

**BRIEFING NOTE:
ACCESS TO INFORMATION – A PREREQUISITE FOR PREVENTING CORRUPTION**

Ask 2: Concerning UNCAC Chapter II, especially Articles 5 (1), 9, 10 and 13, reminding States Parties that access to information is essential for corruption prevention and calling on them to adopt and implement comprehensive access to information legislation.

I. Why is a commitment to access to information needed?

Having access to information is a fundamental part of preventing corruption. Access to information is a logical precondition for ensuring accountability and a prerequisite for the participation of civil society and citizens in decision-making processes. The importance of access to information in anti-corruption efforts is recognised in the United Nations Convention against Corruption (UNCAC) and runs through its text.

States' understanding of the role of access to information in fighting corruption is steadily growing, but this is an area that still needs special attention from the UNCAC Conference of States Parties COSP because more action is needed, especially in terms of application of access to information laws. A resolution at the COSP would help emphasize the importance of transparency in the fight against corruption. More action is also needed in other ways. The topic of access to information is not currently on the agenda of the Working Group on Prevention and this should be addressed. Access to information should also be covered in the questionnaire for the second cycle of reviews.

The UNCAC Coalition is therefore asking the 5th UNCAC Conference of States Parties to reaffirm and emphasize that States Parties must have in place legal protection for access to information. This is necessary in order to implement properly the collection of articles in the Convention that reference access to information (such as Articles 5, 7, 9, 10, 12 and 13).

II. What is the Coalition seeking from the COSP?

The COSP should call on States Parties to adopt comprehensive laws that protect the right of access to information where these do not already exist, and they should ensure that these are properly implemented in practice. These laws should be in line with international standards.

In addition to this basic provision, the COSP should also be encouraged to provide for the following:

1. In the upcoming review cycle for Chapter II on corruption prevention, due to start in 2015, states should report on whether they have a comprehensive law guaranteeing access to information..

States Parties should instruct the United Nations Office on Drugs and Crime (UNODC) to prepare interpretative notes to accompany the Self-Assessment Questionnaire prepared for the next cycle of the review process clarifying that under the questions referring to Articles 5, 10 and 13, states should report on whether they have functioning and comprehensive access to information laws.

2. The Working Group on Prevention should include in its work-plan the issue of "ensuring that the public have effective access to information" (as detailed in Article 13). This should include a focus on access to information laws and whether they are applied.

III. Background – the foundations and context for commitments on access to information

Access to information laws have been repeatedly recognised as being a key tool for the prevention of corruption. The right of access to information is composed of two practical elements: the proactive obligation of governments to publish information and the reactive right of citizens to make requests for information. Together, these two elements form a powerful mechanism for open governance.

When the public and civil society have access to information about government activities, we can consider that those activities are “transparent” and leave drastically fewer opportunities for corruption and mismanagement. Besides preventing corruption, transparency is also essential for accountability by enabling the public to detect corruption and call on the authorities to address wrongdoings and public concerns. In the 10 years since the UNCAC was adopted, there have been huge developments in defining how the right of access to information can be used as a mechanism to fight corruption in practice. In 2005 when the convention came into force, the right had only been recognised by access to information laws in 40 countries – a figure that has more than doubled to 95 countries today.¹ There have also been important developments at the international level. The right to information as a human right has now been recognised by the UN Human Rights Committee² as well as in decisions at the Inter-American Court of Human Rights and the European Court of Human Rights.³

In recent years there has been a consolidation of international standards. In 2009 the Council of Europe Convention on Access to Official Documents became the world’s first binding treaty on Access to Information (not yet in force).⁴ This has been complemented by the 2011 Model Inter-American Law on Access to Information⁵ from the Organization of American States which is another example that sets a high international standard on access to information. This, and other regional and national examples on high standards on access to information could help the UNCAC Open-ended Intergovernmental Working Group on Prevention (WG), and subsequently country reviewers in the implementation review stage of Chapter II, align UNCAC expectations on access to information to international best practice. Best practice can be found in the form of official and NGO statements and standards,⁶ model laws,⁷ court decisions⁸ and many rulings of specialised information commissioners from countries with well-functioning access to information systems.

¹ See, http://www.rti-rating.org/country_data.php. This is updated on a yearly basis (on Right to Know Day, 28 September). There were 93 countries included in the last completed analysis for which information is available. Two new access to information laws have been passed since the last update, in Guyana and Rwanda.

² See UN Human Rights Committee, July 2011, in General Comment Number 34, <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

³ See the Claude Reyes v. Chile case, <http://www.corteidh.or.cr/casos.cfm?idCaso=245&CFID=1026593&CFTOKEN=83909938>; see also the Hungarian Civil Liberties Union against Hungary case, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%22dmdocnumber%22:%2222849278%22,%22itemid%22:%222001-92171%22> and the 'Youth Initiative for Human Rights vs. the Republic of Serbia' ECHR case, http://www.access-info.org/documents/Access_Docs/Advancing/Council_of_Europe/CASE_OF_YOUTH_INITIATIVE_FOR_HUMAN_RIGHTS_v._SERBIA.pdf (See analysis from Access Info Europe at <http://www.access-info.org/en/laws-and-standards/411-echr-ruling-youth-initiative-ngo-serbia>).

⁴ Convention on Access to Official Documents, 27 November 2008, http://www.right2info.org/resources/publications/instruments-and-standards/coe_conv-on-access-to-doc_eng; and Explanatory Report, http://www.right2info.org/resources/publications/instruments-and-standards/coe_explanatory_report_to_the_convention_on_access_to_official_documents_eng.

⁵ See http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf and http://www.oas.org/dil/access_to_information_model_law.htm

⁶ See, for example, the 61 indicators developed for the legal analysis of access to information laws worldwide, www.rti-rating.org/Indicatorsfinal.pdf and see the collection of NGO statements and declarations at www.right2info.org/international-standards#section-8.

⁷ See the [Model Inter-American Law on Access to Information](#) (in [French](#), [Portuguese](#), [Spanish](#)), 7 June, 2011, [Organization of American States](#) and, [Model Law on Access to Information for Africa](#), African Union, 2013. See also: [Convention on Access to Official Documents](#), 27 November 2008 (in [French](#)), and [Explanatory Report](#) (in [French](#)).

⁸ See the cases mentioned in footnote 5 and a full compilation of international right to information case law compiled by the Right2Info project by the [Open Society Justice Initiative](#), www.right2info.org/cases.

Furthermore, in large part motivated by the recognition that access to information is an effective anti-corruption mechanism, the World Bank, the United Nations Development Programme and the Organisation for Security and Co-operation in Europe now have substantial programmes in place promoting access to information. Others – including the special international mandates (rapporteurs) on freedom of expression, UNESCO and the Council of Europe – have carried out important standard-setting and monitoring work in this area.⁹ The European Union also recognises access to public documents as a fundamental right and has its own rules allowing citizens to request information directly from its institutions.

A number of intergovernmental organisations, including most of the international financial institutions, have also adopted or significantly enhanced their own openness commitments, demonstrating good practice in applying the principle of the right of access to information beyond national state structures.¹⁰

This background of international support for access to information makes clear the importance of access to information legislation as well as the need for States Parties at the COSP to adopt a resolution that reaffirms and consolidates the Convention’s transparency and access to information provisions.

IV. What does UNCAC say about access to information?

In Marrakesh in 2011 States Parties stressed “the importance of implementing Articles 5 to 14 of the Convention to prevent and fight corruption”.¹¹ These contain numerous references to transparency, including in UNCAC Article 13, which is dedicated to promoting the participation of society and which specifically requires States Parties to ensure “effective access to information” for the public.

UNCAC articles on transparency: the UNCAC identifies a number of classes of information that should be made publicly available to assist the fight against corruption and promote effective government accountability. These include:

- (i) Government anti-corruption policies: Article 5
- (ii) Employment of public officials: Article 7
- (iii) Election campaign funds / political parties: Article 7 (3)
- (iv) Conflict of interest-related information: Article 7 (4)
- (v) Public procurement: Article 9
- (vi) Public sector finances: Article 9 (2)
- (vii) Public administration: Article 10
- (viii) Private sector: Article 12(2)(c)
- (ix) Decision-making processes in government: Article 13 (1) (a)

These would fall within the remit of good access to information laws.

UNCAC Article 13: This is the main article referenced in the context of efforts to prevent corruption via the participation of members of the public because it mentions both participation in a broad sense, as well as several more specific measures. These include “public education programmes on tolerance of corruption” and on the “enhancing of transparency” and “participation of individuals”.

The language in Article 13 calling for States Parties to respect, promote and protect the “freedom to seek, receive, publish and disseminate information concerning corruption” has been understood in other contexts to correspond to the need for states to put into place protection for the right of access to information, as recognised by other international bodies such as the Organisation for American States, the Council of Europe

⁹ See the Right2Info project website for a compilation of declarations by Special Rapporteurs, <http://www.right2info.org/international-standards#section-7>.

¹⁰ For updates on this, see www.freedominfo.org/ifti/general-ifti/. For more on what has been achieved over the last 10 years by the movement for Freedom of Information see, the 10-10-10 Statement by the Freedom of Information Advocates Network, <http://www.foiadvocates.net/es/component/content/article/38-resources/346-10-10-10-statement-adopted>.

¹¹ Resolution 4/3 Marrakech declaration on the prevention of corruption, The Conference of the States Parties to the United Nations Convention against Corruption, <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session4-resolutions.html>.

and the UN Human Rights Committee. The international law summarised in the previous section places a positive obligation on States Parties of the UNCAC to protect the right of access to information.

UNCAC Article 10: Under Article 10, States Parties are required to adopt procedures or regulations that allow members of the general public to obtain information on the “organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public”. This relates to a citizen’s right to request access to publicly-held information. In addition, the provision refers to measures for “publishing information, which may include periodic reports on the risks of corruption in its public administration” This relates to governments’ proactive obligation to publish information.¹²

UNCAC Article 61 on collection of information, when read together with Article 13, highlights the necessity for states to collect information on corruption, recognising that without such information, it is difficult to deal with challenges. For civil society, and society in general, it is also difficult to combat corruption when information is neither collected nor made accessible.

V. How can the issue be addressed?

A proactive approach should be adopted to ensure that access to information laws plays an integral role in promoting transparency in the second cycle of the UNCAC review process.

Conference of States Parties: The principal actors in making the necessary changes possible are in most cases the States Parties themselves, both individually through their national-level actions to tackle corruption, and collectively through the decisions they take in the Implementation Review Group (IRG) and the COSP. Most of the changes outlined below and in the proposals detailed in this briefing are dependent on the initiative and collective decisions that can be taken by the COSP. Below we outline where other actors or specific groups are involved.

Open-ended Intergovernmental Working Group on Prevention: A good first step would be for the Working Group to address the issue of access to information laws as anti-corruption mechanisms. There seems thus far to be a lack of focus on these issues. In its August 2011 report on good practices, the Working Group provided no examples of the use of access to information laws as mechanisms to prevent corruption. This omitted a wealth of knowledge and good practices.¹³ At present in the online compilation of information, only three cases on access to information have been collected.¹⁴ The three states that submitted this information all specify access to information laws as a fundamental mechanism used to prevent corruption.

With 95 access to information laws currently in force worldwide, the Working Group could compile much more information on this critical tool for corruption prevention and accountability. Civil society organisations could contribute information on this subject and on case studies on the proper functioning of access to information laws. It is also likely that many states are able to share their own experiences.

¹² The proactive side of access to information is the fast-developing foundation of the movement for “Open Government Data” which calls for information to be released in a format that can be used and reused by citizens and society. One question that comes up regularly in the context of defining “Open Government Data” or the proactive side of access to information is that of what information should be published proactively.

¹³ See page 13, Open-ended Intergovernmental Working Group on the Prevention of Corruption, CAC/COSP/WG.4/2011/2 Good practices and initiatives in the prevention of corruption: Awareness-raising policies and practices with special reference to articles 5, 7, 12 and 13 of the UN Convention against Corruption, Background Paper prepared by the Secretariat, Vienna, August 2011, available, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2011-August-22-24/V1183632e.pdf#page=13>.

¹⁴ See, Open Ended Intergovernmental Working Group on The Prevention of Corruption, Thematic Compilation of Relevant Information Submitted by States Parties, Article 13, UNCAC Access To Information, http://www.unodc.org/documents/corruption/WG-Prevention/Art_13_Access_to_Information/art_13_Access_to_Information.pdf.

SUMMARY OF KEY RECOMMENDATIONS:

1. The COSP should call on States Parties to adopt comprehensive laws that protect the right of access to information where these do not already exist, and they should ensure that these are properly implemented in practice. These laws should be in line with international standards.
2. In the upcoming review cycle for Chapter II on the corruption prevention, due to start in 2015, states should report on whether they have a comprehensive law guaranteeing access to information. This should include the recognition of access to information either in the form of a constitutional provision or a law on freedom of information, the right to information or access to information.
3. States Parties should instruct the United Nations Office on Drugs and Crime (UNODC) to prepare interpretative notes to accompany the Self-Assessment Questionnaire prepared for the next cycle of the review process clarifying that under the questions referring to Articles 5, 10 and 13, states should report on whether they have functioning and comprehensive access to information laws.

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