raises the issue of international data flows which complicate decisions on national legislation. As stated by the UN Secretary-General's High Level Panel on Digital Co-operation, there are arguments for and against storing and processing data within national borders. It is also the case that the numerous layers of private actors collecting data (owners of operating systems, connectivity providers, various applications, storage providers, and security providers) have limited accountability for respecting and protecting rights. The idea of treating them as legal "data fiduciaries" with responsibilities to secure data against breaches, and to adhere to a code of conduct for how they use this data, is an emerging debate. As the High Level Panel on Digital Co-operation notes, it is often only publicity about a major hack that leads to investment in security, whereas such breaches are arguably a significant issue for proactive disclosure under ATI.

Issues have also arisen as to whether there should be a "right to explanation" about the collection, storage and use of data and its conversion into meaningful information, particularly in regard to how human biases impact on the design and workings of algorithms. The ICIC, described earlier, notes that public

[89] The Age of Digital Interdependence, Report of the UN Secretary-General's High-level Panel on Digital Cooperation, 2018, https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf
[90] Ibid, Page 10. https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf

institutions are already making decisions by automated data processes, aided by algorithms and artificial intelligence, not only in the preparatory stages, but also in the final phase of decision-making. The 2019 ICIC conference passed a resolution advising that before using algorithms and AI procedures, public institutions should evaluate to what extent their use is in line with human rights. Further, the resolution stated that such institutions should consider how their use of these tools affects how they are fulfilling their transparency obligations ("transparency by design"). For the ICIC, public institutions should take steps to ensure that algorithms and their use are sufficiently transparent, as well as have their own data processing operations communicated in comprehensive and generally understandable information.[91] Similarly, the UN Secretary-General's panel states that "autonomous intelligent systems should be designed in ways that enable their decisions to be explained and humans to be accountable for their use". It references audit and certification schemes, which have direct bearing on ATI concerns.

> **"decisions on access to information, traditionally made by humans, are now driven by AI applications which have the ability to selectively exclude or emphasise significant information...**

A study by the NGO Privacy International highlights that AI impacts how individuals can access information and express themselves on the Internet, including through search engines and social media. It further notes that decisions on access to information, traditionally made by humans, are now driven by AI applications which have the ability to selectively exclude or emphasise significant information, and which can enable actors to operate processes without transparency. Thus, in opaque and inscrutable ways, AI systems can leave users ignorant about their ATI more broadly.

A further complexity is that machine-learning algorithms personalize the content that is shown to the user, thereby determining what different people see, and in what order they see it. Personalized experience may bring forward relevant information tailored to an individual's needs, but also, by shaping the type of information – and disinformation – to which people have access, the idea of humans as active assessors of information can be overshadowed and marginalised. The availability of more content does not necessarily mean knowing about access to relevant or credible information held by either private or public actors, nor access to that which some data holders might prefer to keep out of the public domain and yet which may also well be highly significant to human rights and the achievement of the SDGs.

[91] Draft ICIC resolution: "Transparency of public administration when using algorithms is indispensable for the protection of fundamental human and civil rights".
https://cdn.website-editor.net/61ed7ac1402f428695fcc2386ad0577f/files/uploaded/ICIC%25202019%2520-%2520DE%2520%2520Resolution_final%2520draft_11.03.2019.pdf

Governance in general, and development of smart cities in particular, could serve as another area where, while discussing access to information as an important asset for development, there are emerging challenges. ATI is relevant to how city authorities deal with the priorities of inclusion when faced with diverse issues such as: differences in housing provision (and tackling slums and temporary shelters); urban gender inequalities; provision of services for people with disabilities; racial or ethnic discrimination; exclusions based on nationality, childhood or old age, minority language issues, disability, etc. In addition, the character of information available impacts on symbolic and economic inclusion, as for example in the controversies behind digital mapping (such as contested naming and zoning, along with directions for travel). The authors of a forthcoming chapter in a UNESCO book argue that a smart city cannot be created without a rights-respecting ATI policy, data protection and the promotion of media development.[92] Cities at minimum need to be on a readiness-footing to raise awareness and respond to requests by citizens exercising their right to information. This readiness includes promoting affordable connectivity, such as in developing policies for libraries and public free Wi-Fi zones, as well as measures to strengthen open government and open data access; data protection and privacy. As pointed out in the article[93] privacy impact assessments of "smart city" initiatives are needed before they are rolled out. Cities should also consider requiring and adopting mandatory privacy-by-design principles, and not blindly implement privacy-invasive ways of administering levies, such as often found in highway tolls or electricity consumption.

In making sense of all the data gathered from citizens' consciously expressed communications, and their involuntary metadata (such as transportation records, electricity and water use), cities need to consider the collection, storage and use of data. Residents of cities further need the right to opt in or opt out of data intensive initiatives. However, it is hard for anyone to opt out of something that they do not even know is taking place, which is the case with many smart city initiatives.

Finally, the chapter argues, cities should consider algorithmic transparency (i.e. what is going on inside black boxes of data analytics used by them), in line with the idea that data subjects have a right to know about the logics used in how their data is being processed. As per the UN Secretary-General's panel report, "companies, governments and civil society should agree to clear and transparent standards that will enable greater interoperability of data in ways that protect privacy while enabling data to flow for commercial, research and government purposes, and supporting innovation to achieve the SDGs". Such systems are of direct ATI pertinence.

[92] Information, Media, and Urban Inclusion, a manuscript by Guy Berger, UNESCO; Jane Duncan, University of Johannesburg, South Africa: Cynthia Patricia Cantero, Pacheco Instituto de Transparencia, Información Pública y Protección de Datos Personales del Estado de Jalisco, Mexico (2018).
[93] Ibid.

A further issue looking ahead is balancing the right to privacy and the right to information when there is a potential conflict between them. It is for this reason that national RTI laws invariably have exemption for personal privacy. The right to privacy can be caught up in digital data processing and personally-identifiable information can be uncovered as a result of big data analysis and triangulation of data sources. Many consumer products and autonomous systems are frequently equipped with sensors that generate and collect vast amounts of data without the knowledge or consent of those involved.[94] Data collection and mining can also provide the basis for blanket surveillance, and for commercial or political profiling, automated decision-making that is biased, behavioural tracking and prediction, and attempted manipulation of data subjects. All this has generated questions about elaborating how ATI goes hand in hand with the right to access data (at least personal data held by third parties). Data protection has come to be seen as an essential complement to policies for access to information. In a growing number of countries, bodies responsible for ATI now also include data protection functions.

Increasingly, many countries are adopting separate privacy and data protection laws that may interact with the ATI law in determining the release of information.[95] These are becoming informed by the European Union's General Data Protection Regulation (GDPR)[96] adopted in 2016 and which went into force in 2018. Salient debates about GDPR include:

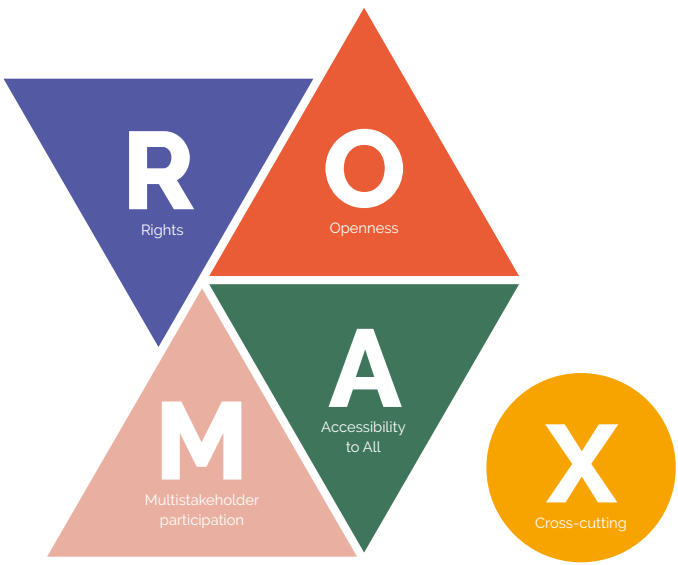
- Where privacy is protected at the expense of access to information, such as through interpretations of a right to be forgotten.
- The burden on organizations of complying with the rights of individuals to gain access to their data.
- The extraterritorial scope of the Regulation as enforcement of the Directive requests that rules are to be enforced in cyberspace, in an international context, and on operators which may not have any physical presence in the EU.
- Following the adoption of the GDPR, public authorities may face some initial challenges with the application of section 40(2) exemption of GDPR, if the request for information contains personal data belonging to a third party. The 'legitimate interests' ground relied upon by public authorities to justify disclosure of personal data are gone. Consequently, it may prove difficult for public authorities to ever disclose personal data through GDPR.

[94] https://www.article19.org/wp-content/uploads/2018/04/Privacy-and-Freedom-of-Expression-In-the-Age-of-Artificial-Intelligence-1.pdf
[95] The Right to Information and Privacy: Balancing Rights and Managing Conflicts, World Bank Institute, WORKING PAPER, 2011. www.ip-rs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblascencev/Right_to_Information_and_Privacy__banisar.pdf
[96] Regulation (EU) 2016/679
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532348683434&uri=CELEX:02016R0679-20160504

On the other hand, there is a growing consensus that even "more needs to be done to safeguard the human right to privacy: individuals often have little or no meaningful understanding of the implications of providing their personal data in return for digital services". [97] Regardless the above mentioned challenges, it should be emphasized that ATI and privacy are not inherently in conflict. The important issue is how the legislation and the implementing and oversight bodies balance the two rights.

Many stakeholders working in the fields of ATI understand that today it is bound up with the wider ecosystem of Internet. UNESCO has agreed on Internet Universality ROAM principles – covering the need for the Internet and ICT to be aligned with human Rights, Openness, Accessibility and Multi-stakeholder governance. These principles constitute a holistic body that can guide values, norms, policies, regulations, codes and ethics relevant to ATI in particular. Since 2018, UNESCO has adopted a set of indicators to assess ROAM at country level, including particular indicators for assessing ATI in digital context.[98] These examine inter alia issues of affordability, local content and language, and capabilities. The latter links also to Media and Information Literacy, which designates a set of capacities that include knowledge and skill about the right to access information and how to use it.

UNESCO's ROAM-X indicators



[97] The Age of Digital Interdependence, Report of the UN Secretary-General's High-level Panel on Digital Cooperation, 2018, Page 31. https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf
[98] Steering AI and Advanced ICTs for Knowledge Societies: A ROAM Perspective, UNESCO, 2019, https://en.unesco.org/system/files/unesco-steering_ai_for_knowledge_societies.pdf

Concluding observations

The surge of ATI laws reflects that information in the 21 century has become one of the most important areas which impacts human rights, development, democracy and the private life of the citizen. The 2030 Agenda for Sustainable Development has recognised this, and has been part of the momentum in promoting legal codification of ATI, and improved implementation of access to information. Access to information not only advances the right to freedom of expression, but also becomes more and more important in strengthening health, gender equality, building efficient and accountable institutions, and countering corruption. Governments that recognize its crosscutting significance will increasingly strengthen it in legal frameworks and their implementation.

Access to information is thus emerging as a new norm in sustainable development that can help countries to improve human rights of every person, other SDGs and ensure that no one is left behind.

The need towards better design and implementation of legislation is demonstrated in this report and in turn, it requires investment in providing legal advice, promotion, monitoring, and capacity-building assistance, particularly in developing countries.

Analysis of OGP commitments related to ATI shows that there is a trend to focus on improving mechanisms of implementation, introduction of proactive disclosure, provision for persons with disabilities with special support, use of novel ICT solutions to improve record management and their accessibility, as well as complementing ATI laws with protection of whistle-blowers.

The Human Rights Council's UPR is another site to watch as trends in improving ATI unfold. UPR recommendations already show strong interrelationship between promoting women's rights and access to information.

Oversight and appeal bodies are essential components of ATI law enforcement because they contribute to the solution of implementation problems. Experience around the world shows that specialised entities, i.e. focusing only on ATI, contrary to a multi-purpose bodies are optimum, although it is not evident that this will become a trend going forward. It may be, however, that there could be a trend towards increased linkages between oversight bodies such as Information Commissions and national-level SDG monitoring bodies.

The 2019 UNESCO research on implementation of SDG 16.10.2 demonstrates that while there is progress, governments can introduce and improve ATI laws, as well as implementation. The research shows a need to improve record-keeping for tracking and processing information requests and appeals, as well as in improving response times. This is a challenge requiring political will, management and resources.

New challenges have emerged for law and implementation of ATI in digital times. In future, there could be more tension between the right to access information and right to privacy. Governments, official specialised regulatory bodies, academia and civil society have already started to map those issues and propose solutions. UNESCO, the HRC and its UPR process, OGP and the SDG monitoring process are natural platforms for such activities. While developing ATI is moving with the grain of history, and can be expected to make its contribution to sustainable development on a global basis, the opportunities afforded by advanced ICTs need to be combined with an understanding of and response to the new complexities.

What this report shows is that the SDGs offer a new opportunity for advancing ATI, and that an increasing number of States are recognising this, pointing to a likelihood of continuing positive trends in the future, even though much remains to be done to make ATI a more effective reality.

Appendices
- Regional Groupings according to UNESCO

WESTERN EUROPE AND NORTH AMERICA (27)

Andorra	Greece	Norway
Austria	Iceland	Portugal
Belgium	Ireland	San Marino
Canada	Israel	Spain
Cyprus	Italy	Sweden
Denmark	Luxembourg	Switzerland
Finland	Malta	Turkey
France	Monaco	United Kingdom of Great
Germany	Netherlands	Britain and Northern Ireland
		United States of America

CENTRAL AND EASTERN EUROPE (25)

Albania	Estonia	Republic of Moldova
Armenia	The Former Yugoslav	Romania
Azerbaijan	Republic of Macedonia	Ukraine
Belarus	Georgia	Uzbekistan
Bosnia and Herzegovina	Hungary	Russian Federation
Bulgaria	Latvia	Serbia
Croatia	Lithuania	Slovakia
Czech Republic	Montenegro	Slovenia
	Poland	Tajikistan

LATIN AMERICA AND THE CARIBBEAN (33)

Antigua and Barbuda	Dominican Republic	Paraguay
Argentina	Ecuador	Peru
Bahamas	El Salvador	Saint Kitts and Nevis
Barbados	Grenada	Saint Lucia
Belize	Guatemala	Saint Vincent and the
Bolivia (Plurinational State of)	Guyana	Grenadines
Brazil	Haiti	Suriname
Chile	Honduras	Trinidad and Tobago
Colombia	Jamaica	Uruguay
Costa Rica	Mexico	Venezuela (Bolivarian Republic of)
Cuba	Nicaragua	
Dominica	Panama	

ASIA AND THE PACIFIC (44)

Afghanistan	Kiribati	Timor-Leste
Australia	Kyrgyzstan	Malaysia
Bangladesh	Lao People's Democratic	Maldives
Bhutan	Republic	Marshall Islands
Brunei Darussalam	Niue	Micronesia (Federated States of)
Cambodia	Pakistan	Mongolia
China	Palau	Myanmar
Cook Islands	Papua New Guinea	Nauru
Democratic People's	Philippines	Nepal
Republic of Korea	Republic of Korea	New Zealand
Fiji	Samoa	Tonga
India	Singapore	Turkmenistan
Indonesia	Solomon Islands	Tuvalu
Iran (Islamic Republic of)	Sri Lanka	Vanuatu
Japan	Thailand	Viet Nam
Kazakhstan		

AFRICA (47)

Angola	Ethiopia	Nigeria
Benin	Gabon	Rwanda
Botswana	Gambia	Sao Tome and Principe
Burkina Faso	Ghana	Senegal
Burundi	Guinea	Seychelles
Cameroon	Guinea-Bissau	Sierra Leone
Cape Verde	Kenya	Somalia
Central African Republic	Lesotho	South Africa
Chad	Liberia	South Sudan
Comoros	Madagascar	Swaziland
Congo	Malawi	Togo
Côte d'Ivoire	Mali	Uganda
Democratic Republic of the Congo	Mauritius	United Republic of Tanzania
Djibouti	Mozambique	Zambia
Equatorial Guinea	Namibia	Zimbabwe
Eritrea	Niger	

ARAB REGION (19)

Algeria	Libya	Saudi Arabia
Bahrain	Mauritania	Sudan
Egypt	Morocco	Syrian Arab Republic
Iraq	Oman	Tunisia
Jordan	Palestine	United Arab Emirates
Kuwait	Qatar	Yemen
Lebanon		

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Centre for Law and Democracy: www.rti-rating.org
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Global Forum for Media Development: https://gfmd.info
Information Commissioners Office: https://ico.org.uk
Open Government Partnership: https://www.opengovpartnership.org
Organization of American States: http://www.oas.org
Transparency International: https://www.transparency.org
United Nations: www.un.org
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United Nations Educational, Scientific and Cultural Organization: www.unesco.org
United Nations Statistics Division: https://unstats.un.org
Universal Periodic Review database: https://www.upr-info.org
World Intellectual Property Organization: https://wipolex.wipo.int/fr/main/legislation

Access to Information:
A New Promise for Sustainable Development

In Focus Series | **World Trends in Freedom of Expression and Media Development**

UNESCO, as enshrined in its Constitution, promotes the "free flow of ideas by word and image". Part of this is work to facilitate a legal, policy and institutional environment that ensures access to information (ATI).

This Report explores recent developments in regard to the laws and their implementation, covering evolving international standards, models for implementation bodies, and new digital challenges and opportunities.

In order to understand the drivers of change, the Report examines trendsetting activities within UNESCO, the Sustainable Development Agenda, the Universal Periodic Review, the Open Government Partnership, and the standard-setting work of regional intergovernmental organizations and national oversight bodies.

The research also draws on unique UNESCO surveys and analysis of Voluntary National Reports presented at the United Nation's High-level Political Forum.

Among the findings, the report demonstrates that the SDGs offer a new opportunity for advancing ATI. With increasing number of States and other actors recognising this, the study points to an increase in positive trends in the future.

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