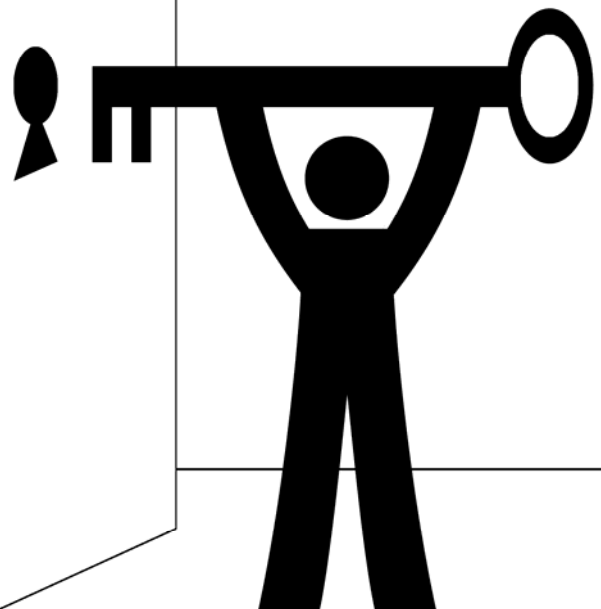




An Introduction to Openness and Access to Information

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Copenhagen April 2005
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PREFACE

The present **Introduction to Openness and Access to Information** is the result of the combined efforts of the Danish Institute for Human Rights, Local Government in Denmark (LGDK), the National Media Institute of Southern Africa, the Body of Case Handling Institutions, the Malawi Human Rights Resource Center and other DIHR partners in Malawi, Women's Media Center and other DIHR partners in Cambodia, Ecole Nationale d'Administration et de Magistrature and other DIHR partners in Niger.

The first and very thoroughly elaborated draft (entitled Manual on Openness and Access to Information) was prepared by Louise Krabbe Boserup, DIHR, with the assistance of Jens Peter Christensen, LGDK. Several international organizations working in the field of access to information provided very useful input to this draft, for which we are grateful.

This draft was then tested at seminars with DIHR partners in Malawi, Cambodia and Niger and edited into this final version entitled **An Introduction to Openness and Access to Information**. This process was directed and coordinated by Lisbeth Arne Pedersen, DIHR, with substantial assistance from Klavs Kinnerup Hede, DIHR, Mukelani Dimba, Open Democracy Advice Centre, South Africa concerning Malawi, Jens Peter Christensen, LGDK, DIHR Human Rights Officer Mikkel Hesselgren, Phnom Penh, Anders Folmer Buhelt, Mette Holm and Malek Sitez, DIHR concerning Cambodia and in Niger by Fatou Jagne-Senghore, ARTICLE 19, Dakar and Monique Alexis, DIHR.

I owe all of these partners my thanks for their tireless efforts and constructive comments and critique leading to this publication. Any errors or omissions, however, remain the responsibility of the undersigned.

BACKGROUND

Not only is freedom of access to information a basic human right, it is also a precondition for informed public participation in governance, i.e. for democracy. Open and transparent governance is also considered a precondition for preventing and revealing corruption and maladministration.

Consequently knowledge about openness and access to information is a crucial element in the implementation and promotion of human rights and democratic principles.

DIHR was inspired by partners in the Ukraine to investigate further this specific human right. A seminar was held in Copenhagen with the participation of partners from the Ukraine, Russia and Central Asia. This led to the formulation of the first version of the present document.

This **Introduction** is exactly this – an offer for anyone interested in knowing more about access to information. The concept itself and its legal basis and standards are

presented. Being a National Human Rights Institution, we have then chosen to elaborate on four different areas where we find access to information particularly important, i.e. the public administration, Ombudsman and National Human Rights Institutions, the judiciary and the NGOs.

It is our hope that the **Introduction** will serve as inspiration, as a kind of handbook, as a basis for debate and dialogue and as background material for training and education. It is, obviously, a general introduction prepared from an international human rights perspective. It can not replace national guidelines, manuals etc., but hopefully inspire to the preparation of such tailor-made, national material.

Comments and suggestions to the **Introduction** are still most welcome and can be forwarded to lap@humanrights.dk.

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DIHR, December 2005

Table of content

PREFACE.....	2
1. Introduction.....	5
2. Standards on openness and access to information.....	10
National standards and trends	10
International and regional standards on freedom of information.....	20
International standards on good governance and anti-corruption.....	27
International standards on the protection of.....	30
privacy and personal data.....	30
Conclusion	34
3.0 Openness and access to information in relation to:	36
3.1 Public Administration	36
Regulation on openness of public administration.....	36
Role of public administration in a culture of openness.....	38
Administrative procedures and organization supporting openness	40
Providing information.....	44
Strengthening the openness capacity of public administration.....	56
Accountability for lack of openness	57
Conclusion and recommendations	61
3.2 Ombudsman and National Human Rights Institutions (independent institutions).....	75
Regulation on openness of independent institutions.....	75
Role of independent institutions in a culture of openness	76
Administrative procedures and organization supporting openness	78
Providing information.....	80
Strengthening the openness capacity of independent institutions.....	84
Accountability of public institutions for lack of openness	85
Conclusion and recommendations	88
3.3 The judiciary	90
Regulation on openness of the judiciary	90
Role of the judiciary in a culture of openness.....	92
Administrative procedures and organization supporting openness	93
Providing information.....	95
Strengthening the openness capacity of the judiciary.....	102
Accountability for lack of openness	103
Conclusion and recommendations	104
3.4 NGOs.....	105
Regulation on openness of NGOs.....	105
Role of NGOs in a culture of openness	106
Tools of NGOs promoting openness of public authorities	108
Strengthening the capacity of public authorities and civil society	115
Holding public authorities accountable for lack of openness	117
Conclusion and recommendations	121
4. Conclusions and openness checklists.....	114
Openness checklist at national level	115
Openness checklist at institutional level.....	117
Annex 1 Relevant literature and internet references.....	120

1. Introduction

What is openness and access to public information?

‘Openness’ means measures taken to make governance affairs as transparent and participatory to the surrounding community as possible, and to strengthen the general trust in public institutions.

‘Openness and access to information’, as used in this introduction, are measures which public authorities can or must take to make the conduct of public affairs transparent. Such measures include:

- providing access *at their own initiative* to information they hold,
- providing access *upon request* to information they hold
- *involvement* of the public through hearings, open meetings and campaigns, and
- *involvement* of the public in policy formulation and implementation through participation in relevant committees, boards etc.

Public authorities do not only have a duty to provide information, but in some instances also have right to acquire information from other authorities. This principle e.g. applies to ombudsmen, state auditors as well as to ordinary exchange of information between public administration instances.

Freedom of information forms part of human rights and freedoms, and is essential to access information from public authorities which is indispensable for exercising human rights and freedoms. This is particularly true to disadvantaged groups, and especially in countries where information is not flowing freely. Ideally, freedom of information includes the right to receive information held by public structures, also called the right to know, as well as the obligation of such structures to make information accessible.

Benefits to openness

It is often argued that openness demands a tricky balancing act between serving the public interest on the one hand and loyalty towards a public employer on the other. It is a dilemma which all public employers as well as employees encounter in their professional lives. However, the way your institution interacts with the public is crucial because openness is a mechanism which allows for good and accountable government of public affairs. Openness and involvement of the public is a necessity for the establishment and maintenance of a dynamic and democratic society which builds on consensus and economic growth and for an efficient public sector.

It is important for the good and smooth administration of public institutions themselves that employers as well as employees have the level of knowledge necessary for making correct decisions and being open to the general public. Furthermore, it is important for the cooperation of different institutions that information flows freely between them.

Does the public need to know and be involved in conduct of public affairs?

Public institutions serve the purpose of administering public tasks and funds for the benefit of the common good. Ideally, the public should be properly informed about and heard in relation to matters of public interest. This enables them to take active part in public affairs, to make informed decisions, and to hold public institutions accountable for good as well as for bad administration or corruption with regard to tax payers' money. Moreover, information forms the basis for sound democratic elections, where good performance should be rewarded and bad performance may be punished. However, this scenario does not always emerge in practice. The reason may be very simple, namely that the population is ignorant about its right to know as well as what it is important to know. The population may also take an indifferent stand claiming that nothing comes out of invoking the right to know.

Thus, it is in the public interest to know how resources are planned and used in terms of budgets and accounts, including possible donor contributions. It is also important to have openness regarding the persons who administer the public budgets. For instance, it is important to have access to information about salaries, and to know whether a minister or a mayor has personal economic interests which can influence his or her decisions. It is also important to know when rules against special incompetence apply to a person in a decision making process. And it is in the public interest to know that a set of procedures is followed in order to avoid arbitrary and corrupt conduct – e.g. in relation to recruitment procedures, procedures for outsourcing contracts and for privatization.

Information and dialogue with the public are equally vital for the national decision makers in Parliaments and in Governments. Only when they are prudently informed about the performance of public authorities at different levels can they plan future actions correctly and introduce corrective measures, if necessary.

Limits to openness

Openness comes at a price, namely occasional disregard of other fundamental interests than the protection of transparency of public affairs. To protect such other interests, be it privacy of an individual or the protection of national security, it is a common rule that openness in terms of freedom of information

cannot be unlimited. A fair balance must be made between the right to information and these other interests. To find that balance requires a specific assessment in every single case. International standards can assist authorities in making such assessments.

How does openness come about?

To make an organization actively take steps to promote openness, takes a strong and dedicated leadership which is prepared to act as a role model and set standards for an open approach to running of government. Otherwise employees often see openness as a way to complicate rather than facilitate policy- and decision making. They may also feel fear of wrongdoing which can overshadow attempts to be open. With regard to standard-setting it takes adoption of clear policies, legislation, guidelines, administrative procedures regulating why and how public institutions should conduct public affairs in an open and transparent manner. In-service training is an indispensable tool to inform public employees of such standards and how they should be implemented in practice.

Over the past decades, the number of domestic acts obliging public authorities to give the public access to its records has increased from a dozen to more than 50 at the global level. More countries are working on adopting similar acts. All continents have witnessed the adoption of at least a couple of such acts and initiatives. This development has been triggered by different factors. In some countries it has e.g. coincided with adoption of new constitutions and political transition towards democracy whilst in other countries legislation has grown out of a public demand for transparency in the wake of corruption scandals. With the adoption of access to information acts comes the demand for bringing practice in conformity with the principles laid down in the law. To societies not having experienced a culture of openness, such implementation may come as a challenge - for the public administration as well as for the public. The administration is bound to take upon it the role of a service body rather than exercising a tight control function, while the general public must learn how to make use of the right of access to information. For both sides this demands an increase in the level of awareness of rights and obligations.

Modern information and communication technologies

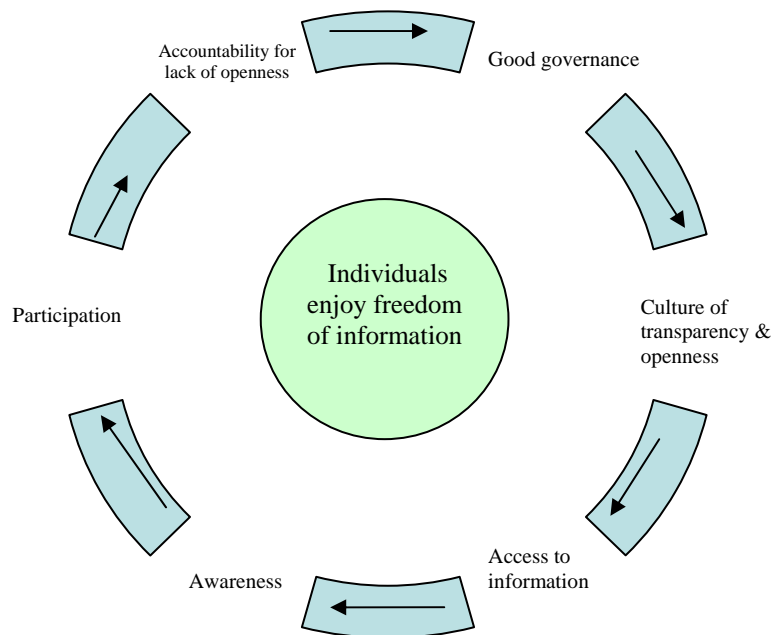
Information and communication technologies are effective tools to increase accessibility and availability of information held by public institutions. This is for instance the case of the Internet, which is a revolutionary medium in the sense that information can be retrieved much faster than before and in much bigger quantities. However, technology in itself does not create openness, but it can establish the preconditions for improving the level of openness.

Modern information and communication technologies do come with a challenge, however. They require that personal data be stored and treated in a secure manner, and that specific systems and procedures are put in place to protect them against misuse and disruption (e.g. through computer viruses). On a more serious note, the introduction of modern technologies exposes whether or not there is a digital divide in the country in terms of access to the use of such technologies. In many countries this is a dilemma which is particular visible when one looks at the access of rural and urban areas, respectively.

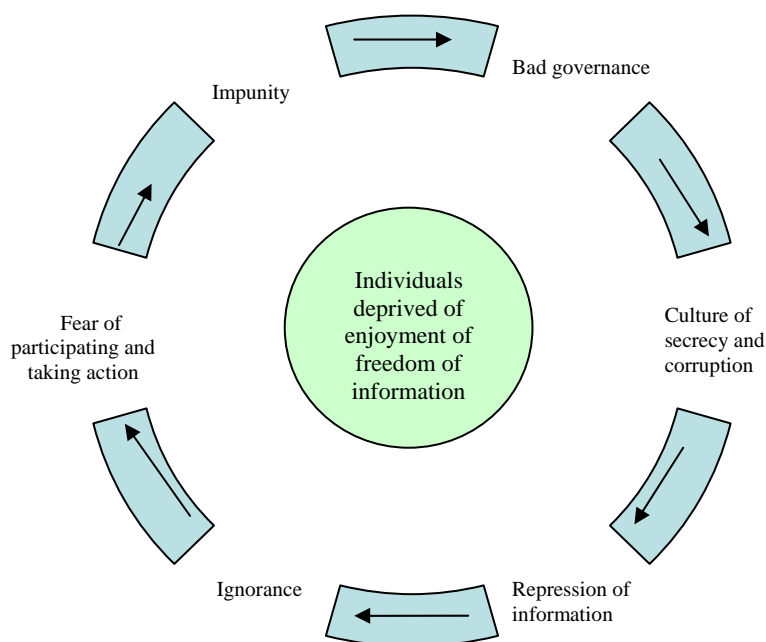
The flow of openness

Open societies are founded on a fundament of public trust between public institutions and the population. The drawback of such societies is that they are vulnerable to illegal actions undermining and restricting the right to information. Corruption and terrorism are some of the most forceful threats. A low level of implementation of the right to information as well as popular unawareness of this right may also undermine the functioning of an open society. Thus, hindrances to openness can be the result of a low level of education which can constitute a barrier for understanding and making use of the information provided. It is another barrier to openness if the public feels that official power structures influence their ability to act on the information received. And finally, restrictions of free media which are supposed to act as watchdogs of society also seriously hamper the level of openness.

Model illustrating the general preconditions for a good flow of information in public institutions:



Model illustrating factors which hamper and destroy a good information flow in public institutions:



Content and purpose of the publication

In view of the bearing that implementation of openness principles and the right of access to information have on the enjoyment of other human rights and freedoms, DIHR has elaborated the present introduction in cooperation with Local Government Denmark (LGDK). The purpose of the introduction is to strengthen initiatives and the capacity of DIHR, LGDK as well as partner institutions within the field of openness and access to information.

Part of the introduction outlines national and international instruments setting standards on openness and access to information, important definitions and principles. The standards are supplemented with reference to best practices from the various continents.

The core chapters of the introduction look at the role that specific institutions play in furthering openness and transparency, including when to provide and promote access to information. The institutions are: the public administration at state and local levels, courts, national human rights institutions, civil society organizations promoting access to information and providing legal aid. The role of the media is looked at within these chapters.

2. Standards on openness and access to information

Introduction The occurrence of constitutions in the late-eighteenth century in France and America was a forerunner of the actual freedom of information legislation as we know it today. These legal frameworks were even preceded by legal acts elsewhere, e.g. from the seventh century in China and the early eighteenth century in Sweden¹. The development of national standards has inspired the formulation and adoption of international standards, which now work vice-versa by inspiring revision of constitutions and elaboration of new legislation governing openness.

National standards and trends

A growing number of countries have established - or are about to establish – a legal right of citizens and others to demand information from public bodies. The legal systems differ from country to country. For instance, in civil law countries legislation is the primary source of law in contrast to common law countries where case-law is the main legal basis, including for the elaboration of legislation. A third example is the co-existence of civil or common law with so-called customary law, which is oral law based on tradition. Naturally, the legal tradition will influence the value of the legal instruments used to regulate openness and access to information. However, in relation to access to information, it should be mentioned that even in some common law countries such as UK and New Zealand legislation plays an important role in establishing the right to access to information.

Legal hierarchy The principle of openness and the right of access to information are enshrined in the general hierarchy of norms, which is roughly illustrated in the example below. Very often the low-ranking norms are more specific than the Constitution or legislation and therefore more frequently used by the public authorities. However, all the described norms are binding for public authorities. Therefore, citizens can use them to claim their rights.

Example

Civil law countries	Common law countries
International law	International law
Constitution	Constitution if any
Legislation, such as <ul style="list-style-type: none"> ○ Freedom of Information Act, special legislation affecting access to information, incl. access to environmental and consumer information, special legislation protecting personal data, incl. access to records about oneself, ○ sunshine laws on openness of meetings and public participation. 	Case-law, including Codification of law, including Freedom of Information Acts
Subordinate legislation, such as <ul style="list-style-type: none"> ○ Regulations ○ Consolidation acts ○ Statutory orders ○ Government circulars ○ Instructions 	Regulations, including <ul style="list-style-type: none"> ○ Government codes of practice and standards ○ Court instructions

In addition to the formal hierarchy, public institutions often adopt their own policies and guidelines on openness. Such instruments generally promote a culture of openness and good governance. This type of declarations of intent are not legally binding for the institutions and therefore the public can seldom invoke them to claim specific rights.

Keep legislation simple

A certain level of legislation and principles is necessary to ensure that citizens obtain a right to a minimum degree of openness from the public administration. To ensure that the principles are applied in practice it is important that the legislation be as simple as possible. Simplicity may in itself be an incentive to use the principles.

In Sweden, the general principle of openness is stated in an access to information act and a couple of special acts. All exemption grounds are contained in a secrecy act. This makes it fairly easy to decide whether information should be disclosed or not. By contrast neighbouring Denmark has several acts, regulations, instructions and other legal instruments to regulate the same area. This provides a confusing pattern of legal instruments with reference-making and exemptions from one to another. Despite the possibility to be precise, the coexistence of

more legal instruments has the disadvantage of making the legal framework more complicated and obscure to the administration as well as to the citizen. This is especially the case in relation to information which can legally be exempted from disclosure. For implementation purposes it is recommendable to keep legislation simple.

Example

Example of simple legislation	Example of complicated legislation
<p>Sweden</p> <p><u>Legislative basis</u> <i>Freedom of the Press Act</i> Special act.</p> <p><u>Exemptions</u> Primarily gathered in one act, The <i>Secrecy Act</i>. If regulated by other acts, the <i>Secrecy Act</i> must contain a reference to it.</p>	<p>Denmark</p> <p><u>Legislative basis</u> General act: the <i>Access to Public Administration Files Act</i> and the <i>Public Administration Act</i>. Special act, regulations, instructions and internal guidelines.</p> <p><u>Exemptions</u> Contained in several acts, including the general acts establishing the openness principle.</p>

Federal systems

To ensure openness at all levels in federal systems, federal legislation is often supplemented with state legislation in areas where the states alone have the jurisdiction.

State Secret Acts

In some countries the point of departure for the public's right of access to information is – or has been – legislation on the protection of classified information or state secret acts in opposition to a regular openness approach. Such legislation creates a culture of secrecy and closes public institutions rather than opening them up to the public. It is therefore not in conformity with the principles of openness and open government.

How to access legislation

Legal instruments are adopted by parliaments or governments to standardize the conduct of public institutions. Since this is done for the common good they must consequently be publicly accessible. In many, but not all, countries legal instruments are automatically published in print or electronically and thus made widely accessible. Individuals or professionals wishing to access them should look to:

Legal instrument	Information source
<ul style="list-style-type: none"> • Legislative history of the instruments, incl. <ul style="list-style-type: none"> ○ Bills, ○ Explanatory notes ○ Records on discussions in Parliament, • Final legal instruments and possible comments <ul style="list-style-type: none"> ○ Published by Parliament or government in print or electronically • Guidelines explaining contents of legislation targeting public authorities and/or the general public <ul style="list-style-type: none"> ○ Published in print or electronically by the ministry responsible 	<ul style="list-style-type: none"> • Parliament • NGOs participating in law drafting and/or monitoring the field <ul style="list-style-type: none"> • Internal staff handbooks • Ministry responsible • Ombudsman • Information Commissioner • NGOs monitoring the field • Academic works and interpretations. <ul style="list-style-type: none"> • Internal staff handbooks • Ministry responsible • Ombudsman • Information Commissioner • NGOs monitoring the field • Academic works and interpretations.

Openness principles A set of openness principles should ideally be the backbone of national legislation on openness and access to information and in particular information acts and special acts protecting the right of access to specific information. Article 19, the organization working on a global campaign for free expression and information has drawn on existing international and national standards and practice to elaborate a set of principles for freedom of information legislation in 1999 as well as a model freedom of information law of 2001 to guide national users to best standards.² The core of these principles are briefly examined and supplemented in relevant places below:

Principle One: Maximum disclosure The principle of maximum disclosure means that there is a strong presumption in favour of access to information. The principle puts an obligation on public authorities to disclose all information held by them unless it is subject to a clear and limited set of exception grounds. In Denmark this is also called the principle of ‘more openness’ which implies that the administration is free to provide more information than the bare minimum they are obliged to disclose according to the law.

Bodies covered by obligation to disclose information upon request	As a minimum all government and administration bodies at national, regional and local levels should be covered by the obligation to disclose information. Moreover, natural and legal persons should be comprised by the obligation to disclose information held by them when performing public functions or exercising some kind of administrative authority. And finally, public authorities which are part of the legislative and the judiciary could be comprised by the obligation as is the case in some information laws, e.g. in India and Pakistan ³ .
Who may seek information?	<p>Anybody should be entitled to seek publicly held information – it should not be a privilege of a particular group of society such as the media. In the countries currently having Information Acts the citizenry in general has the right to access information held by the state authorities and generally without having to prove a specific legal interest. For instance in Japan which has a modern law from 1999 also non-citizens enjoy this right⁴ as they do in South Africa.</p> <p>To ensure maximum disclosure specific guidelines or manuals may be produced advising the general public on their right of access to information and how to exercise it. This is e.g. directly required of South African public institutions in the Promotion of Access to Information Act⁵.</p>
Access to personal information	<p>There should be a wide access to personal information gathered by public and private bodies, e.g. in registers, databases and the like.</p> <p>Individuals have a right to know what information public authorities record about them. This right includes the right of correction, should any mistakes or omissions have been made in the records etc. This includes public employees in all cases where their employers hold information about them. Individuals can therefore claim access to their records, be it health records at hospitals or personal records held by other branches of public institutions. Specific regulation on the treatment of such personal data should be enacted for the protection of personal privacy and to avoid that data are processed and used in an unauthorized manner which would jeopardize the interest of the individual about whom information is collected.</p>
Quality and quantity of information	The quality of information provided to the general public by public bodies is decisive for the public's possibility to apply it in practice. No matter whether they provide information at their own initiative or on the basis of an act the following elements are fundamental for providing information of high quality:

- To make key information available,
- Only to make correct and precise information available,
- To make information available in an intelligible language,
- To make information available in a form accessible to vulnerable groups.

In order that information can be presented at all in the first place it is essential that the information kept by a public institution is recorded and stored systematically and properly. If piles of paper which ought to be filed just sit in a corner of an office they are not just kept out of the public eye, but are also kept out of the institutional memory.

It is important that the information is presented in a clear and well-structured manner thus enabling access for all, including for disabled groups. In relation to the reform of South African legislation after apartheid many efforts were put into making legal language accessible to all parts of the population through so-called plain legal language or simplified language. In Great Britain the authorities are requested to make easy-reader texts available at all homepages and experience shows that these texts are more frequently read than the originals. In Switzerland similar efforts have led the government to adopt a set of 5 criteria which must apply to presentation of on-line government information. Thus, the information must be reliable, useful, complete, objective and easily accessible⁶.

In very comprehensive access to information cases, e.g. requests made as part of a research project, public authorities may consider how to comply with the obligation to provide information in a manner which is not too burdensome. Rather than using a big quantity of resources in relation to one single case the administration may chose to simply leave the files requested at the disposal of the individual requesting the information in a supervised office. In South Africa the wide margin of 30 days given to the public administration to answer information requests may be extended with another 30 days if it would otherwise interfere unreasonably with the activities of the body and if the search of requested documents must be made in consultation with another agency or a sub-agency placed in another city⁷.

**Principle Two:
Obligation to
publish**

Public bodies should provide relevant information to the public about their own activities and information of public interest within their fields.

Which information is relevant to the public? An example is given in a project called the Global Accountability Project which has developed good accountability practices, including for provision of online information. The organization suggests

to use a specific set of questions to assess the level of information disclosure outlined below. Although the recommendations are focused on intergovernmental organizations, transnational corporations and international non-governmental organizations the questions apply equally to any type of public institution⁸:

- “Is a description of the objectives, targets and activities available?
- Are evaluations of main activities available?
- Can the public identify all key members of the organization?
- Is there a public record of the number of votes each member holds?
- Is a meaningful description of key decision-making bodies available to the public?
- Are individuals on the executive body publicly identified?
- Are the agendas, draft papers and minutes of both governing and executive body’s meetings available to the public?
- Is there an information disclosure policy available which clearly states the types of documents the organization does and does not disclose, stating the reasons for non-disclosure?
- Are annual reports publicly available and do they contain externally audited financial information?
- Is the above information available in the languages of those with a stake in the organizations?”

Too much information may have the same effect as no information at all since an overflow of information risks to blur the essential message in the midst of it.

Type of information The right of access to information should apply to all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function. Thus, it could be information written down on paper as well as information stored in films, photographs, maps, microchips etc.

With regard to official information held in other than recorded form, e.g. information received orally, this may be a challenge to request access to. In recognition of this potential problem the Danish public administration is obliged to record factual information received orally whenever this may be of importance to decisions of administrative cases⁹.

**Principle Three:
Promotion of
Open Government** Public bodies should actively promote a culture of openness and open government within its own ranks as well as externally. Such promotion measures, which require a strong and dedicated leadership, include

- raising of awareness of the duty to provide information as well as the public’s right to receive it,
- establishment of accountability principles making it clear whose responsibility it is to provide information as well as sanctions for obstructing this duty,

- establishment of systems to handle and store records and information in a systematic manner and allowing easy retrieval of information

**Principle Four:
Limited scope of
exceptions**

To allow for openness to thrive in practice the grounds for exception to disclose information should be clearly and narrowly defined. Otherwise it is all too easy for public bodies to broaden exceptions to cover most types of information and thereby withhold important information from the general public. The presumption is always in favour of disclosure unless the information meets a so-called three-part test which implies a difficult, but necessary balancing of interests.

The three-part test, which is deduced from international law, provides that information can be exempted from disclosure if:

- The information relates to legitimate interests protected by the law, **and**
- Disclosure of the information threatens to cause substantial harm to that interest, **and**
- The harm to the interest is greater than the public interest in receiving the information.

Information laws must specify which interests are legitimate to protect through exemption from disclosure. The list of legitimate interests to protect may comprise privacy of individuals, health and safety, law enforcement, commercial and other confidential information, the safeguard of policy making and operation of public bodies and national security.

The fact that the information falls within the list of legitimate exception grounds is not sufficient to exempt it from disclosure. The disclosure must harm the specific interest substantially and this harm must be greater than the public interest in receiving the information. This might e.g. be the case if the balancing of interests has to be made between the general public's interest in information concerning a major threat to the health of a nation and a private individual's privacy interests.

The weight of the exception grounds sometimes differ according to the country. As an example the protection of privacy in Denmark is traditionally much higher than in neighbouring Sweden which – on the other hand - has a much broader protection of the public interest at the expense of privacy. It would e.g. be possible to disclose a non anonymized list of exam results in Sweden, information which would have to be anonymized in Denmark.

If requested information is only partly covered by an exception ground the remaining part should be disclosed.

**Principle Five:
Processes to
facilitate access**

Information requests must be dealt with in an effective manner following a clear procedure for decision-making. This includes that public bodies should:

- Provide assistance to the requester, including if he or she has difficulties filing a request,
- Provide a timely answer within strictly defined time limits,
- Provide an answer in at least the same form as the request was received,
- Provide an answer in the same language as the request was received in multi-lingual societies if the requested information exists in this language,
- Provide the actual access to information, e.g. by means of copies or making documents available to the applicant,
- Reason the decision if the applicant is refused access to the requested information,
- Refusals to disclose specific information should be accompanied by information on review bodies to address possible appeal of the decision to.

The way of providing access to information varies, but should include some or all of the following measures:

- Inspection of records in the place where they are kept, in a manner that enables the requester to view and read them, including making necessary equipment available for the purpose,
- Transcript of file,
- Paper or electronic copy of document,
- Another copy of information carrier, e.g. tape or CD,
- Verbal explanation,
- Special forms of access, e.g. to persons with disabilities

Review procedure

Control and review bodies must be established and must be accompanied by a review procedure in order to facilitate access to information and to enable review of the decisions made by public bodies. Control and review bodies include Courts, information commissions and ombudsman institutions.

**Principle Six:
Costs**

Information should in principle be made available at no cost. Thus, access to information should not be hindered by costs related to e.g. copies of records and time spent by the public body to meet a request. Should the information required involve making copies of several hundred pages, e.g. for scientific research, the actual cost for the copies (and no more) may be charged. However, such cost must not be inhibitive or discriminatory.

As access to information is a right, any cost involved in authorities fulfilling this right must be considered part of ordinary public service already paid by citizens via taxes etc.

**Principle Seven:
Open meetings**

Freedom of information includes the public's right to know what the Government is doing on its behalf and to participate in decision-making processes. Freedom of information legislation should therefore establish a presumption that all meetings of governing bodies are open to the public.

Duty to involve
the public

There is a growing tendency to include a duty to involve the public in the openness principles. It concerns involvement in policy formulation as well as decision-making. Involvement can take place indirectly by inviting the public to take part in public hearings and open meetings. Plans about the use of a specific area or expropriation of private property for a public purpose are good examples of subjects which have a direct bearing on the public and where public involvement enhances transparency of the decision-making process and gives the public a voice. The authorities can also be obliged to involve the public directly in the implementation of specific tasks, for instance in relation to relevant committees and boards. Opening up decision-making procedures to the public provides a forceful tool for making well-reasoned and viable solutions to specific challenges in cases where the decisions directly influence the public itself. In Denmark for instance a certain number of parents must be members of all primary level school boards.

**Principle Eight:
Disclosure takes
precedence**

Disclosure takes precedence to secrecy and to give effect to the principle of maximum disclosure any legislation or provision contradicting this principle should therefore be amended or repealed. In cases where specific acts conflict with information acts the latter should overrule acts hindering maximum disclosure.

**Principle Nine:
Protection for
whistle blowers**

One way of ensuring that corruption and wrongdoing of public bodies can be brought to the public's knowledge is by protecting so-called whistle blowers. Whistle blowers are public officials who release confidential information on wrongdoing of public bodies. In order to ensure that such internal scrutiny takes place whistle blowers should be protected from criminal and disciplinary liability when they act in good faith to serve the public interest. The limits for whistle blowing are decided by the judiciary in court cases.

In recognition of the importance of promoting accountability of public institutions some countries, including South Africa and the United Kingdom, have introduced laws protecting whistle blowers.

International and regional standards on freedom of information

Introduction

The freedom to seek, receive and impart information and ideas is protected by all international and regional human rights instruments. In all of the instruments the freedom is part of freedom of expression. Although the African Charter on Human and Peoples' Rights has a slightly different wording, the content is interpreted as identical to that of the UDHR and the ICCPR.

Information is a fundamental prerequisite to the functioning of modern democracies, and some international organizations have therefore actively debated whether the freedom of information deserves a specific binding instrument. For instance the establishment of a general convention on freedom of information has been subject of many discussions in the Council of Europe for a couple of decades. So far the non-binding recommendation (rec (2002)2) on access to official documents has been adopted¹⁰. However, since environmental matters are generally high on the agenda, the UN managed to agree on the adoption of a special convention on access to environmental information in 1998, the so-called Aarhus Convention¹¹.

The application of binding international and regional standards in national law depends on whether the national legal system is monist or dualist. In countries having a monist system, international law automatically becomes part of national law following approval, which in technical terms is called ratification. In dualist systems, international law only becomes directly applicable in national law through a process whereby it is incorporated or transformed into national law.

The United Nations

Freedom of information

The United Nations recognized freedom of information as a fundamental human right already at the General Assembly's first Session in 1946. However, the *Universal Declaration of Human Rights* (UDHR) of 1948 became the first international human rights instrument to guarantee freedom of information in terms of seeking, receiving and imparting information.

Article 19 of UDHR reads:

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

In 1966 followed the adoption of the *International Covenant on Civil and Political Rights* (ICCPR) which is a binding legal

instrument and has a similar protection of freedom of information in Article 19:

Article 19 (2) of ICCPR reads:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Special Rapporteur Every year the United Nations' Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression¹² presents an annual report to the United Nations Commission on Human Rights. In these reports the Rapporteur has underlined that the freedom of information is an important freedom on its own and that it is crucial to the effective enjoyment of all human rights and freedoms and for the functioning of democratic societies and the right to participate in public affairs. The Rapporteur has stressed the positive obligation of states to ensure access to information, in particular information held by Government¹³. This obligation is included in a set of *Principles on Freedom of Information Legislation and the Public's Right to Know* elaborated by the Rapporteur in 1999 and noted by the Human Rights Commission at its 56th session in 2000¹⁴. These principles are an endorsement of the nine principles developed by Article 19.

The African Charter on Human and People's Rights The *African Charter on Human and Peoples' Rights* (ACHPR) of 1981¹⁵ stipulates the right to information directly. But it does not explicitly mention the right to seek information. As mentioned above, however, this right is covered by article 9 through interpretation.

Article 9 of the Charter reads:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Additional principles In order to clarify Article 9 of the Charter, the African Commission adopted a *Declaration of Principles on Freedom of Expression in Africa* in 2002 in which it stresses that freedom of information is crucial for the free flow of information and ideas¹⁶. In the preamble, the Commission also underlines that respect for the right of access to information held by public bodies and companies leads to greater public transparency and accountability, as well as to good governance and the strengthening of democracy. The Commission furthermore underscores that the media play a key role in promoting the free flow of information and in assisting people to make informed decisions.

Section IV of the Declaration on Freedom of Information reads:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

The American Convention on Human Rights

The *American Convention on Human Rights* (ACHR) of 1969¹⁷ sets forth freedom of expression and information in a manner, which is slightly more elaborate in wording than the United Nations instruments, and which goes further than the European Convention on Human Rights.

Article 13 (1) of ACHR reads:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Additional principles

As a specification of ACHR Article 13, the Inter-American Commission on Human Rights approved the *Inter-American Declaration of Principles on Freedom of Expression* in October 2000 elaborated by the Office of the Special Rapporteur for Freedom of Expression¹⁸. Like its African counterpart, the Commission stresses in the Preamble that by means of guaranteeing the right of access to information held by public authorities, greater transparency and accountability of governmental activities will be accomplished. And so will the strengthening of democratic institutions. The Declaration constitutes a basic document for interpretation of Article 13 of the ACHR, and includes incorporation of other and more developed international standards on freedom of information. The Principles were accompanied by an extensive paper on the background and interpretation of the principles¹⁹.

Articles 2, 3 and 4 of the Inter-American Declaration read:

2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, colour, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and /or amend it.

4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

The General Assembly of the Organization of American States has taken note of the Principles in its 2003 *Resolution on 'Access to Public Information: Strengthening Democracy'*²⁰. At the same time the Assembly also recalled a number of principles adopted by civil society. In the resolution, the Assembly stresses that access to public information is 'a requisite for the very functioning of democracy, greater transparency, and good governance and that, in a representative and participatory democratic system, the citizenry exercises its constitutional rights, inter alia, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information'. The *Inter-American Democratic Charter of 2001* furthermore obliges Member States to ensure transparency in government activities as well as a responsible conduct of the public administration²¹.

Right to truth

A particular element of access to information has increasingly appeared and been treated through the inter-American human rights agenda. Thus, the concept 'right to truth' has developed in recent years due to the many cases reported about disappearances, detention, torture, impunity and lack of information about these circumstances. The right of access to information is an integral element of the right to know the truth.²² This was underlined by the Commission through the following statement in a case before it: 'The right to know the truth is a collective right that ensures society access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation, in particular, in cases where amnesty acts are adopted' due to the many cases reported about disappearances and lack of information.

The Asian Human Rights Charter

The *Asian Human Rights Charter* of 17 May 1998²³ is a Rights declaration of Asian civil society in which they endorse the international human rights instruments and principles, including the right to information. The purpose of elaborating such a Charter was to move the Asian human rights culture forward by initiating a discussion on human rights and freedoms throughout the region. The Charter is used as a stepping stone for reaching consensus on human rights in Asia which would eventually lead to a state-sponsored human rights charter.

The Draft Arab Charter on Human Rights

The *Draft Arab Charter on Human Rights* (DACHR) was adopted by the Arab Standing Committee for Human Rights on 5-14 January 2004, but will only enter into effect when seven countries have ratified it²⁴. Like the African Charter DACHR goes further than other regional and international instruments since it protects ‘the right to information’.

Article 32 of DACHR reads:

- (a) The present Charter guarantees the right to information and the freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers.
- (b) Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

The European Convention on Human Rights

The *European Convention on Human Rights* was adopted in 1950²⁵ and includes the protection of the freedom to receive and impart information. Unlike the United Nations instruments and the American Convention it does not include the right to ‘seek’ information and is therefore a less progressive instrument.

ECHR Article 10 (1) reads:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Towards a specific Convention

After the adoption of the Convention the Council of Europe has at several occasions discussed whether to recognize the right to freedom of information as a right in itself and thus adopt binding legislation. So far the Committee of Ministers has only adopted non-binding recommendations and declarations. *Recommendation R (1981)19²⁶ on Access to Information Held by Public Authorities* states that ‘everyone...shall have the right to obtain, on request, information held by public authorities other than legislative bodies and judicial authorities...’. In the

Declaration on Media in a Democratic Society of 1994²⁷ the Committee is asked to consider to prepare a binding legal instrument or another set of standards building on the basic principle on the right of access to information held by public authorities. *Recommendation R (2002)2 on Access to Official Documents*²⁸ was the outcome of this initiative. The Recommendation sets out a series of minimum standards to domestic laws and regulations of the right of access to official documents. The 2002-declaration widens the scope of ECHR Article 10 from a right to receive and impart information to a broader right of everyone to have access to information, although only to information in the shape of official documents.

While the Council of Europe was unable to agree on the adoption of a general instrument, the same Council was able to adopt a specific and very ambitious instrument in the field of environmental affairs in June 1998. The *Convention on Public Participation in Decision-making and Access to Justice in Environmental Matters*²⁹ was adopted with a view to give the public a broader right of access to information of environmental character than otherwise prescribed by ECHR Article 10 and declarations widening the scope of freedom of information. The Convention contains a set of minimum standards which oblige governments to be accountable, transparent and responsive, including by providing access to information, public participation and access to justice. The Convention is ambitious because it goes further than requirements in any other instrument and provisions on access to information:

- Firstly, it obliges not only public authorities, but also private bodies with public responsibility to provide access to information.
- Secondly, it sets out an obligation not only to comply with requests for information, but also to automatically provide the public with relevant environmental information.
- Finally, the Convention establishes certain public participation requirements for decision-making in relation to preparation of specific activities, plans, programmes, policies and legislation. It is not described how participation should take place, but just that appropriate measures should be taken to involve the public.

The United Nations has drawn up an implementation guide to the Convention in recognition of the fact that the instrument may be regional in scope, but global in significance³⁰.

Case law

The European Court of Human Rights has tried cases in which individuals complained about unsuccessful attempts to access information from public authorities. So far the Court has only tried these cases very concretely in relation to the right to a private and family life under Article 8 of the Convention. As an example the Court used this provision to uphold a decision of the Swedish authorities. In the decision the authorities stated

that in order to protect national security a Swedish individual could not be granted access to secret police files about his private life which were used as reasoning for dismissing him³¹. The Court directly rejected to treat the question of access to information as an integral part of Article 10 in this as well as other cases by stating that the provision neither gives individuals a right of access to information nor an obligation for states to provide information³². It therefore has not developed any guidelines for the interpretation of the scope of freedom of information contained in Article 10 and the recommendations adopted by the Committee of Ministers.

The European Union

Openness and access to information within the European Union has for a long time been the subject of vivid debates inside as well as outside the Union institutions. In the 1990's the Union began to adopt policies and regulations in this area, primarily due to outside pressure.

Efforts to better the level of Union transparency were firstly made with the adoption of the *Maastricht Treaty* in February 1992. With the Treaty came *Declaration 17 on the Right of Access to Information*³³. The Declaration stressed the need for transparency of the decision-making process and ordered the Council and Commission to take measures to improve public access to the information available to the institutions. In 1993 and 1994 these institutions decided to adopt Decisions governing the public's access to their documents³⁴. With the adoption of the *Amsterdam Treaty* in 1997 the right of access to documents held by the European Parliament, the Council and the Commission was directly included in Article 255 of the Treaty³⁵. According to the provision, secondary legislation should be adopted two years later. However, it was only in 2001 that a *Regulation regarding public access to European Parliament, Council and Commission documents* was adopted³⁶. The Regulation is progressive compared to other international instruments in the sense that it obliges the institutions to

- Establish direct access to documents in electronic form or through a register of documents,
- Elaborate annual reports on cases of access to information,
- Establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents

In October 2004 the Charter of Fundamental Rights of the Union was adopted as an integral part of the European Constitution³⁷. The Charter includes a general right to freedom of information (Article II-71) as well as a specific right of access to documents held by the institutions, bodies, offices and agencies of the Union (Article II-102). The specific right widens the scope of beneficiaries of access to "any citizen of

the Union, and any natural or legal person residing or having its registered office in a Member State.”

Case law

Since the adoption of the Council and Commission Decisions in the beginning of the 1990's, the public has challenged a series of refusals of access to documents before the Court of Justice. In these cases, the Court has often sided with the complainants. The first case, which was filed immediately after the adoption of the Decisions, was initiated by journalist John Carvel from the British newspaper *The Guardian*³⁸. Mr. Carvel sued the Council for its refusal to disclose documents from three meetings of the Council of Ministers. The Council refused to provide the requested documents on the ground that the deliberations of the Council were of preparatory nature, and that the confidentiality of these proceedings should be protected, including the position taken by the members of the Council during its deliberations. The Court annulled the Council decision on the grounds that the Council had not complied with its duty to strike a genuine balance between on the one hand, the interest of the citizen in obtaining access to the documents and, on the other, its own interest in maintaining the confidentiality of its deliberations³⁹.

European
Ombudsman

Also the European Ombudsman institution, which was established in 1995 according to the Maastricht Treaty, has given guidance to the interpretation of the right of access to information in a number of decisions. These decisions are not binding for the EU institutions, but nevertheless carry both moral and political weight. In order to promote good administration and fight maladministration of Union institutions, the Ombudsman has moreover elaborated The European Code of Good Administrative Behaviour. In Article 22 the Code gives guidance on how to accommodate requests for information from the public⁴⁰.

International standards on good governance and anti-corruption

Introduction

‘Good governance’ is a notion widely used to describe a series of principles which public institutions in democratic societies should adhere to. The requirement to establish open and accountable government forms part of most definitions of this still vaguely defined notion.

To ensure good governance it is necessary to prevent and combat corruption. Therefore, Corruption Conventions have been adopted at several different continents.

United Nations

Resolutions on good governance

The UN has adopted a number of resolutions on good governance, including the *Millennium Declaration* of 2000⁴¹. None of them explicitly defines what should be understood by good governance. However, they set out that good governance is based on ‘transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people’. They also underline that good governance is a prerequisite for the promotion of human rights in general.

Convention against Corruption

A *Convention against Corruption* was adopted by the General Assembly in 2003⁴². The purpose of the Convention is to promote and strengthen measures within the fields of: transparency, prevention and criminalization of corruption, international cooperation and accountability and proper management of public affairs and property. States which have ratified the Convention should ensure an appropriate level of public reporting about their public administration (Article 10). This includes their organization, functioning and decision-making processes. States are also obliged to promote participation of civil society in the prevention of and fight against corruption, including that the public has effective access to information (Article 13).

Africa

The *Corruption Convention of the African Union*⁴³ was adopted in 2003, but still awaits more ratifications before entering into force. The Convention applies both to the public and the private sectors. One of the objectives was to ‘establish the necessary conditions to foster transparency and accountability in the management of public affairs’ (Article 2, 5). The Convention obliges the African states parties to respect the rule of law and good governance (Article 3, 3).

According to the Convention, civil society and the media should be enabled to participate in the monitoring process of public bodies (Article 12, 3). Furthermore, they should be given ‘access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial’ (Article 12, 4).

Americas

The *Declaration of Santiago on Democracy and Public Trust*⁴⁴ was adopted in 2003. The Declaration contains a commitment to strengthen democracy, including by means of respect for freedom of expression, access to information, free dissemination of ideas and full citizen participation in the political system. The Declaration specifically stipulates that democratic governance can be strengthened through

incorporation of new technologies, which can help raise the level of efficiency and transparency in public administration.

The *Inter-American Corruption Convention*⁴⁵ was adopted in 1996. The overall purpose of the Convention is to assist member states in promoting and strengthening mechanisms necessary to detect, punish and eradicate corruption.

Asia

In Asia the *Anti-Corruption Action Plan for Asia-Pacific*⁴⁶ was agreed by the Asian Development Bank and the OECD in 2000. The Action Plan was supplemented with an implementation plan. The participating governments must take concrete steps in the following three areas:

- Development of effective, transparent and accountable systems for public service.
- Strengthening of anti-bribery actions and promoting integrity and responsibility in public operations.
- Supporting active public involvement, including through access to information of public interest.

Europe

Council of Europe

In December 2004 the Council adopted a set of *Recommendations on electronic governance*⁴⁷. The purpose of the Recommendations is to assist member states in developing strategies for electronic governance (e-governance), which make effective use of modern information and communication technologies. The use of such technologies should aim at:

- strengthening public participation, initiative and engagement in public life,
- improving transparency of the democratic decision-making process and accountability of democratic institutions,
- improving the responsiveness of public authorities,
- fostering public debate and scrutiny of the decision-making process,
- improving access to and communication with public officials and elected representatives,
- enhancing communication within and between public authorities at all levels.

The Council of Europe adopted the *Criminal Law Convention on Corruption*⁴⁸ as well as the *Civil Law Convention on Corruption*⁴⁹ in 1999. Both Conventions stress that corruption threatens the rule of law, democracy and human rights and that it undermines good governance.

European Union

In 2001 the Commission launched a *White Paper on European Governance*⁵⁰. In the Paper the European Commission establishes its own concept of governance so that the term 'European governance' refers to the rules, processes and behaviour that affect the way in which powers are exercised at

European level. The Paper contains a set of recommendations on how to enhance democracy in Europe and increase the legitimacy of the institutions. The paper establishes that 5 principles underpin good governance and that these should be further promoted, namely:

- openness
- participation
- accountability
- effectiveness
- coherence

OECD

The 1997 *Convention against Bribery of Foreign Public Officials*⁵¹ underlines that bribery ‘undermines good governance and economic development...’ It focuses on the offence of bribery of foreign public officials and the sanctions for such activity. The Convention recommends that national legislation be adopted to criminalize bribery of foreign officials.

A total of 35 countries have signed up to the Convention and take part in the OECD Working Group on Bribery in International Business Transactions. The Working Group is the body responsible for the implementation of the Convention. This includes the monitoring of national compliance with the standards set out in the Convention.

International standards on the protection of privacy and personal data

The right to privacy forms part of most human rights instruments. This right protects individuals against unlawful intrusions into their privacy, including in relation to information of private character.

Information privacy is defined by Privacy International in the following terms:

‘Information privacy...involves the establishment of rules governing the collection and handling of personal data such as credit information, and medical and government records. It is also known as "data protection"’⁵².

State authorities as well as private entities hold big quantities of information, including information relating to individuals. In recent decades international standards have been adopted in order to protect individuals against misuse of their personal information as well as unlawful invasion of their privacy. In a number of countries around the globe the international standards are supplemented with national legislation on the protection of personal data and privacy. The basic aim of these standards is to enhance the security procedures regarding data processing about individuals. This includes:

- To protect individuals against misuse of personal information held about them, and,
- To give individuals the right of access to files held about them as well as a right to correct this information,
- To regulate how and when information holders can pass on personal information to persons or bodies authorized to receive, process and use it.

In matters regarding personal information the protection of the individual's right to privacy, including personal data, is potentially conflicting with the public's right to know. In such instances the rights therefore need to be weighed against each other to strike the right balance in the specific case.

United Nations

Article 17 of the *International Covenant on Civil and Political Rights* is related to the right to information as it establishes a protection of private and family life, which includes the right to access information held about one-self by private and public bodies.

In the General Comment made to Article 17⁵³ the Human Rights Committee⁵⁴ underlines that:

- Information about an individual's private life should only be gathered by public authorities if it is essential in the interests of society,
- Gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, should be regulated by law,
- Individuals should have access to the personal data stored about them, to know the purpose of the storage and should have the right to request rectification or elimination of the stored data if it is incorrect⁵⁵,
- Passing on of information should be regulated by law.

The United Nations General Assembly adopted a set of *Guidelines concerning computerized personal data files* on 14 December 1998⁵⁶. The Guidelines recommend that states include minimum guarantees relating to computer treatment of personal data in national legislation. This includes principle 4 on 'interested-person access' giving "...everyone who offers proof of identity...the right to know whether information concerning him is being processed and to obtain it in an intelligible form....and to have appropriate rectifications or erasures made in the case of unlawful, unnecessary or inaccurate entries..”.

World Summit

In December 2001, the United Nations General Assembly endorsed the holding of a World Summit on the Information Society. The Summit focuses on how to use modern information technologies so as to ensure that everyone can benefit from the information society. This

includes access to information and participating in the work of national as well as international authorities and organizations⁵⁷. The Summit sees a wide participation from the sides of international organizations, governments and civil society and the private sector.

Africa, Arab countries and Asia

No regional standards have been adopted so far in Africa, the Arab countries nor Asia. However, quite a few of the countries in these regions have introduced national legislation for the protection of personal data. In Asia the Asia-Pacific Economic Cooperation (APEC) is in the process of developing a set of privacy principles and a consultation draft was made public in 2004⁵⁸. The draft is consistent with the core values of the OECD 1980⁵⁹, and reaffirms the value of privacy of individuals, including the individual's right of access to collected data as well as a right of correction.

Americas

Article 11 of the *American Convention on Human Rights* establishes a right of everyone to be protected by law against arbitrary or abusive interference with his private life, his family, his home and his correspondence as well as against unlawful attacks on his honour and reputation.

In the absence of an actual Convention or specific guidelines on the protection of personal data in the Inter-American human rights framework, the Special Rapporteur on Freedom of Expression has drawn up a report on existing legislation and practices within the Organization of American States (OAS) with respect to the right of access to information and privacy. One of the recommendations made was to take international standards into account when elaborating national legislation enabling individuals to access personal data⁶⁰. Moreover, principle 3 of the *Declaration of Principles on Freedom of Expression* provides that 'every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it'.

Europe

The Council of Europe

Article 8 of the *European Convention on Human Rights* protects the individual's right to respect for private and family life, home, and correspondence. As mentioned above, the Court has reviewed cases regarding individuals' access to personal information held about

them by public authorities, and has focused its judgments on pointing out whether sufficient access procedures exist in national law⁶¹. The Court has not treated cases where the right to privacy was conflicting with the public's right to know. But it has dealt with cases involving transfer of personal data between public authorities without the individual's consent. In these cases it has prescribed that such transfer must be prescribed by law, serve a legitimate aim and not go beyond what is strictly necessary for the purpose for which the information is requested⁶².

Data Convention

In 1981, the Council of Europe adopted the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* in which the member States recognize that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples in regional as well as national law⁶³. The Convention was the first legally binding international instrument in the data protection field and till today, it remains the only binding international legal instrument. Under the Convention, the parties are required to take the necessary steps in their domestic legislation to apply the principles laid down in the Convention. The convention defines a number of principles for the fair and lawful collection and use of data in Article 5. Notably, data can only be collected for a specific purpose and should not be used for any other reason. Data must be accurate, adequate for this purpose and stored only for as long as is necessary. Article 8 of the Convention establishes the right of access to and rectification of data for the person concerned (data subject). Article 6 requires special protection for data of a sensitive nature, for example on religion, political beliefs, genetics or medical information. This indeed also applies to the dissemination of such information.

In order to adapt the general principles set out in the convention to the specific requirements of various sectors of activity in society, the Council of Europe has adopted a number of recommendations dealing with subjects such as medical databanks (1981); social security (1986); police records (1987); employment data (1989); communication of data to third persons by public institutions (1991) and for the protection of privacy on the Internet (1999)⁶⁴.

The European Union

The protection of individuals with regard to the processing of personal data and the free movement of

personal data have been guaranteed in the European Union since the entry into force of *Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data* in October 1995⁶⁵. Processing of data includes disclosure of data to others than the individual concerned by the data. The directive builds on Council of Europe standards and establishes more or less the same principles, including the right of access to personal data in order to verify the accuracy of the data and the lawfulness of the processing as well as the right to have inaccurate data rectified (Articles 10 - 12). Special protection is required for processing of sensitive information such as health, sex life, political and religious beliefs (Article 8). Processing of personal information requires consent from the person about whom data is processed, unless private or public interests surmount the interest in protecting the private individual. The directive stresses the need to balance the right to privacy against other fundamental rights, such as the right to freedom of information and the right to receive and impart information. Article 7 contains specific requirements for the processing of data, which includes disclosure of the data to others than the individual concerned

Intergovernmental
Organizations

The Organization for Economic Co-operation and Development (OECD) adopted the *Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data*⁶⁶ in 1980. The Guidelines also set out basic principles for collection and use of personal data, including that data should be obtained by lawful and fair means, be relevant to the purpose for which they are used, be accurate, complete and kept up-to-date. Moreover, the Guidelines include a privacy protection safeguard in terms of an 'Individual Participation Principle' requiring that individuals be given a right of access to data held about them as well as a right to challenge data processed about him/her. The Guidelines establish an openness principle stating that there should be a general policy of openness about developments, practices and policies with respect to personal data. In practice this means that it must be possible to acquire information about the collection, storage or use of personal data.

Conclusion

Since the adoption of the Universal Declaration of Human Rights in 1948, the protection of freedom of

information has slowly gained a clearer and broader scope. The legally binding United Nations and Inter-American human rights conventions directly provide individuals with a right to seek information and a corresponding duty on authorities to provide information. This is not the case in the European and African Conventions which only provide the right to impart and receive information, not explicitly the right to seek it. However, the tendency in non binding guidelines and declarations of all human rights systems has been to adopt more refined principles on the right of access to information. This tendency has been supported by monitoring mechanisms such as Special Rapporteurs and by the courts. In Europe, it has been discussed to introduce a binding convention on freedom of information. Agreement has not been reached so far, but a step in this direction was reached with the adoption of the 1998 Aarhus Convention on access to environmental information.

The development of openness principles has been further cemented by the steadily increasing adoption of corruption conventions and principles on good governance across all continents.

The protection of personal data has also gained more momentum during the past decades, primarily due to the emergence of new and much more powerful technologies easing the technical aspects of data processing. All international and regional data protection instruments provide individuals with a right to access data processed about them as well as a right to challenge these data. And most instruments oblige data-holders to carefully balance the right to privacy with other fundamental human rights in cases of conflicting interests.

3.0 Openness and access to information in relation to:

3.1 Public Administration

Regulation on openness of public administration

Principle	Public administration should ensure the highest possible level of transparency in its conduct of public affairs, including by granting access to information upon request. Openness is a way to foster good governance in the performance of public administration since it involves continuous public scrutiny and presumes that authorities are held responsible for possible maladministration and human rights abuses.
Openness about what?	<p>Public administration should be open about its financial management and the services it provides to the citizens. It should also be open about how policies and procedures regulate the development of these activities. As a minimum this obligation should apply to the following areas:</p> <ul style="list-style-type: none">• Development and realization of policies, strategies, initiatives and physical planning,• Financial decisions, including budgets and accounts,• Decisions in administrative cases,• Evaluation of sector performance,• Information about services,• Meetings of the administration.
History	The development of openness of governmental affairs in Sweden since the 18 th century has been one of the greatest sources of inspiration for spreading the principle of openness across the continents. Following the Second World War many countries, primarily from the Western hemisphere, started adopting legislation governing access to information held by governments. Since the fall of the Berlin Wall this process spread to most Central and Eastern European countries during their transition to democracies. It also spread to countries in transition to democracy in all other continents. Currently, a considerable number of countries in Asia, Africa and the Americas are considering adopting such legislation.
National law	When regulated at the national level, public administration should be governed by a general legal framework on openness and access to information (Freedom of Information Act) and in most cases also by special acts requiring openness in relation to specific areas (e.g. Anti-Corruption Act, Data Protection Act, Access to Environmental Information Act, Public Archives Act).

LGs typically work and operate differently from state institutions. Therefore, specific local government acts and sector laws apply to LGs in many countries. Such legislation may put forward a number of additional or more specific demands to openness.

Example

Danish Act on Transparency and Openness in the Educational Sector
The Danish Act on Transparency and Openness in the Educational Sector obliges LGs to establish concrete openness initiatives, including establishing and maintaining a website at all schools. At these sites various relevant information must be published, such as plans for lessons and courses, information about the pedagogical principles and teaching values and grade point averages for courses, classes etc.

Guidelines and manuals

It is important to clarify the intention of the legislation and how to use it in practice and in concrete terms to assist those administering the legislation⁶⁷. A useful way of doing so is through elaboration of guidelines or manuals. As an example, it is important for the front staff in so-called one-stop shops, who receive citizens directly, to have guidelines on how to handle requests for information. In order to enhance the confidence in public administration such tools should be made public.

Participation

To increase the citizens' interest and participation in the work of public administration it is an advantage if the legal framework enables citizens to participate in meetings of the administration and to be actively involved in the administration of public affairs. The more such practices become institutionalized, the more they create channels for dialogue between the public administration and the citizen as well as forums for discussion of prioritizations of services. In this way, public administration can gain valuable information about citizens' preferences and positions that enable the public administration to make sound decisions, which are as widely accepted as possible.

Which institutions?

It is common for general legislation governing openness and access to information that they apply to all sectors and all levels of public administration. This includes local governments (LGs). LGs are placed in a country's institutional framework with hierarchical links upwards to the central government. Bodies typically covered by the notion 'public administration' in Information Acts include:

State administration	Local administration
<ul style="list-style-type: none"> • Ministries • Boards • Agencies • Police • Military • Hospitals 	<ul style="list-style-type: none"> • Municipalities • Boards • Institutions providing specific services at municipal level, including <ul style="list-style-type: none"> ○ Municipal police ○ primary and secondary education, ○ water supply, ○ waste management, ○ public utilities ○ hospitals
Private bodies undertaking public duties, such as <ul style="list-style-type: none"> • telecommunication, • airports and other infrastructure, • bodies administering grants from public budgets. 	

Role of public administration in a culture of openness

Responsible administration

Public administration is not itself responsible for adopting legislation on openness, but it is responsible for bringing law into practice and for ensuring an open, sound and responsible administration of public affairs based on the rule of law. It may indeed influence the way openness is perceived and performed throughout the entire public sector through its approach to openness as well as mechanisms set up to guarantee it. This is especially important in countries having long-standing secrecy attitudes and practices.

In any society, openness only comes about through dedicated leadership, systematic training, promotion and implementation of openness legislation and principles. Moreover, sanctions may be imposed on public officials who seek to obstruct openness legislation in practice.

Willingness to communicate information

For all branches of public administration openness means willingness to communicate the information they hold to the outside world – both information about successes and information about failures. The way that the different branches of the administration can open up towards the citizens naturally depends on the type of work they undertake and where they are situated in the administrative system hierarchically. Willingness often develops through outside pressure, for instance from NGOs, unions and the political opposition.

Empowering the public

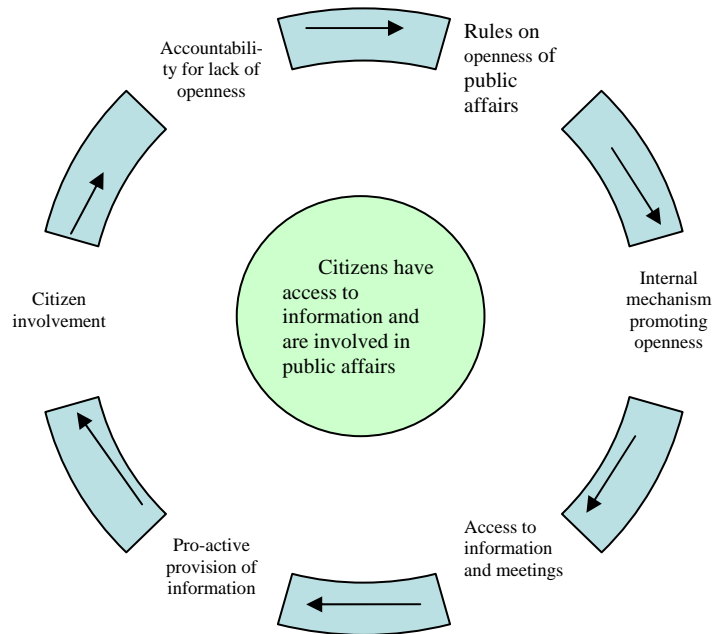
Although access to information about the performance of the public administration is a precondition for accountability, the public administration cannot take for granted that the citizens will take action; the public may be unaware of their rights or they may fear repercussions if they request information. The administration must therefore play an active role in empowering the general public to participate in and influence the conduct of public affairs as well as the control thereof.

In many ways it is an advantage for public administrations to be transparent about their management and performance – even beyond what is prescribed in the legislation. When their achievements and dispositions are made public, citizens get a better understanding of the motives underlying activities, plans and decisions. Such information enables citizens to react either in terms of supporting public initiatives or by questioning the relevance of them. Such involvement of the citizens is an active way to:

- Increase commitment and co-ownership.
- Diminish the “us-them” thinking.
- Tap available resources in civil society.
- Turn negative feelings (protests) into positive energies (engagement) - the enthusiasm and involvement of some citizens in particular cases (like child care, roads, schools etc.) can in a positive dialogue be used to discuss broader local government development issues.
- Give the administration an opportunity to make better decisions and solutions to problems.
- Create a balance between different special interest groups thus increasing local democracy.
- Reconcile people’s reality on the ground with what is claimed on paper through public service reports on progress of government in delivering services.

Model

The model below illustrates what public administrations should be particularly aware of in order to secure openness and the involvement of citizens in public affairs:



Administrative procedures and organization supporting openness

Introduction

In addition to the legal framework it is necessary to apply procedural and organizational mechanisms to promote openness of the national administration and to avoid an excess of bureaucratic obstacles to the provision of information. Such mechanisms can be particularly relevant for work on openness of administrations in countries lacking constitutional and other legal framework. One advantage of basing internal working procedures and organization on the principle of openness is that it encourages the staff to regard openness as a positive value. Openness may therefore easier become an acceptable part of the administrative system itself. Another advantage of openness is that a transparent and clear system may also make employees of public administration more comfortable with and better at providing information services to the public. It may also enable the staff to adopt participatory mechanisms on policy formulation and implementation.

It is vital to the success of such initiatives that the leadership is dedicated to setting a clear openness agenda and to promote concrete openness initiatives within the organization.

Administrative procedures

Administrative procedures are instruments of governance, which can be used to define specific tasks. As a side benefit of establishing and applying administrative procedures a greater level of transparency, efficiency and coherence may be achieved.

Relevant procedures to conduct an open and responsible administration include:

- Internal information procedures
 - In relation to every-day matters,
 - In relation to background information of the staff such as staff handbooks containing relevant legislation, guidelines and information on procedures and processes.
- Procedures on the preparation and publication of budgets and annual accounts.
- Procedures for registering and storing information,
- Procedures to accommodate enquiries from the general public, including how to assist the public requesting access to information.
- Procedures for publication and release of information, including type of media and how to make information intelligible, accessible and useful.
- Procedures for openness of meetings and possible direct involvement of the public, e.g. in terms of internet hearings,
- Communication policy.
- Procedures for public consultation.

Example

Transparency Checklist - best practices in municipalities in Bulgaria⁶⁸

The organization Foundation for Local Government Reform (FLGR) is a resource centre which has specialized in providing assistance to local government on ways to improve democratic and transparent government. As one example, FLGR has drawn up a 'Transparency Checklist – 2004' of best practices currently in use in municipalities in Bulgaria. Upon request of FLGR municipalities themselves contributed to the elaboration of the checklist by providing examples of best practices used in their daily work. Examples include procedures of the municipal council, the way decisions are executed and communicated, openness of financial management, openness in relation to service delivery, openness in relation to public procurement procedures and decisions and issues relating to management and disposal of municipal property. Copies of the list have been forwarded to all municipalities in order to help them assess the transparency of their daily management as well as areas where they can make progress.

Procedures on e-government

With regard to electronic government (e-government), recent technological development provides new avenues for processing information and for handling electronic records as well as making them available to the public. Depending on the development of the IT system of public administration, as well as the PC and internet penetration in the general public, it may therefore also be relevant to adopt procedures for e-government. In Denmark the experience gained from a major project on 'e-government' throughout public administration will be applied by a Commission on Access to Information which is tasked with drafting a proposal for a new and modernized act on access to information taking account of the technological progress in the Danish public administration⁶⁹.

Organization

The flow of information within public administrations themselves as well as with the outside world can be supported by means of the organizational structure. If an institution is well managed with a clear internal distribution of tasks it will typically be in a better position to provide good administration in an efficient manner and to be open about it. It demands that activities linked to processing of information can be identified, and that specific persons or structures can be assigned responsibility for their realization.

Key activities of any public administration which should be scrutinized include establishment and maintenance of archives and registers, information offices, access to information services and digital services:

Archives and registers

It is a precondition for the accessibility of information within any institution that it has an institutional knowledge in terms of a well functioning archive securing that information and data are gathered and arranged in a systematic manner. According to need and size, archives may be organized centrally or in a decentralized manner within every single branch of the administration. Also databases can be used to store information in a systematized manner, obviously with due respect to principles for treatment of personal data.

In addition to filing it is decided by law that public administrations in the Nordic countries should keep registers on documents created or received by the institution.

Example

Registers made publicly available in Sweden

In Sweden this system is used as the backbone of obliging the administration to not only keep registers of all official documents, but also make these publicly available according to the Freedom of the Press Act⁷⁰.

Information office

Often information offices or units are assigned responsibility for general communication and information activities. To serve the public well such offices may identify topics of public interest to include in an active communication strategy and practice. This may include analysis of public opinion, examination of requests from the general public, public hearings and polls. They may also produce information to serve a specific audience such as national and foreign journalists⁷¹.

It may be an advantage to the level of openness to have several specific information departments or information officers. This is for instance the case in Danish local governments where different types of requests are answered by expert offices. Information offices may also comprise or be closely linked to the library of the institution and to a specific citizens' service giving advice on the substance matter of the institution in question.

With regard to the profile of information officers skills to be considered include communication skills, service skills, organization skills and language skills, especially in countries with more than one official language.

Access to information service

In many countries the task to assist citizens wishing to access information is assigned to public relations officer(s) or to information desks or so-called one-stop shops. The state administration has some one-stop shops, e.g. in the field of environmental matters, but they are most widely used in local governments which are charged with many service tasks vis-à-vis the citizens. In societies with a high degree of digitalization websites of public administration tend to become the new service counters or at least a supplement to the one-stop shops. Wherever this is the case administrations should be careful to coordinate the level of service provided from either side.

In one-stop shops citizens should be able to submit their proposals and complaints, make appointments with the officials, receive information upon request and get acquainted with the work and decisions of the institution. A one-stop-shop itself symbolizes openness and that citizens are welcome. A concrete way of making such offices friendly and accessible to the public is to make them bright, with low counters without window frames and make physical access to them easy e.g. by placing them at street level.

Example

Online Delivery of Municipal Service in Vijaywada, India ⁷²

The Vijaywada Online Information Center (VOICE) delivers municipal services such as building approvals and birth and death certificates. It also handles the collection of property, water and sewerage taxes. The VOICE system uses five kiosks located close to the citizens. The application has reduced corruption, made access to services more convenient, and has improved the finances of the municipal government.

In order that the staff can provide access to information in a correct and friendly manner it is important that the staff knows the relevant procedures, including when expert staff should be consulted. In digitalized societies such procedures should be accessible to staff via the intranet. It is also important that a sufficient number of officials is appointed to undertake this service vis-à-vis the general public.

Example

Staff number and information accessibility interrelated in South African law

In the chapter on designation of information officers of the South African Promotion of Access to Information Act this concern is formulated as follows: 'For the purpose of this Act, each body must,, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records'.⁷³

Information officers must be service-minded, unbiased and able to communicate difficult information in an easily accessible language. Otherwise they are poorly equipped to receive and assist citizens from all parts of society with their information requests.

There is a risk of overlaps in the distribution and exercise of the tasks performed by those providing access to information in one-stop shops or via websites and specialists working with specific subject areas within the administration. Important synergies between these two types of structures should therefore be secured by adopting a clear distribution of tasks as well as a plan for sharing of information. Such coordination is especially important when the two types of services are not placed close to each other physically. One clear danger of overlapping activities, or even competition, is that it becomes confusing for the citizens whom to address to get information.

Digital service

Depending on the level of digitalization of the administration in mention as well as the public's possibility to access digital information it is worthwhile looking at possible results of digitalizing the administration. It definitely leads to an easier and faster sharing of information, not only within the institution but also between different public authorities. It can also be used to supply the general public with possibilities to access information services directly via modern communication technologies, such as the Internet.

In order to secure the right of information to all citizens, administrations making use of e-government should adopt an IT supported information strategy which ensures that e-government is supplemented by information dissemination through other and less technically advanced media channels.

Units supplying digital services must be attentive to making digital information accessible in an intelligible manner, which effectively ensures openness.

Providing information

The administration can provide information to the public in a number of ways. Beyond providing one-way access to information it can also involve the citizens directly in the management of public affairs.

Who provides and who receives information?

Public administration has a duty to provide citizens with access to certain types of information and the public has a right to be informed. However, it is not exclusively the public which has a

right to receive information from public administration. In order to ensure cooperation between different branches of public administration and to ensure review and control of administrative decisions other authorities also have a right to be informed and to request specific information from public administration. In some cases the information may even be passed on automatically. Whenever information of a personal character is passed on to other bodies, the basic principles on the protection of personal data must be applied in order that the right to privacy is fully respected.

Information provided at own initiative

Freedom of Information Acts in some countries, such as the United Kingdom and the United States, prescribe that basic information should be provided to the public. In other countries, such as Denmark, the public administration is not bound by general law to provide such proactive information disclosure at its own initiative. It might be in relation to specific areas, such as environment, but not in relation to openness in general.

Whatever the law prescribes it is good practice that public bodies make information on their own activities available to the public in a generally accessible form. This includes print, broadcast and electronic forms of dissemination. As described in the openness principle 'Obligation to publish' in chapter 2, basic information includes information on the function, organization, accounts, procedures and standards of the public authority as well as major decisions affecting society.

One thing is what should be made public – another is how to make it public. Very few acts prescribe how the information should be made public. Lack of such instructions leaves the administration to its own judgment as to how to make information available in a manner which accommodates the public interest and need. Below, a list of examples illustrates relevant ways to communicate basic information to the general public. Some of the methods and media suggested may be less useful in countries with a high degree of illiteracy and in countries where access to modern information technology is scarce.

Printed information

The common way for public administrations to provide information to the general public is via printed information. Typical types of printed information include:

- Brochures or booklets
- Newsletters
- Reports
- Analyses
- Contributions to debates in printed media

The administration can inform the public about the availability of the printed information via the media or the Internet or through distribution of it in the public room, e.g. in posters, in market places, at post offices, public libraries or public administration's own library.

Example

Annual report of Bulgarian Council of Ministers accounts for requests for information

All Bulgarian Ministries are obliged to inform the Council of Ministers about the number of requests for information received and processed, and the type of individuals or bodies who have presented the requests. Based on these reports, the Council of Ministers provides statistics on information requests in its annual reports. The reports are publicly available.

Radio and TV

Audiovisual media are effective instruments to provide information to the entire general public. The media, or at least radio, have the advantage that they are fairly cheap, and they can be used to provide information to almost all groups of society, including to the illiterate part of the population. Moreover, they are effective instruments to reach remote areas. Many countries in development are struck by the digital divide between North and South as well as between urban and rural populations. In such circumstances theatre or radio plays often prove to be effective ways of communicating information to the public. The African Commission on Human Rights stresses in its *Declaration of Principles on Freedom of Expression in Africa* that broadcast media are particularly appropriate media to use in Africa where oral traditions lend themselves particularly well to such ways of providing information. Broadcast media have the advantage of reaching a wide audience due to the comparatively low cost of receiving transmissions and the media's ability to overcome barriers of illiteracy as well as geographical distances.

Information and communication technologies

Modern information and communication technologies provide public administrations with the possibility to be more open than required by law. The Internet gives public administrations the possibility to publish anything from books, reports, policies, guidelines and accounts to relevant public application forms etc. as well as to provide on-line self-service. This may be a way to empower citizens at the same time as it can remove an information burden from the workload of the administration.

The Internet is increasingly used by public administrations around the world as a way to inform citizens of public affairs. The advantage of the Internet is its ability to process huge amounts of information in a speedy and systematic manner, it is quickly updated and it can combine different types of information such as text, pictures, sound and film. It knows no borders, it is transnational and therefore allows access to specific information from anywhere in the world. Very

importantly, new technology makes it possible to make information accessible also to disabled groups, e.g. by generating automatic reading of electronic text or changing font size and format.

Examples

Access to electronic patients' files in Denmark

Another example is the introduction of electronic patients' files. Such a system makes it possible for hospitals to share information with the public in a much faster and less time-consuming way. In Denmark openness in relation to such files was tested at a children's section at the hospital of Hvidovre in order to reduce the time used to answer questions from worried parents. The parents were given a code so they could view their child's file directly via the Internet. This system increased the level of satisfaction and dialogue with the parents and was subsequently extended to the entire country for all patients.

Anti-corruption internet portal in South Korea⁷⁴

The Municipal Government of Seoul, South Korea, has set up the so-called OPEN system (Online Procedures Enhancement for Civil Applications) to enhance transparency in public procurement practices. The internet portal publishes a variety of information related to the services, permits and licenses issued by the local government. The status of an application can be tracked by the applicant on a web site. This system has been established to reduce potential corruption factors such as frequent personal relationships between procurement officials and the staff of private companies.

At the 9th International Anti-Corruption Conference held by the World Bank in South Africa in 1999 this system was recognized as a "Good Practice" in terms of using public awareness to combat corruption.

Databases

One way of informing the public about the performance of public administration at a more general level is to gather key figures, benchmarks in relation to specific performance areas, and analyses of particular sectors emphasizing special problems or best practices.

Examples

Danish Key Figures Database on Local Government

In Denmark the central government hosts a Local Government (LG) Key Figures Database. The Ministry of the Interior and Health publishes a large number of “key figures” per LG on an annual basis – both in paper reports and in an electronic database. An electronic link to the database is available from the Ministry’s website⁷⁵. The main challenge of such information gathering is to ensure that the information is comparable and therefore that reporting is done along the same guidelines. The areas covered include general data such as:

- population, living conditions and employment
- income and expenditures
- services
- child care and social care in general
- education and culture
- costs and benefits

The key figures gathered give the public and especially the press an opportunity to compare key figures of different LGs. However, in order to single out best practices and why specific LGs perform better than others it is necessary to analyze the policies and administrative practises behind these key figures.

The system has proven to be quite an effective method to increase LGs awareness of their efficiency. Furthermore, the key figure databases have given LGs an incentive to apply national accounting standards, in order to ensure that their financial dispositions are correctly reported to the public.

The Right-to-Know Network provides access to official US databases

The Right-to-Know Network provides free access to numerous official databases and resources on the environment in the USA. The Network was established in order to empower citizen involvement in community and government decision-making.

With the information available on the Right-to-Know Network it is possible to identify specific factories and their environmental effects; find permits issued under environmental statutes; and identify civil cases filed.

The Network was started in 1989 in support of the Emergency Planning and Community Right to Know Act, which mandated public access to the Toxic Release Inventory.

Campaigns

Campaigning is a useful tool which public administrations may use to sensitize entire populations in relation to general public matters.

Example

Government-sensitization in Niger

In Niger in West-Africa government-sensitization of the population is carried out by teams of ministers and high ranking officials who travel around the country to sensitize and gather comments from administrative, traditional, religious and civil society leaders. This method was e.g. used in relation to informing and involving them in the national strategy for conflict prevention in 2003 prior to the conclusion of a final document. In relation to sensitization on the fight against AIDS and treatment of diseases in Niger the same types of teams try to locate other campaigning places such as major market places or traditional gatherings such as the nomads 'Salt Party' in September.

Moreover, campaigns are used to raise public awareness of the right to information.

Examples

The Open Sweden Campaign⁷⁶

The Open Sweden Campaign was initiated in November 2000 by the Minister for Democratic Issues and Public Administration. The aim of the initiative was to increase the awareness of the access to information principle as well as application of it, both in relation to the general public and in relation to the entire public sector. In the public sector, senior officials, both politicians and public officials, and registry administrators were specifically targeted. The campaign was a result of concerns from the public, journalists, trade unions and professional organizations who claimed that the principle of access to information was insufficiently known and moreover, not well respected in practice. Those concerned pointed to inadequacies such as delays in connection with the release of official documents, improper invocations of secrecy, cases where employees do not feel at liberty to exercise the freedom of expression and communication freedom guaranteed by law. Moreover, they pointed to insufficient public knowledge of the right of access to information and how to make use of it. Following the campaign, the Swedish government has established a webpage on governmental information.

British government homepage on freedom of information⁷⁷

Another extensive campaign was conducted by the British government prior to the entry into force of the Freedom of Information Act on 1 January 2005. The campaign includes an entire homepage on the right of freedom of information designed to service the public. The homepage gives an introduction to human rights, to the new British legislation and how to use it as well as other relevant legislation and where to address requests for access.

General education

In addition to information provided by public administration, general education can be used as a measure to actively engage adults in various issues and to enhance their knowledge about society and their ability to take actively part in public affairs. In Denmark the state administration provides financial support to all kinds of general education activities undertaken by a number of state and private schools, universities as well as private organizations according to the Law on General Education⁷⁸.

Duty to provide information upon request

Wherever law or tradition obliges public administration to provide access to information upon request this should take place with due respect of the general openness principles described in chapter 2.1. Information held by public administration may either be of general character or information related to one or more persons. Both types of information should be accessible, but different restrictions should apply to them.

General information

The public should have wide access to information of general interest. Information should only be withheld from public disclosure if this is strictly necessary to protect another right or interest, such as law enforcement, the operation of public bodies or national security.

Example

General access to communist secret police files in the Czech Republic to redress past wrongs
In 2002 the Czech Senate approved an act which extended the right of access to previously classified communist secret police files. Czech citizens have been able to access their own files since 1996, but not the files of other people. The new legislation excludes only files of foreign nationals and those containing information that could endanger national security or the lives of other people from access. The act established a new Institute for the Documentation of the Totalitarian Regime to oversee access to the files and ensure the transparency of the process.

Personal information

Information which the authorities hold about individuals should not be disclosed to the general public unless the person has consented or there are important considerations of public interest to justify departure from the general rule of confidentiality. This could for instance be to protect vulnerable members of society or to ensure good and honest administration.

Example

Access to information about public administration staff in Denmark
According to the Danish Access to Public Administration Files Act everyone is entitled to access information about public administration staff. However, this access is limited to name, position, education, assignment, salary and official journeys. Moreover, information about disciplinary cases against employees in managerial positions may also be disclosed. The reason that access can be provided to this type of personal information is that it is considered to be of public relevance.

Individuals, on the other hand, should generally be entitled to access the information the public authorities hold about them. Only in extreme situations where it is strictly necessary to protect other vital public or private interests, such as the protection of health and safety, should this right be limited.

Example

Access to medical files in Denmark

In Denmark patients have a general right to access their own medical files according to the specific act. However, this right of access can be limited if medical professionals deem it strictly necessary for the protection of the individual him-or herself. This could for instance be the case if the person demanding the information suffers from senility and therefore is unable to apprehend the information and the consequences thereof.

Advice and request forms

Public administration should guide the citizen in requesting information. To do so many institutions have chosen to publish request forms detailing how the public should make correct information requests. This is not only important advice to the public, but indeed also a time-saver for public administration. Clear directions save the authorities from spending unnecessary time corresponding with and advising requesters in relation to how to formulate appropriate requests.

Partial access

When access is requested to a document or other information where only part of it can be disclosed such partial access should be ensured.

Transfer of personal information between authorities

Public administrations transfer and share information to a large extent. With the emergence of modern information and communication technologies this means that it is technically possible to transfer more and more information. In relation to information of a general character this is typically not a problem. The problem arises in relation to transfer of personal data between authorities, and sometimes across borders.

Only few countries have directly regulated the protection of privacy in relation to personal data. However, binding as well as guiding international standards provide a framework for protection of the individual against misuse of data held about him or her. According to these standards transfer of personal data between authorities should be regulated by national law and should always serve a legitimate aim. Moreover, transfer of personal data should be relevant to the purpose for which it is used and therefore only be used to the extent strictly necessary.

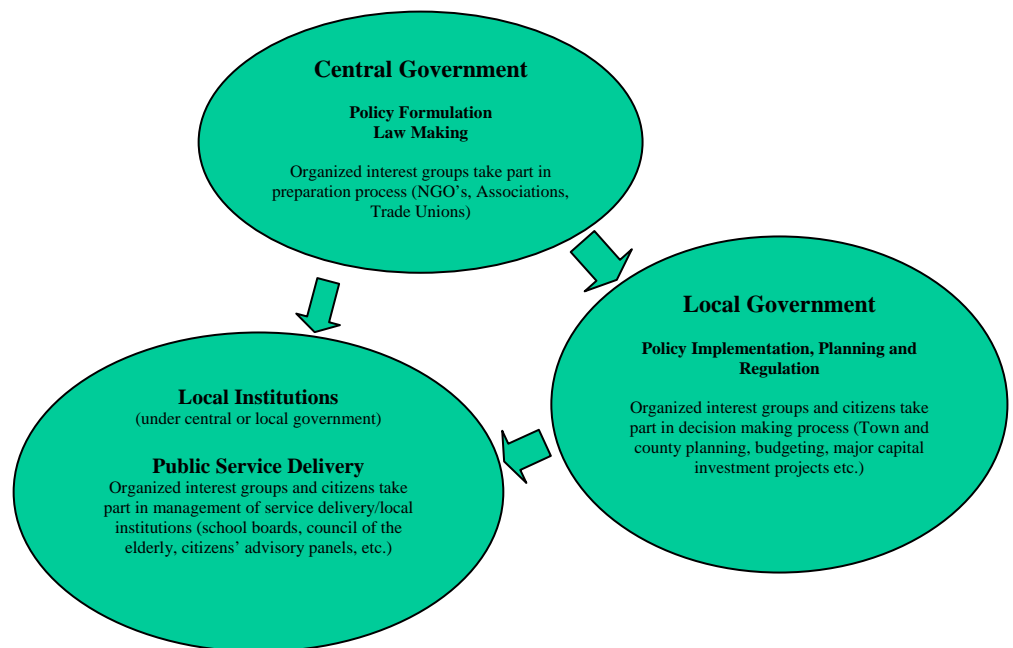
The administration should generally request the consent of the person(s) concerned. Only when competing private or public interests exceed the interest in protecting personal privacy should exceptions to this procedure be allowed. As a matter of principle, the citizens should be informed about procedures and practices about such information transfer. They should also be informed of their right of access to, and correction of, the files held about them.

Citizen involvement

One of the objectives of providing citizens with public information is to increase their interest and participation in the work of public administration. By involving citizens and

creating channels for dialogue, citizens or groups of citizens have the possibility of participating actively in the decision-making, including the prioritization between services. Moreover, public administration can gain valuable information about citizens' preferences and positions that enable the politicians to make sound decisions, which are as widely accepted as possible. Citizen involvement is relevant to all branches of public administration and is an important element in making administrations efficient and cost-effective. The model shown below illustrates where and how citizens can be involved in public sector decision-making and management.

Model



However, in order to obtain the positive effects of citizens' involvement, it is important that they feel their involvement is real and that it is taken seriously. They should not be left with the feeling that the participatory approach is used as an act to legitimize policies already adopted.

Methods which public administration can use to promote information and dialogue between citizens and the administration include:

- Systematic collection of citizens' comments to draft policies and decisions:
 - Surveys using questionnaires or interviews can be applied to clarify preferences within specific user groups. If the aim is to get information on more general issues, the survey should be made from a representative sample of the citizens.
 - Alternatively guiding referenda can be held when issues are particularly important.
- Evaluating and monitoring performance of public administration
 - Surveys can be conducted or citizens can fill in 'report cards' or 'scorecards' on the administration's performance. It is however crucial that the results are made available to the public. It is equally important that the administration evaluated is willing to start a dialogue on the results.
- Consultative mechanisms to give inputs to policy development.
 - Regular official consultation hours for media and interested public on general matters.
 - Public hearings can either include a selected panel of citizens or the general population, who can ask questions to officials or make testimonies. The idea is to formally consult the affected groups of citizens in policy areas that are believed to be problematic.
 - Group meetings with selected parts of the local community for instance to make a participatory planning and budgeting session.
 - Discussion forums where all the different existing and potential stakeholders participate can be organized in order to identify competing ideas.
 - Development seminars can be held as a visionary process for the common development of a strategic plan for the community's future.
 - IT dialogue forums or internet conferences enabling a two-way communication process between administration and citizens.

Examples

Use of IT panels to enhance citizens' participation in Danish municipalities

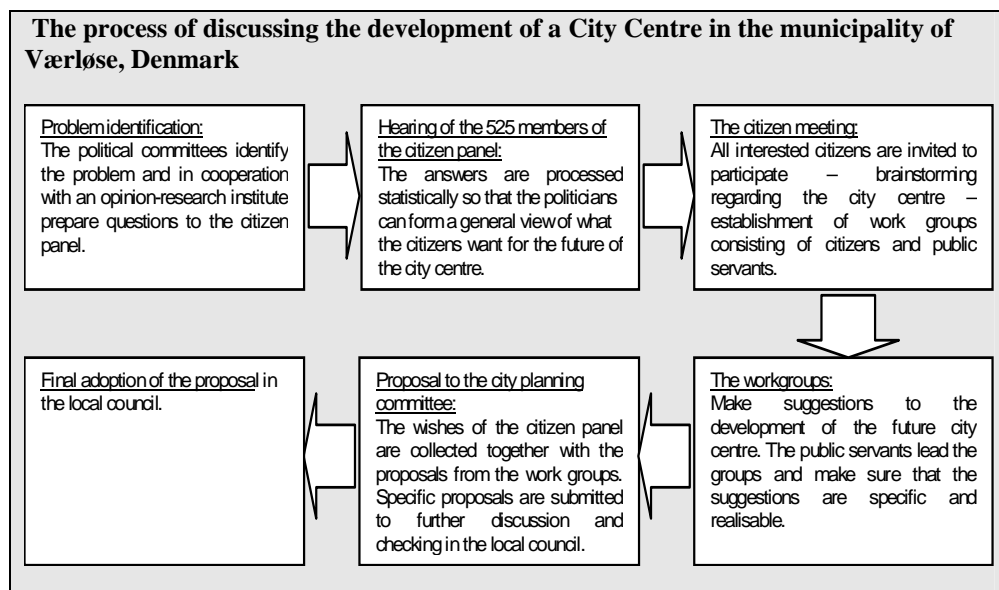
Danish local governments (LGs) increasingly use IT to enhance citizens' participation in public decision-making:

In **Ballerup**, a municipality of approximately 46,000 inhabitants, the municipality has used IT to create a loosely structured citizens' panel. The idea has been to give all local citizens an opportunity to be in dialogue with their LG in a way that fits with the daily life of a modern Danish family. All citizens could enlist in the panel, and 900 did – of which more than 80% have answered the questions put forward by the LG. So far the municipality has put forward 3 rounds of questions for the panel:

- Are user payments an acceptable alternative to budget cuts?
- Is the information provided by the LG sufficient in relation to citizens' needs/wishes?
- If the municipality is to be amalgamated, which partners do the citizens prefer?

In **Værløse** (18,500 inhabitants), a panel of 525 citizens has been selected by an analytical institute on the basis of sex, age, education, housing form and income as a representative sample of the local population. The panel sits for one year and participates in 3-4 investigations, and the municipality does not know the identity of the participants in the panel. The political questions put forward for panel investigations in Værløse are more closely defined than the case is for Ballerup, and the process has to a large degree developed into a policy input to the political decision-making process.

The 2 types of IT panels used by Ballerup and Værløse differ with regard to the number of citizens' participating, how they are given access to participate, what the panels debate – and therefore ultimately also how and for what purpose the LGs can use the dialogue. In relation to the open dialogue in Ballerup, where all citizens have access to participate (but only a group of 900 do) the panel is ideal to give an indication of the political currents in the local population. In contrast, the strength of the invited panel in Værløse is that it gives the LG a representative indication of the preferences of the entire population. It also gives the panel a reason to expect that their commitment will be used in practice. The model involving an appointed panel is probably more binding for the authorities than the model whereby citizens can involve themselves on a voluntary basis.



Incentives to provide information

Instead of using penal actions to ensure that public administrations live up to their information obligations, incentive mechanisms rewarding them for good information practices have proven an effective tool. For example, one of the criteria for calculating state allocations or donor grants to specific parts of the administration such as local governments can be the level of citizens' access to information.

Example

Incentive mechanisms for providing information to the population – investment funding in Uganda

Since 1999, Uganda has implemented a national Local Government Development Programme that provides capital grants for infrastructure development to local authorities.

In order to gain access to the capital grants, the local authorities have to fulfil some minimum requirements that are agreed between the Ministry for Local Government and the Uganda Local Government Association.

One of nine performance indicators is: communication and accountability performance where local authorities have to demonstrate how they make information easily available to the population (for instance by way of posting of plans, approved projects, members of project management committees etc. on public notice boards) and have to submit the final annual accounts to the Auditor General and make them available together with quarterly accountability statements.

Another performance indicator is: procurement capacity and performance where it is controlled that local authorities adhere to good procurement practises, including publication of lists of pre-qualified companies.

Special review teams cover all local authorities annually and deliver a Performance Measurement Report evaluating the fulfilment of the criteria and general performance by each local authority. Depending on the outcome of the performance measurement, local authorities can be granted up to +20% in annual allocations, while a negative assessment may lead to

a decrease of 20%. If a number of minimum criteria are not fulfilled, a local authority may lose all access to capital grants for a year!! The outcome of the annual assessments create great public interest and poorly performing local authorities certainly will have to answer to the local and national press, which provides a good basis for the local population to gain more access to information with a view to ensuring better adherence to the performance criteria next year.

Strengthening the openness capacity of public administration

A culture of openness does not emerge on its own. It demands dedicated work in terms of training, campaigning, practice, networking and other factors to bring the culture into all corners of an organization, including a leadership signalling that openness is on the top of the management agenda. However, even prior to internal training efforts public administration should make it part of their recruitment policy that new staff have basic knowledge about good administration and the principle of maximum openness through their educational background. If this is not the case the administration could assist in pointing out the problem to the educational sector and be helpful in addressing it.

Training

In order to push an openness-culture forward it is necessary to strengthen the knowledge and qualifications of the public officials. This requires training and practice as well as sound cooperation between subordinates and superiors. Training of the administration cannot be viewed in isolation – it makes no difference outside the administration if nobody knows about the efforts. Therefore, it ideally has to be followed by training of key professional groups and broad campaigning efforts. It is particularly important to train officials who will work directly with providing access to information to citizens as well as their superiors.

Training plays a crucial role in the introduction of a legal openness regime. Therefore, it is important that training policies are arranged centrally. In some countries specific academies have been established for in-service training of some or all branches of the administration. Quite often such academies enter into fruitful partnerships with civil society organizations who have the advantage of being customers of public administration and who can therefore point to particular dilemmas to address.

Examples

Introduction of new legislation through training sessions in Great Britain

In Great Britain where a Freedom of Information Act entered into force on 1 January 2005 it has been necessary to conduct extensive training sessions with all branches of public administration to introduce the principles of the new legislation.

In-service training of all state officials in Bulgaria

The Institute of Public Administration and European Integration currently runs compulsory 2 hour courses on the principles of the recently adopted Bulgarian Access to Public Information Act for all officials of the state administration (approx. 70-80.000).

Article 19 Freedom of Information Training Manual for Public Officials⁷⁹

Article 19, which is an international organization working with freedom of expression and information, has elaborated and used a training manual for public officials as a resource for officials who would like to ensure that the best legal standards on freedom of information are applied in practice in their country. The manual is designed in a way that it can be used to train trainers and it can be used both as a learning tool for public officials and as a reference tool for those having participated in courses.

Networking

Another way of strengthening the capacity of public administration is by means of networking. Participation in regular meetings with equals from other parts of the administration facilitates discussion of successes and dilemmas in a non-binding manner.

Examples

The American Society of Access Professionals

This NGO was founded in 1980 by concerned federal government employees and private citizens working in the field of information access through the Freedom of Information Act, the Privacy Act, other legislation and regulations. The purpose of establishing the organization was to create a space for training as well as an open-dialogue forum for discussion of common problems and best practices⁸⁰.

Accountability for lack of openness

In order to ensure a culture of openness and to give citizens access to information, a certain number of complaint and appeal mechanisms must be in place. However, common for all types of appeals is that no enforcement mechanism can make public administrations accountable for lack of openness if they are not willing to abide by the recommendations or decisions made to them.

The following basic appeal mechanisms should be guaranteed:

- Administrative complaints system
- Review by an independent body
- Control by the judiciary
- Review by an independent auditing system

A number of other mechanisms contribute to ensuring that public administration is kept accountable for its openness or lack of same. Among these are the media, NGOs and the general public who all have an interest in promoting as open and transparent administration as possible.

Administrative
complaint system

In most countries, legal openness instruments provide for appeal of refusals or complaints about time delays in providing information to be made to the administrative body which made the original decision. These internal reviews are of course subject to independent and judiciary control if the citizen is not content with the revised decision. Internal review is typically made by another and superior official than the person who dealt with the original request. If the body issuing the original decision is part of another institution it may also be decided by law that this superior institution treats complaints.

Some institutions have established internal ombudsman systems responsible for receiving complaints at the same time as advising the institution on good administration practice.

Example

Ombudsman system within the municipality of Copenhagen, Denmark

The Danish municipality of Copenhagen has established an independent Citizen Counsellor-office in 2004. The Counsellor reviews complaints from citizens in order to assess whether public officials apply principles of good administration properly, including the principle of openness. Possible sanctions include recommendations as well as the authority to expose certain branches of public administration to criticism. Findings and recommendations should be reported to the City Council and in annual reports. The City Council can ask the Counsellor to further analyse specific issues of interest to it.

The Counsellor is also tasked with training the public officials in issues which promote the culture of openness within the municipality.

Public administrations may resort to disciplinary sanctions, such as demotion, transfer to other position or dismissal, in cases where public officials are guilty of administrative wrongdoing or deliberate obstruction of good information practices or of human rights abuses. However, when public officials are asked to make the delicate balancing of opposing interests prior to a decision of whether or not to disclose information there must be a certain margin for mistakes made in good faith. Otherwise anxiety and fear of sanctions may lead officials to make wrongful decisions and ultimately create an indirect culture of secrecy.

Appeal to an
independent body

The administrative complaints system should include independent bodies, such as ombudsman institutions, information commissioners and data protection agencies. Such bodies are established to act as watchdogs of how public officials conduct public affairs and whether they commit human rights abuses against citizens. They provide access to rapid and cost-effective review of decisions of public administration. In relation to reviews, such bodies should have the power to demand access to all information held by public

administration. It is an advantage to the complainant that such review bodies are able to make binding decisions which can be enforced by the judiciary if need be. However, most ombudsmen only have the authority to issue non-binding declarations and therefore the authority of the ombudsperson is decisive for whether or not the declaration is respected and implemented in practice.

Time frames for appeal should make it possible for a complainant to make use of an independent body.

Example

Bulgaria - timeframe for appeal makes independent review illusory
Legislation does not always make it possible to submit the case to an independent body before initiating court proceedings. This is e.g. the case in Bulgaria where the time limit of 14 days for appeal of an administrative decision does not allow both a hearing of the future Ombudsman and making an appeal with a relevant court.

Appeals to the judiciary

Appeal to the judiciary is the ultimate weapon of a citizen against a body within public administration which is unwilling to disclose information, and this measure is directly guaranteed in most Freedom of Information Acts. However, even judicial decisions have drawbacks in case they refer the subject matter back to renewed decision-making in an uncooperative branch of the administration which more or less repeats the original decision.

It is not only public administrations which stand trial in cases regarding disclosure of information. In specific cases public employees may be charged with criminal offences and stand trial in court. This is typically the case when employees leak confidential information of public administration, either for personal gain or in order to put wrongdoing of the latter on the public agenda to hold them accountable for their actions (so-called whistle-blowing). As indicated in the openness principle 'protection of whistle blowers' in chapter 2, whistle blowers should be protected from criminal liability when they act in good faith to serve the public interest.

Independent auditing system

National State Auditor offices are specialized control mechanisms empowered to hold public authorities accountable for their financial administration. Most countries have such an institution, although they have different mandates and a differing degree of independence⁸¹.

Wherever State Auditors only supervise the state administration, there should be parallel regional and municipal audit and control systems. Such systems are generally supervised by the Ministry of Interior.

Example

Danish State Auditors

In Denmark the office of the State Auditors conducts regular reviews of the performance of the Danish state administration, both in terms of economy and efficiency. As a result of its findings, the State Auditors may make recommendations to institutions examined. Parliament is informed in cases of irregularities and the information is made publicly available in reports from the institution. As part of its vision, the Danish State Auditor aims to ‘add value to working processes and administrative procedures of the institutions audited by communicating best practices and experience’ and to conduct ‘an open and trustful dialogue with the institutions audited about the audits and effects thereof’. According to law, the office has the right of access to all information from the institution audited, including information of confidential or sensitive nature. In practice the Danish administration complies with this principle without any trouble and recommendations are normally followed⁸².

Evaluation indicators used by Danish State Auditor to measure effect of control

Improved information to Parliament	E.g. through improved validity of information to be included in the yearly Finance Bill
Provision of legal basis	E.g. through clarification of legislation governing the institution
Improved management information	E.g. through elaboration of management tools providing for quicker and better general information on management and analyses to be used in decision-making process
Improved management basis	E.g. through guidelines, policies and elaboration of objectives and strategies
Improved accounting and control procedures	E.g. through establishment of controller entity, elaboration of auditing instructions and control- and accounting procedures
Improved basis for productivity and efficiency analyses	E.g. through data describing production and use of resources as well as analyses of results
Other	E.g. quality assurance

Conclusion and recommendations

Conclusion

Public administrations are situated in the core of the openness flow of any democracy because this is where major political decisions are executed and issues and resources are managed.

Administrations do not become open and transparent out of the blue. It takes time to sow the seed of openness and make it grow into a culture of openness within the institutions. Old habits need to change, perceptions of the administration's role must change and the citizens must be invited to participate in and influence the conduct of public affairs.

However, a set of core preconditions must also be fulfilled in order for public administrations to open up and be able to provide access to information. This applies to the external as well as internal levels.

Externally, it takes a huge institutional landscape to promote the development of an open public administration. Such a landscape comprises the separation of powers, respect for the rule of law and protection of fundamental rights and freedoms. It moreover requires the existence of free and active media and NGOs as well as active citizens wishing to be informed about matters of public interest. External controllers such as state auditors and ombudsmen taking action if public affairs are not properly conducted are also required. And finally it takes legislation and principles on freedom of information to create a truly open public administration.

Internally, an open administration demands a preset system of values, policies governing the way interests are articulated, resources managed and the power exercised. Thus, public administrations need a number of procedures to support the information flow and to make information accessible internally as well as externally. It is important to support policy and procedures by organization, e.g. by the establishment of well-functioning archive systems and information offices to provide storing and handling of general information.

Recommendations

- Leadership must openly support the implementation of principles of openness and good governance.
- Internal guidelines should be adopted on how to be open and accommodate information requests.
- Incentive mechanisms should be adopted to reward good information practices.
- The organizational structure should reflect and support the adherence to the openness principle.

- It should be clear to the public where to address information requests.
- The administration should provide a wide scope of information at its own initiative.
- The public should be empowered to participate in the conduct of public affairs.
- The administration should use training, networking and other available methods to consistently strengthen their capacity to be open.
- The public should have a possibility to appeal refusals of giving access to information.

3.2 Ombudsman and National Human Rights Institutions (independent institutions)

Regulation on openness of independent institutions

Principle	<p>Ombudsman and National Human Rights Institutions (NHRIs) are independent, but official state institutions established by law. In the following they are referred to as ‘independent institutions’. In their capacity as publicly appointed watchdogs, independent institutions have a particular responsibility to conduct public awareness raising and to be open about their activities with, and review of, public authorities. Independent institutions also have an obligation to be open about their own activities to justify their spending of public funds and to be accessible to the general public.</p>
History	<p>Independent institutions have a relatively short history dating back two centuries. The forerunner of the Ombudsman institution, as we know it today, was established in Sweden in 1809 to handle citizens' complaints about the government. The first NHRI was established in Canada in 1962.</p> <p>In recent decades the establishment of independent institutions has gained ground and has even become a standard element in political transitions towards democracy in all parts of the world.</p>
Human rights treaties	<p>There are no human rights treaties directly regulating the openness of independent institutions. However, the Paris Principles which were adopted by the United Nations Human Rights Commission in 1992⁸³ establish that National Human Rights Institutions should assist in raising public awareness of human rights and freedoms.</p>
National law	<p>Establishment of independent institutions is typically enshrined in a country's constitution and supported by legislation, or acts of the legislature. Such regulation tends to focus on the mandates and power of independent institutions rather than requirements to their level of openness.</p> <p>Access to Information Acts and other legal instruments requiring openness from public institutions do not necessarily apply to independent institutions. In order to lead by example independent institutions that are not covered by such acts should therefore elaborate self-regulation to secure best practices.</p>

Role of independent institutions in a culture of openness

Between government and civil society Globally speaking, independent institutions have different call names, including Ombudsman institutions, Public Defenders, Human Rights Commissions, National Human Rights Institutions, Information Commissioners, etc. Such institutions are categorized as independent institutions and they are positioned in between government and the citizens/civil society. In this position independent institutions have a specific obligation to act as role models and to cooperate with and promote information and dialogue between the two parties. They must also guard their accountability and independence vigorously in order to secure and nourish both parties' trust in and loyalty towards them.

Dual openness role Being in this unique position between government and the citizens/civil society independent institutions have a dual openness role:

- 1) They must be open and inform the public about their own activities.
- 2) Wherever state institutions are weak information providers or fail to provide information to the public concerning their human rights and freedoms they must seek to bridge this information gap.

To achieve a strong position in society, independent institutions must seek to create a favourable public opinion about the principles it adheres to as well as the activities the institution undertakes.

Mandate to promote and protect human rights and freedoms Independent institutions are products of the political contexts in which they were shaped. Despite their different mandates they are all tasked to some degree with protection of the general public against violation of rights and freedoms, abuse of powers, errors and omissions, negligence, unfair decisions, maladministration etc. By doing so they improve public administration and make the actions of public institutions more open and the government and its servants more accountable to members of the public. Independent institutions are also obliged to promote human rights and freedoms by raising public and official awareness of them, be it through documentation, training or campaigning.

Protection and promotion can either be in relation to specific freedoms such as Information Commissioners or to rights and freedoms in general such as Ombudsmen and NHRIs. The functions of independent institutions differ slightly from one type of institution to the other as well as from the institutional set-up in one country to another. For instance, the Scandinavian Ombudsmen have functions resembling courts of

administration and also undertake a considerable amount of advising and counseling, whereas their French and Ghanaian counterparts play a more mediating role in conflicts between the administration and citizens in their countries.

Accessibility

Independent institutions should be accessible in order to be effective and serve their purpose. To be accessible the institutions must consider:

- Their commitment to principles of openness – if an independent institution is not open towards the public it risks to discredit and alienate itself from the citizens.
- Use of different languages in order not to discriminate.
- Their physical accessibility in terms of location and whether more than one office is needed to provide sufficient access.

Co-existence of institutions

In some countries several independent institutions have a mandate to deal with matters of public governance. This can be a problem insofar as it makes it unclear to the public where to address complaints about bad governance and refusals of access to information.

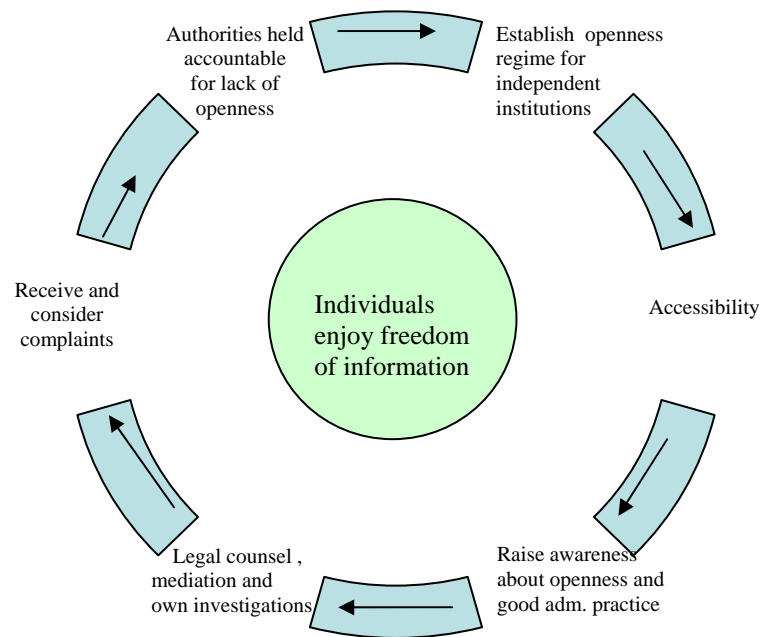
Example

Overlapping competences: the case of Malawi

Three independent institutions are competent to deal with matters related to public governance, namely the Ombudsman, the Human Rights Commission and the Anti-Corruption Bureau. The division of labour, however, is not clear among the three concerning access to information (An Access to Information Act has been drafted but is not yet adopted). This creates a risk of overlapping activities. In a worst-case scenario the lack of a clear division of competences could undermine the authority of all the institutions.

Openness model

The model below illustrates which efforts independent institutions should make in order to promote good openness practices with public institutions, including themselves. Given the watchdog nature of independent institutions the model has clear resemblances with the model drawn up for civil society:



Administrative procedures and organization supporting openness

The positioning between state institutions and civil society enable independent institutions to act as role models for either party in many respects. This also goes for transparency if they secure that their own administrative procedures and organizational set-up support a line of openness and active provision of information.

Administrative procedures

Independent institutions should consider adopting procedures which can support consistent provision of news and which prevent concealing information. Such procedures should include:

- Rules of procedure to ensure uniform treatment of cases and internal sharing of information, incl.
 - Public complaints procedure (if institution has a mandate to receive complaints)
 - Practical tool kits or handbooks with relevant directives, guidelines and outline of information and work processes (distribute in print or make available through the intranet),
- Procedure for automatic release of information, incl.
 - Information about function and assistance of institution,
 - Which type of medium to use (internet, print, the media),
- Procedure for gathering information during investigations, incl.
 - Directives on how to seek and collect reliable information,
 - Directives on how extensively to use second-hand information,
- Procedure for accommodating information requests, incl.
 - Time limits for response,
- Language policy ensuring
 - That the language of independent institutions is kept simple and accessible to all,

- That due account is taken of possible linguistic diversities within the country,
- Communication policy, incl.
 - Considerations about how to use the media as a strategic ally to help maintain human rights on the public agenda and providing a larger public outreach for independent institutions.

Example

Procedures for request of assistance of the Philippine Ombudsman⁸⁴

The Philippine Ombudsman has adopted a set of procedures on public requests for assistance. The procedures, which are accessible on the internet, outline:

- the nature of requests received by the institution, such as complaints against unreasonable, unfair, oppressive, discriminatory, improper or inefficient public administration,
- who handles the request, namely the Public Assistance Office,
- the procedure for handling requests, including mediation with and recommendations to the public administration
- that the Ombudsman bring non-compliance of recommendations to the public's attention.

Organization

Being providers of information between different parties in society, independent institutions must seek to organize themselves in a way which supports their capacity to be open and accessible to state institutions as well as to the public at large.

Office(s)

Independent institutions have national mandates and must as such be accessible throughout the countries in which they operate. Different factors determine whether and how the institution can ensure that it is physically accessible throughout the country:

- The size and infrastructure of the country
- The level of literacy of the population
- The information infrastructure
- The level of public access to and use of internet services
- Funding

Example

The Commission on Human Rights and Administrative Justice in Ghana⁸⁵

The Commission on Human Rights and Administrative Justice (CHRAJ) possesses broad investigative powers vis-à-vis the state apparatus and is competent to receive and handle complaints from citizens. CHRAJ has made huge efforts to decentralize its operations and thus ensure physical access to its offices in order that as many people as possible get assistance from the Commission. So far, CHRAJ has succeeded in opening offices in all ten regions of the country and in sixty-four of the 110 districts. The organization has good experience with representation on the ground and therefore plans to widen its physical accessibility and become operational in all the districts within a few years

Information unit

There should be a clear entry point to the institutions for those seeking information from them, be it the media, a state official or an individual wishing information or to lodge a complaint.

In order to ensure the credibility of the institutions and to avoid unnecessary overlaps and inconsistencies in provision of information it is crucial to establish internal coordination between different information structures, especially between:

- Headquarter and district offices,
- Information unit and those managing website,
- Information unit and person(s) charged with providing access to information upon request.

Documentation function

Many independent institutions are mandated to provide access to human rights documentation. For this purpose, libraries must be established, maintained and also updated at regular intervals.

Archive function

Independent institutions must provide reliable information in order to be trustworthy. To do so it is vital that they build up and carefully maintain record systems for storing and retrieving information. Institutions opening district offices must ensure that filing is carried out according to the same principles in all its entities.

Providing information

Information provided on own initiative

In their capacity as publicly established control bodies, independent institutions serve a public cause and therefore have a legal or moral obligation to account for their activities and findings as well as to raise the awareness of human rights and freedoms of the public.

Information about own activities and services

Independent institutions should make sure that public bodies as well as the public know what the institutions are doing. They should also inform the public how and for which reasons the assistance of the institution can be requested. The public should know beforehand what they can and cannot expect from a given situation. For instance it is important to inform them about the differences in mandate and jurisdiction of independent institutions and courts.

If independent institutions are mandated to receive complaints and make investigations at their own initiative they should also inform the public about their findings and recommendations. However, publicity should not go beyond the promise of confidentiality which institutions give to complainants in order not to reveal their identity and sensitive information about them.

Example

Raising awareness of the scope of work of the Belgian Ombudsman
In order to explain to the public how a newly established Ombudsman institution could assist the citizens in complaints against public authorities, the institution launched a campaign about the scope and limitations of its work.

The campaign specified which assistance complainants could expect from the Ombudsman, including:

- Who can lodge a complaint.
- Where to address the complaint.
- Which complaints the Ombudsman is competent to treat.
- How to formulate a complaint and what information to include.
- How the complaint is processed, including the different stages of the complaints handling.
- Which decisions the Ombudsman is competent to make.

Information about human rights and freedoms

Promotion and awareness raising of human rights and freedoms are some of the key tasks assigned to independent institutions. But which rights and which freedoms should they promote and raise awareness about? It naturally depends on the type of institution, its mandate and the national context.

Examples

National Human Rights Commission in India focuses on all human rights⁸⁶
One of the functions assigned to the National Human Rights Commission in India is to “spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means”.

The focus of the Commission is to strengthen the extension of all human rights to all sections of society, and in particular to vulnerable groups.

Canadian Human Rights Commission focuses on equal opportunity and prevention of discrimination⁸⁷
The Canadian Human Rights Commission is mandated to ensure that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction.

The Commission conducts information programmes and seeks to foster public understanding of Canadian legislation on human rights and prevention of discrimination. For instance, it has established a public outreach programme through which it assists public bodies and companies, unions and employees in putting in place a culture of human rights in the workplace.

The Commission sees the totality of its outreach and awareness raising activities as a means to reduce the number of complaints it receives and the general number of incidents of discriminatory activity.

Awareness raising

When conducting awareness raising activities, independent institutions have different methods and information channels at their disposal to ensure that their efforts have an impact and can

help strengthen the culture of human rights in the country. The usefulness of these methods and information channels naturally depends on the local context and how well the population is educated.

Independent institutions have numerous methods at their disposal to support awareness raising activities. Popular education, training of public officials and campaigning are but three effective methods to raise the general level of awareness of human rights and freedoms as well as of standards on openness and good administrative practices.

Awareness raising efforts can be strengthened through creative partnerships with public bodies or civil society, depending on the purpose of the activity and the group of people targeted.

Examples

Training of child workers in India to teach them their rights

In relation to the issue of child labour, the National Commission on Human Rights has set up various non-formal education programmes for working children as it believes that their rights can only be well protected through knowledge and education. Through the programmes the Commission believes that it has slightly improved the general level of popular awareness of the problem.

Sensitization of public officials in Malawi

Upon request, the Malawian Ombudsman conducts training courses on good openness and administrative practices for public officials. To support the training the Ombudsman has developed a training manual. In a short and concise manner the manual presents the mandate and role of the Ombudsman, and it presents the Ombudsman's view on good openness and administrative practices. Moreover, it contains a number of selected and instructive case summaries of instances of injustice and violation of human rights in the public sector.

Human Rights and Democracy Awards in South Africa

In South Africa the Human Rights Commission joins forces with the Electoral Commission (IEC) and the Commission on Gender Equality (CGE) in giving Human Rights and Democracy Awards to persons and/or institutions that have made an outstanding contribution towards the development of a culture of human rights and democracy in the country.

A core objective of giving the awards is to raise awareness of activities which can contribute to strengthening the building of the South African democracy. Other objectives are to encourage individuals and institutions to support initiatives that promote and protect human rights, gender equality and democracy in South Africa and to ensure public acknowledgement for the outstanding contributions by such individuals and /or institutions.

Information channels supporting awareness raising

Independent institutions also have different information channels at their disposal to ensure a wide information outreach. Whenever possible, practically and economically,

they should seek to take advantage of traditional audio-visual media as well as new information and communication technologies.

Common for all information activities is that independent institutions should seek to make use of all types of media organs to publicly expose cases of human rights violations and maladministration and thus ensure the largest possible public outreach and raising of awareness.

- Printed information to be distributed in the public room/website
 - Training material
 - Information leaflets and newsletters
 - Press releases
 - Findings and recommendations
 - Annual reports
- Press
 - Contributions to public debate
 - Interviews on role and position of institution
 - Explanation of findings and recommendations
- Radio and television
 - Participation in public radio and televised debates
 - Film on role and position of institution
 - Interviews on role and position of institution
 - Explanation of findings and recommendations
- Meetings and conferences
 - Regular meetings with the press,
 - General information meetings which are open to the public,
 - Invitations to specific target group such as organizations, schools, universities, churches and community groups
 - Presentations at meetings of other organizations,
 - Public events,
- Public education

Right to access information

Independent institutions should have a duty to provide access upon request to the information they hold, either according to law or to self-imposed regulations. The law may apply differently to independent institutions in the same country. This is for instance the case in Denmark where access to information legislation applies to the National Human Rights Institute, but not to the Ombudsman institution.

Example

Self-regulation of the Danish Ombudsman⁸⁸

The Danish Parliamentary Ombudsman is exempted from openness requirements in the Access to Public Administration Files Act and the Public Administration Act together with all institutions of Parliament. The institution has a vital say in the development of good administrative practices since it treats a large number of complaints and questions in relation to the administration of public affairs.

To give greater authority to his findings and recommendations the Ombudsman has chosen to lead by example. The institution has therefore decided to provide access to information along the same openness principles as those applying to the public administration according to law.

General information

When providing access to information independent institutions should distinguish between information of a general character and information of a personal character.

Activities as well as finances of independent institutions are of general interest to the public since they are directed at reviewing and supplementing the acts and omissions of public institutions. However, it is probably the way independent institutions challenge the authorities in terms of decisions, recommendations, mediation that is of greatest interest to the public and indeed also for the future line of action of the public authorities themselves.

Access should normally not be provided in cases where public authorities would be the natural place to address the information request to. This is for instance the case if an independent institution is competent to request access to governmental information or records in order to treat a specific case. Under such circumstances access should only be given if the public authorities have denied access and if they cannot be persuaded to give access by means of recommendations or the like. Showing such restraint is a way to teach public institutions good openness habits.

Personal information

Personal information included in decisions or otherwise held by an independent institution should not be accessible to the general public. The institution should make sure to guard and nourish a relationship of trust with complainants as well as with information providers within the general public. Therefore, it should be specifically aware not to compromise the confidentiality it enjoys with these parties.

To the extent it is possible to anonymize the personal information which is part of an information request this should be done. Other ways to accommodate such information requests is to give access to only part of the information (partial access) or to transform it into statistical information. If this is not possible the entire information request should be refused unless the public interest in receiving it is deemed more important than the interest in protecting privacy.

Strengthening the openness capacity of independent institutions

In-service training within own ranks

It is important for independent institutions that they maintain a high degree of openness and access to information if they wish to serve as role models for other public institutions. To ensure that all parts of the organization have sufficient knowledge

about such standards and what they should be open and informative about, it is important to conduct in-service training or meetings at regular intervals and to supplement it with internal information updates.

Networking

Professional exchange is another important way to strengthen one's openness capacity and therefore many networks have been established across borders as regional or international organizations.

Examples

The OmbudsNet⁸⁹

OmbudsNet is an integrated information and communication system for the Ombudsman offices in Latin America and the Caribbean which enables them to access information relevant to their work in a systematic manner. The Net can help them carry out their task of protecting human rights and exercising oversight of political power, tasks which are necessary to reaffirm democracy in the region. The main purpose of OmbudsNet is to strengthen the capacities of Ombudsman Offices in Latin America and the Caribbean to effectively protect and promote human rights and democratic development.

International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights⁹⁰

The mission of the Committee is to support the creation and functioning of National Human Rights Institutions along the Paris Principles. For this purpose, the Committee for instance encourages international joint activities and cooperation among institutions and sets up meetings on subjects related to the mandate of national human rights institutions.

International Conference of Information Commissioners⁹¹

The conference was set up in 2003 as an annual meeting place for authorities of the world which have the mission to protect and promote the right of access to information. The objective of the conference is to discuss different aspects of how to promote access to information and transparency in society in general, including how to influence the fight against corruption.

Accountability of public institutions for lack of openness

Accountability
within own ranks

It is very important for the image of independent institutions as well as for the accountability they require from public institutions that they themselves are accountable. Therefore they should be careful to respect the openness principles which they seek to promote and implement with public institutions.

To the extent that independent institutions have been set up by the state to discharge it of the obligation to promote and protect human rights, the question is whether the institution is accountable itself if information about human rights is not effectively disseminated to the public. This may be the case of National Human Rights Institutions and Human Rights Commissions.

Independent institutions are established by law and should as all other public bodies be accountable for their activities as well as financial management to specific state institutions such as the Parliament and the National State Auditors.

Review of which institutions?

It is the mandate of the specific independent institutions which specifies which public authorities they are empowered to review. Reviews related to openness and how information of public interest is disseminated to the citizens typically target the public administration. This branch of government makes administrative decisions that directly influence the life and conditions of individuals.

Legal or moral authority

Recommendations, decisions and mediation emanating from independent institutions typically only have moral authority. To strengthen their legitimacy and public support these institutions should therefore ensure publicity of their activities and findings. The impact of publicity in relation to a single case may be particularly important as it may give public bodies an incentive to settle or prevent similar issues.

With or without legal authority independent institutions are competent to control the accountability of public institutions in terms of how well they respect and implement the openness principles.

Examples

Malawi - powers of the Ombudsman
When investigating cases on administrative injustices the Malawian Ombudsman has the power to 'require the immediate disclosure of information and the production of documents of any kind, from any public body'⁹². The decisions of the Ombudsman are not binding on the public administration. They are recommendations on the Ombudsman's view on appropriate administration action. The Ombudsman has no means of enforcing his decisions, but to appeal to the authority in question as well as to point out specific problems to the Parliament and the general public. The Ombudsman is required by law to submit annual reports of all his activities to Parliament, which then assesses his performance.

Ireland - Powers of the Information Commissioner

In some countries Information Commissioners are empowered to order disclosure of information. This is e.g. the case of the Irish Information Commissioner who can make binding and conclusive decisions on appeals in relation to the following⁹³:

- refusal to provide a record,
- refusal to provide the complete record,
- refusal to provide the record in the manner sought,
- deferral of access to the record,
- a decision arising from a request to correct personal information,
- a decision to refuse to give reasons for acts which materially affect a person,
- a decision in relation to fees or a deposit sought,
- a decision arising under Section 29 i.e. where a body proposes to release an individual's "personal information" to a third party,
- a decision to extend the time limit within which a request for access must be decided.

In addition to their decision-making role Information Commissioners may in some countries also be authorized to prepare and publish commentaries on the practicalities of implementing legislation relevant to openness of the public administration as well as encourage development of codes of good practice. Such commentaries and codes may be based on the experience of the Commissioner in dealing with applications for review of individual decisions and should provide guidance to the public bodies covered by the legislation in relation to good practice in the release of information⁹⁴. Furthermore, Information Commissioners may also be empowered to mediate between dissatisfied information applicants and government institutions.

The result of a binding decision of an Information Commissioner cannot be appealed to a court. However, the judiciary can review whether the decision was based on correct legislation.

Own investigations

Those independent institutions which are mandated to initiate investigations of public bodies at their own initiative can use this competence to draw attention to and make recommendations in relation to maladministration of public institutions as well as human rights violations. This type of investigations will typically bring general matters to public attention rather than individual cases.

Example

Investigations of the Danish Ombudsman

The Danish Ombudsman has the competence to conduct investigations at his own initiative in the following cases:

- When he wishes to examine how public bodies under his competence handle administrative cases when they relate to principles or when there is reason to believe that maladministration takes place.
- When he wishes to examine the conditions in public institutions where people often stay without their own consent such as psychiatric hospitals, prisons and 24-hour care centers.

The most famous case which the Ombudsman has taken up at his own initiative is the 'Tamil-case' in which he examined the length of time the Danish immigration authorities spent on assessing whether or not Tamil refugees were allowed to be reunified with family members in Denmark. The Ombudsman informed the Parliament of the result of the investigation, being that the authorities had deliberately prolonged the review time prescribed by law. The findings grew into a major scandal which brought down the government.

Conclusion and recommendations

Conclusion

Independent institutions have different features and powers according to the national context in which they are rooted. Therefore, they also have different mandates in relation to review of openness aspects of public institutions.

Being placed between state institutions and the citizens/civil society, independent institutions are obliged to lead by example in terms of openness and providing access to information. This is not only a way to build up trust and a high level of awareness-raising with the general public, but also a way to gain respect from public authorities.

Recommendations

- The institution should make sure to establish an openness regime if this is not provided by law.
- Awareness-raising should be conducted to promote knowledge of the institution's mandate and activities as well as how it can assist citizens as well as public authorities.
- Awareness-raising should also be conducted to promote knowledge about openness and good administrative practices.
- Accessibility to the institution should be guaranteed, at least in terms of physical location of the institution and use of plain language.
- Administrative procedures should support consistent provision of information.

- Functions related to gathering, storing and providing information should be secured.
- Different information channels should be used to ensure a wide information outreach to the public.
- In-service training should be conducted to ensure that employees know the openness principles and that openness is crucial for the trust the institution enjoys with the public.
- Contacts should be made with other independent institutions to discuss and exchange best practices.

3.3 The judiciary

Regulation on openness of the judiciary

Principle	<p>A principle of openness of the judiciary can be deduced from national and international law. Parallel to the openness principle governing the public administration the point of departure in relation to the judiciary is that there should be the widest possible level of access to information from courts and court administrations. Publicity is not an aim in itself, but rather a way to prevent corruption and to protect the right to a fair trial as well as a genuine access to justice. Openness also prevents discriminatory practice against specific groups of individuals.</p>
History	<p>Openness of the judiciary as we know it from legislation of today stems from ancient traditions in judicial proceedings. These were held in public in order to guarantee that justice took place according to the law. It was primarily the case in relation to criminal proceedings and was an early way of protecting the defendant against injustice and unfair trial.</p>
Human rights treaties	<p>There are no international openness provisions applying specifically to the judiciary other than the general principles of openness contained in international law. All international and regional human rights instruments afford some protection of openness of the judiciary, namely the publicity of court proceedings:</p> <ul style="list-style-type: none">• The <i>International Covenant on Civil and Political Rights</i> protects the right of everyone ‘to a fair and public hearing’ (Article 14). In its General Comment to the provision the Human Rights Committee has expressed that ‘the publicity of hearings is an important safeguard in the interest of the individual and of society at large’ and that ‘a hearing must be open to the public in general, including members of the press’⁹⁵.• The <i>European Convention on Human Rights</i> entitles ‘everyone ... to a fair and public hearing’ (Article 6).• The <i>Draft Arab Charter on Human Rights</i> establishes that ‘trials shall be public’ (Article 13).• The <i>Draft Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa</i> establishes elaborate principles on the publicity of hearings in all legal proceedings (Section A, 1 and 3).• The <i>American Convention on Human Rights</i> applies to criminal proceedings only (Article 8).
National law	<p>Many Freedom of Information Acts recently adopted include a duty of the judiciary to be open and provide access to information upon request on equal terms with government agencies. Beyond information about issues relating to daily</p>

administration the required level of openness in such Freedom of Information Acts includes the obligation to be open ‘about final orders and decisions’ as phrased in the Pakistani Freedom of Information Ordinance 2002 and ‘operations and decisions of a public authority’ as phrased by the Indian Freedom of Information Act of 2002. Thus, these Acts apply not only to administrative affairs, but to some extent also to the core of judicial affairs such as judicial decisions.

Other legislation and subordinate law may either supplement Freedom of Information Acts or be the sole source of openness regulation in relation to the judiciary. This is e.g. the case in Denmark where the Administration of Justice Act contains the basic principles of publicity in relation to the judiciary. The specification of how the principles should be applied in practice are touched upon in a set of Guidelines on Access to Information in Relation to the judiciary adopted by the National Courts Administration. However, the Danish Courts Administration is not exempt from the ordinary openness principles of the Freedom of Information act. Therefore it is bound to provide access to information pertaining to e.g. allocation of funds, personnel, development of guidelines and IT.

Which matters?

The principle of openness applies to civil as well as criminal proceedings. It also applies to judicial affairs outside the area of dispute settlement, e.g. in relation to registration of property, and to matters of inheritance and employment. For all types of cases publicity is a way to ensure access to court practice and administration as well as to promote the public trust in the judiciary.

Which instances of the judiciary?

As a minimum the principle of openness should apply to all courts and tribunals no matter whether they are ordinary or specialized. Military and other special courts that try matters which are often of sensitive nature are regulated by a different set of principles to those of ordinary courts and are not subject to the same degree of openness. In its General Comment to ICCPR Article 14 the Human Rights Committee underlines that whenever such courts try civilians they should ‘genuinely afford the full guarantees in article 14’⁹⁶. This includes publicity of the proceedings.

However, openness should also apply to national court administrations, which function as the administrative backbone of the judiciary.

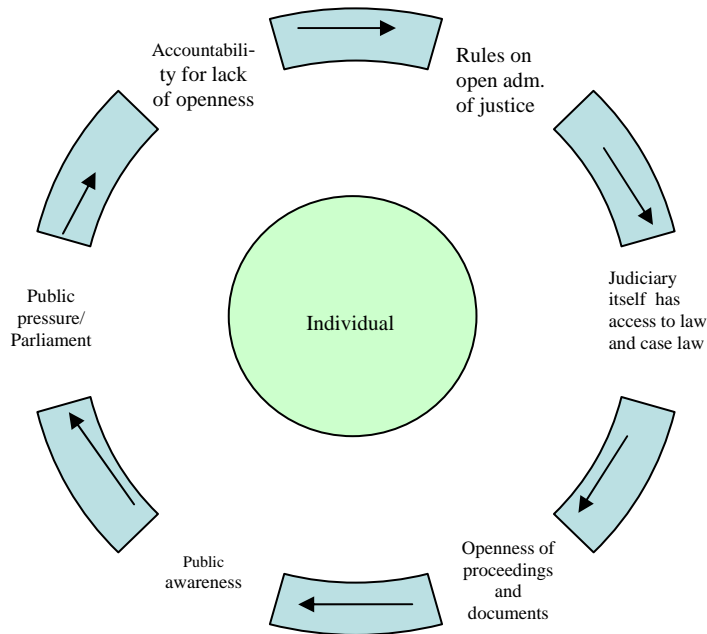
Role of the judiciary in a culture of openness

Similar to other public institutions the role of the judiciary is to provide a public service to the citizens, namely access to justice. However, the judiciary is often perceived as a slow and lenient institution where a lot of decisions are taken in back room dealings. And across the world there will be people who say that they are not well-informed about the justice system and how to access and make use of it. This goes for the general public, the media and to a lesser degree those who work with or within the system itself. Such lack of knowledge is a factor which contributes to the perception that the judiciary is a closed and perhaps even corrupted system to those who are not part of it.

To get away from a negative image the judiciary should organize and administer the justice apparatus as well as the administrative matters surrounding it in a transparent manner and according to the rule of law. Moreover, it should make sure to bridge important information gaps by reaching out to the population, e.g. through public education.

Openness of the judiciary is the democratic way to ensure a responsible and non-corrupt exercise of judicial powers and that the public has trust in and uses the institution. It is also a way to ensure access to justice, including that the courts are actively used as forums of conflict resolution. Openness gives the public a means to scrutinize the performance of the judiciary, including whether courts provide equal and impartial administration of justice to all thereby avoiding injustice such as secret procedures.

The model below illustrates components of the flow of openness in relation to the judiciary:



Administrative procedures and organization supporting openness

It is an advantage to the flow of openness within - as well as from - the judiciary to have well-defined administrative procedures and a clear organizational set-up which supports such efforts.

Administrative procedures

Procedures which are highly relevant to adopt in order to conduct an open and responsible administration of justice include:

- Procedure ensuring provision of information internally
 - In relation to every-day matters
 - In relation to background information of the staff, including staff handbooks or internal intranet sites with information on relevant legislation, guidelines and information on procedures and processes,
 - Standards to be used to identify and record a case
 - Incl. mention of date, file number, reference to case officer, parties, location, judicial offence, and information about the document itself,
- Procedure for automatic release of information, incl.
 - Which basic information to provide,
 - which type of medium to use (internet, print, the media),
 - how to and who can provide information to journalists,
- Procedure on how to accommodate information requests, incl.
 - Time limits for response,
 - recommendation as to appeal,
- Procedure for registration and storage of information,
- Language policy ensuring
 - that the language of the judiciary is kept simple and accessible to all,

- that court language takes due account of possible linguistic diversities within the country.

Example

Communication policy for Danish courts
 In Denmark the Court Administration⁹⁷ has elaborated a ‘Communication Policy for Danish Courts’. The policy must be well known by all court staff. As described in the foreword the purpose of the policy is to establish a uniform set of principles for openness and responsiveness to the general public as well as to underline the importance of using communication in the daily routines. The policy paper outlines principles in very clear terms in the following areas:

- The values of the judiciary,
- Why and how to communicate internally,
- Why and how to communicate externally,
- How to conduct good and sound communication,
- How to communicate with the press as well as the type of information requested by the press.

The Policy is based on the following values:

- Openness, dialogue and cooperation,
- The right of every individual to a respectful treatment,
- Independence of the judiciary,
- Responsibility and credibility.

Organization

Like all other organizations openness of the judiciary benefits immensely from a clear organizational set-up and distribution of tasks as well as a strong management which is dedicated to opening up the institution. In that regard it is important for the general level of openness that the judiciary ensures the establishment and maintainance of the following services:

Court administration

It is important for the transparency of the judiciary to establish uniform procedures and administrative practices across the court landscape. To do so it is an advantage to let one institution, such as a central national court administration, assume the overall responsibility for this standard-setting.

There should be a close cooperation, but yet again clear division of tasks, between local courts and the central national body responsible for the administration of the judiciary. Thus, general information such as overall procedures for the judiciary adopted at the national level should at least be provided from this same level. In addition every single court should provide information relating to its specific activities and decisions.

Information unit

The general flow of information from the courts as well as national court administrations should be managed through an information unit, a press centre or simply a person responsible for communication with the outside world. It should be clear to information units that their task is to provide information - not to censor information.

Archive

The establishment of a systematic way to gather information in each and every court is a fundamental requirement for preserving a collective memory within the institution and for the judiciary's possibility to provide information. It is also a precondition for being able to service the citizens who request access to specific information. Therefore, information and court records should be carefully stored in archives and registers. In order for staff – and possibly also the public – to access this information and make use of it in practice is necessary that the storage of information takes place according to a system which is documented and communicated to the archive users.

Providing information

Information provided on own initiative

It is good practice for courts as well as national court administrations to inform the general public about their activities. Such information should include basic information about the activities of the institution and how the judiciary functions as described in the openness principle 'Duty to inform publish' in chapter 2.

Often the provision of information to external applicants mirrors the state of the internal flow of information of the organization. Consequently, it is important that courts and court administrations ensure that internal information channels function well. Appropriate information channels to use include meetings, theme days, newsletters, notice boards and intranet.

Obligation to publish

There are numerous ways for courts and court administrations to keep the general public informed about their activities and decisions. The choice of information channel naturally depends on the capacity, the digitalization and the financial means of the judiciary. In all countries there will be parts of the general public who do not have computer access and therefore cannot retrieve on-line information. Consequently, use of on-line information should always be supplemented with some level of information through traditional information sources, such as print information.

Below is listed a series of popular and powerful information channels. Not all of these, but at least some of them, can be used in all countries by courts having an open attitude - irrespective of resource considerations. For instance it is not very costly to conduct information meetings with the general public or with a particular interest group. The list includes:

- Printed information to be distributed in the public room, be it within the court itself, at a library, post office, the market place or other:
 - Folders and newsletters,

- Annual reports,
- Press releases,
- Timely copies of court calendars.
- Press
 - Contributions to debates in written media,
 - Explanation of court decisions, particularly in high profile trials.
- Radio and television
 - Contributions to debates in audio-visual media,
 - Education on justice system, including court procedures and requirements,
 - Explanation of court decisions, particularly in high profile trials.
- Websites,
 - Access for parties to a case to follow files upon internet registration,
 - Timely copies of court calendar,
 - Timely copies of information relating to court cases,
 - Explanation of court decisions, particularly in high profile trials.
- Meetings,
 - Regular meetings with the (local) press,
 - General information meetings,
 - Education on justice system, including court procedures and requirements,
 - Open house arrangements,
 - Invitations to specific target groups, such as students and school children.

Examples

Openness through modernization of the Supreme Court of Venezuela

One of the aims of a modernization project, which the Supreme Court of Venezuela recently undertook with the assistance of the World Bank was to improve the openness of the court decisions. Methods used to reach this goal included

- Involvement of NGOs and legal professionals in workshops with the legal staff of the court,
- Improving the quality and quantity of information from the court, especially via a new homepage,
- Establishment of an internet-service for parties to a case whereby they would be able to access documents from their own case-file automatically⁹⁸.

Measuring the openness of the judiciary of Hawaii's

The judiciary of Hawaii has explored the perceptions of openness of their courts in an attempt to pinpoint problems and needs. In 2003 the State Judiciary carried out research among stakeholder groups (judges, attorneys, media and the public). Three major issues identified through the research formed the backbone of a conference on 'Openness in the Courts – a Conference on Transparency in the Judicial System', namely 1) confidentiality of court records, 2) openness of court proceedings and 3) whether judicial principles allow judges to make public statements⁹⁹.

Case law database Case-law lies at the very heart of the work carried out by courts and should be publicly accessible. However, in most countries case-law is only partly available to the public – if published at all. It may for instance be due to financial problems or simply due to technical problems to anonymize the case texts. However, to raise the level of transparency of the judicial proceedings it is recommendable to establish case-law databases covering at least those parts of case-law which are of general legal interest. Such databases do not only give the general public access to case-law, but also enhance legal practitioners' use of case-law as an important legal instrument and guidance of the legal status. Typically, databases are computer-based journals and can therefore be construed so as to give on-line access to the general public. If such information is well structured, and searches made user-friendly, it is fairly easy for the public to access the case-law in an intelligible manner. It saves those running the database from spending too much time answering questions. It is important to stress that case-law should be made available in a timely manner, if possible through real-time online access.

If the public access to the Internet is low the most appropriate way of providing information on case-law remains the publication of printed case-law journals although this may be more costly than internet versions.

Example Internet based case-law databases from superior courts are already used in a number of countries. The table below illustrates how such databases are run in Finland, Norway, Sweden and Germany.

Finland <i>(Finlex)</i>	Norway <i>(Lovdata)</i>	Sweden <i>(Lagrummet)</i>	Germany <i>(Juris)</i>
Only judgments	Only judgments	Judgments and decisions	Judgments, rulings and decisions
Most judgments from specific superior courts are published.	All judgments from specific superior courts are published	Most judgments from specific superior courts are published	All judgments of specific superior courts
Judgments of legal interest from lower courts are also published	Judgments are anonymized manually	Only summary of judgments	Link in Juris to databases with theme based judgments or judgments from lower courts
Full text or excerpts accompanied by summary	Financed and run by private entity	Judgments are anonymized manually	Full judgment as well as summary
Judgments are anonymized manually	Use of database is subject to charge with some exceptions for private individuals	Financed and run by the Court Administration	Judgments are automatically anonymized
Financed and run by Ministry of Justice		Use of database is free of charge	Financed and run by private entity (founded by the state)
Use of database is free of charge			Use of database is subject to charge

Right to access information

The judiciary is bound by law to provide a certain level of access to the information it holds. Access can be provided in terms of access to information/documents and physical access to attend proceedings in a courtroom. The types of information which can legally be requested can be grouped under three overall headings: 1) information about functioning of the judiciary, 2) information relating to proceedings in a case and 3) information about cases without dispute settlement.

Information about functioning of the judiciary

There should be wide access to information about the functioning of the judiciary. In relation to courts as well as court administrations this includes budgets and accounts, working procedures, organizational set-up of different structures and communication and employment policies and practice.

Example

Judges right to take on secondary jobs in Denmark

Information about the workload of courts and how much time judges spend on cases is a typical example of a matter of public concern. In the same vein it is a matter of public concern to determine whether and to what degree judges have a right to engage in secondary jobs. Secondary jobs take time and focus away from judges' primary occupation, namely that of administering justice. One could argue that the amount of time devoted to the administration of justice naturally corresponds to the workload of courts – or rather the backlog of cases.

In Denmark the topic has been subject to vivid debate in recent years because journalists were given access to information about – and could therefore document - that at least supreme court judges earned more from secondary jobs than from their primary occupation as judges. This could naturally give them an incentive to downscale their involvement at work and take on more secondary jobs. The debate gave rise to a public outcry as well as a professional self-examination among judges. The Danish National Audit Office made their contribution to the debate, e.g. through reports to the Public Accounts Committee.

Information relating to proceedings in a case

Access to information about the proceedings in a case can either be obtained through access to unpublished judgments, information from court records or other case documents. Or it can be obtained through attendance at the court proceedings. This goes for civil as well as criminal cases.

Wherever possible and where no opposing interests are at stake there should be wide access to information from court records and other case documents. Everybody should have access to court documents as a matter of principle. However, parties to a case and the media, who view themselves as guardians of the public interest vis-à-vis the courts, are typically the most frequent requesters of access. Nevertheless, there should not be an unlimited access for everyone. It is only natural to introduce a legal interest condition in relation to requests for access to information of individual or sensitive character. In criminal cases the defendant and his/her defence lawyer have a particular legal interest in getting wide access to information from the court records to prepare the best possible defence. Also the party aggrieved or those left bereaved would fulfill the 'legal interest' requirement whereas a curious neighbour would not.

Access to the proceedings of a case is a direct and efficient way for the general public and the media to get access to information and control whether court cases are decided on a legal and correct basis. For instance access can reveal whether sufficient evidence and statements have been sought from witnesses and whether such statements are properly recorded. In principle proceedings should be public as provided by international law. But under special circumstances, authorized by law, the courts should be allowed to restrict the access. This

is e.g. done in order to protect the integrity of victims, to safeguard the investigation of a case and to protect the identity of juvenile defenders. Typical restrictions include:

- closing of doors during the court session,
- complete or partial reporting restrictions (such as ban on quoting name or other identification of individuals).

Restrictions should only apply to the extent strictly necessary. For instance, if it is not necessary to close the doors during the entire proceedings, the restriction should only be imposed to the court sessions necessary. Despite use of restrictions during the proceedings, the final judgment should always be public, in its entirety or as a summary.

The opinion as to whether or not electronic media should be allowed in legal reporting differs a lot across the continents. E.g. in the USA such media have been widely used to raise the public awareness of judicial affairs. In Europe legislators have generally taken a very strict stance since they have had a fundamental fear of compromising the right to a fair trial as well as of the court cases turning into sensationalist entertainment. Therefore, such media are not permitted in European court rooms to the same extent as in the USA.

Information about cases without dispute settlement

Courts are often obliged to handle judicial affairs which do not involve any type of dispute settlement. This is e.g. the case in relation to legal decisions about property registration and inheritance. Here the role of the judiciary often is to confirm the status and change of particular rights in relation to the surrounding world. It is particularly important to ensure openness about such confirmations - or registration as it is also called – for instance in relation to property rights. Without a transparent and accessible property registration system there is a genuine risk that the area will be subject to corruption.

Public access is an important issue in relation to land information as such information can form a very significant part of decision-making for individuals, corporations and governments. It is an area of rapid development as computer and internet technology increase capabilities to access, distribute and analyze data. Jurisdictions vary in their approaches to the ownership and protection of data within registers. The UNECE Land Administration Guidelines recommend that legislation should contain the following:

- the extent of legal liability for the accuracy of the data,
- the extent of rights of privacy over land and property information,
- the ownership to copyright to data within the registers,
- who may have access to data,
- who may alter entries in the registers.¹⁰⁰

Example

Registration of title to land in Ireland

In Ireland the Land Registry was established to ensure that registration of titles to land takes place and gets recorded in a central and uniform way.

Every change of title to land requires a legal decision of a court.

Some of the principal aims of the Registry are:

- to guarantee legal title on behalf of the State to interests in land,
- to provide ready access to accurate land information to the public.¹⁰¹

Refer applicant to appropriate authority

When a request for information is sent to the wrong authority this body should refer the applicant to the appropriate body. This is for instance often so in relation to closed criminal cases because all case files are automatically transferred to the prosecutor's office or to the police. Whenever a court receives a request for information related to closed criminal cases it must therefore refer the applicant to address the request to the appropriate body.

Anonymization of information or identity

Wherever requested documents contain confidential information of a private character this information should be duly anonymized. Anonymization requirements as well as other restrictions of the judiciary's disclosure of identity are typically based on Administration of Justice Acts, Data Protection Acts as well as subordinate law.

Examples of information which should generally lead to anonymization of documents include: sexual orientation, health conditions, serious social problems, race, religion, colour and political orientation.

Judgments and decisions which are published should generally be anonymized in order to protect the identity of implied parties to the case, be it e.g. parties to paternity suits, parties to sensitive family court cases or defendants, parties aggrieved and witnesses of criminal cases. Anonymity is also required in relation to public court calendars wherever the court has banned public quoting of names in the case.

Limits

The level of openness may be limited if other interests than the public's interest in transparency are at stake. In relation to both court proceedings and administrative affairs such competing interests may include:

- jeopardy of effective law enforcement,
- protection of the parties to and witnesses of a case
- protection of juveniles,
- protection of fair trial and the integrity of the process,
- protection of privacy,
- protection of national security.

Limitations may only be imposed if it is strictly necessary to protect another interest. Therefore, the court or the court administration must weigh the opposing interests and find that openness would do more harm than lack of access. However, it is a common perception that the advantage of openness is so great to the general public that it outweighs a large part of the inconvenience to individuals arising from it. The borderline goes where there is a risk that publicity may influence a particular case or administrative matter negatively and effectively lead the judiciary to give way to a strong public opinion.

Partial access

If a request concerns a document where only part of it can be made public the court should ensure such partial access.

Strengthening the openness capacity of the judiciary

Access to information demands an open attitude from the part of the judiciary, and in particular from key personalities. Strengthening the capacity to be open can take place in different manners, including in-service training and networks to facilitate exchange of experience and best practice.

Examples

Strengthening relations between media and the judiciary in Asia

In response to a strongly felt need for openness of the judiciary the Asian Institute of Journalism launched a project which aims at strengthening the relationship between the media and the judiciary in the Philippines in a way that ensures a balance between transparency and public information on the one hand and judicial confidentiality and independence on the other. The capacity building is based on the elaboration of a comprehensive information-education and communication plan for the judiciary. It includes workshops and roundtables involving participants from both stakeholder groups and elaboration of prototype handbooks for media professionals such as 'Handbook on the Disclosure Policy'¹⁰².

'Best Practice' project in Danish courts

Since 2002 the Danish National Courts Administration (NCA) has run a project called 'Best Practice'. The project focuses on working procedures and routines of all district courts with a view to strengthen their administration of justice. It was initiated in order to help the judiciary become more efficient and adopt more consistent practices and thus be able to provide better services to the citizens. 4 persons from different courts were trained to become 'Best Practice Consultants'. The consultants all work within the court system and therefore have profound knowledge about it. They act as facilitators in Best Practice-seminars with the district courts where preferably all staff is invited, including academic as well as non-academic staff. The assistance has been very well received by the courts. So has the Idea-bank, which pools the inputs from the seminars and which is accessible to all the courts through their intranet. Beyond more satisfied staff the outcome of the training activity has included 1) a visible reduction of time spent per case, 2) enhanced public accessibility to the courts (e.g. in terms of posting signs and better service) and 3) institutionalized exchange of experience.

Accountability for lack of openness

The public should have access to appeal judicial decisions within the formal complaints system. Be it appeal of decisions whereby the judiciary decides to withhold requested information or appeal of decisions which restrict the openness of court proceedings.

Superior court instance

There should be a possibility to appeal court decisions to a superior court instance. Not everyone should have the right to appeal a judicial decision. It depends on the type of decision which is appealed against. For instance those who have a right to request access to information should be entitled to appeal the decision they receive. And those who are legally affected by a decision to close the doors during court proceedings should be able to appeal the court's decision to a higher court.

Independent Commissioners

Information and Data Protection Commissioners are generally vested with powers to examine complaints about lack of disclosure - or unauthorized disclosure - of information from public authorities. Such Commissioners are typically independent supervisory bodies who oversee and enforce Data Protection Acts and Freedom of Information Acts. To the extent that these laws apply to the judiciary, the Commissioners are therefore competent to consider complaints from the public against the judiciary. Therefore some of the bodies charged with managing the courts and providing a support service for the judges and information on the court system to the public would typically be covered by such Commissioners' mandate. If the Commissioner detects wrongdoing s/he can ultimately forward recommendations to the relevant branch of the judiciary, possibly with copies to the national Court Administration to increase the likelihood of recommendations being followed.

Civil society

Beyond formal appeal mechanisms the public, the media and NGOs are all parties interested in having and promoting an open and transparent judiciary. Together civil society can make a powerful scrutiny of the way the openness principles are implemented by the judiciary, including how requests for information are treated. Such control is for instance carried out through judicial system monitoring programmes.

Conclusion and recommendations

Conclusion

Internal as well as external openness is a precondition for guaranteeing an accountable and non-corrupt judiciary. It is also a precondition for ensuring the public's trust in the justice system as well as access to and use of it.

The international human rights standards provide for openness of judicial proceedings only. Therefore, the level of openness of the judiciary largely depends on the requirements set forth in national legislation as well as the spirit in which the judiciary applies the legislation in practice. Openness should be provided in terms of access to information from courts and court administrations as well as access to judicial proceedings. Some limitations may be made to protect competing legal interests, but they need to be strictly necessary.

Openness is not only important vis-à-vis the citizens, but also within the justice system itself. Thus, the staff should be well informed about law and case-law and have access to case-files in order to be properly equipped to make decisions respecting the rule of law.

Recommendations

- The leadership must send clear signals to employees that it wishes to work for an open judiciary.
- Procedures and organization should be part of an openness approach.
- Case-law should be made publicly accessible, e.g. through databases.
- The judiciary should at their own initiative provide wide access to information about their function and activities.
- The judiciary should raise the public awareness of its role and how to access justice.
- The public should have the possibility to appeal refusals of access to information.

3.4 NGOs

Regulation on openness of NGOs

NGO characteristics	NGO is the abbreviation of ‘non-governmental organization’ which means that NGOs do not belong to the state apparatus. NGOs are powerful actors of civil society and are established by the public to serve all kinds of public interests and activities. NGOs may take a more or less formalized shape according to the aim they serve, be it as a small local initiative or as a highly organized interest organization. NGOs have different denominations such as voluntary organizations, community-based organizations, civil society organizations, but here the term used is NGO.
International and national law	NGOs are not bound by any international or national regulation on openness and access to information. Such legislation only pertains to public institutions. Openness in terms of publication of annual accounts may nevertheless be a condition for achieving VAT-exemption as is the case in Denmark. Working with issues of openness and transparency and advocating for greater openness in the public administration, NGOs must nevertheless be prepared to be open and transparent about their own activities in order to lead by example. Complete openness may be cumbersome to NGOs in countries where publication of e.g. funding sources may lead to state intervention. Nevertheless, transparency with regard to management and finances of the NGO should prevail wherever possible without compromising the work of the organization.
NGO ethics	Attempts have been under way to work out a specific set of NGO ethics which include recommendations as to NGO transparency. Such ethics or guidelines are recommendable to ensure that NGOs live up to the standards they themselves demand public institutions should adhere to.
Example	

Ethics Code of Georgian NGOs¹⁰³

The Ethics Code is a self-regulation mechanism for NGOs. The essence of the Code is to declare minimum behaviour standards for Georgian NGOs. These standards address the openness and transparency of NGO activities, their public image, their relationships with society, government, political parties, donors and the general public, as well as internal democratic governance and financial accountability.

Role of NGOs in a culture of openness

NGOs operate at different levels of society and also work to a varying degree with aspects of openness and access to information. It is common for NGOs that they serve more or less specialized aspects of public interest and that they are well placed to focus on access to information. It is also general to all NGOs that the clear distinction from the state makes them particularly apt to critically assess the performance of public institutions, including to assess whether and how public institutions provide access to official information. It also enables them to articulate and demand accountability as well as promotion of good openness practices from public administrations.

Specialized NGOs

Some organizations have specialized in working with promotion of openness and access to information, either broadly speaking or in relation to a specific topic such as access to environmental information or access for vulnerable groups. Due to the general character of such work it is typically carried out by NGOs operating at the national level, but can of course also be undertaken by locally based NGOs. The role of such specialized NGOs is primarily to raise the public awareness of the right to know about conduct of public affairs and to press for the development of an official culture of openness. However, in some societies there is no culture of openness and official structures therefore fail to fulfil their obligation to inform the citizenry about their rights and freedoms as well as matters of public interest. In order to enable the population to exercise their rights and freedoms and to take actively part in society it is important that NGOs breach such information gaps in the absence of state initiatives or will to do so.

The present chapter on access to information from an NGO perspective first and foremost applies to the specialized NGO, which works directly with the promotion of openness and access to information. However, some of the tools described can certainly also be used by non-specialized organizations and by the general public.

Theme based NGOs

Most NGOs work on other thematic issues than openness itself. This type of organization can be found at all levels of society, be it the national, regional or local level. However, openness is still important to their work to the extent that they seek access to information from public institutions, sometimes with the assistance of the specialized NGOs. In terms of openness and access to information the role of such NGOs is to critically review official information within their field, and to provide general information to the public wherever the public

institutions fail to do so. Like the specialized NGOs their role also is to empower the population through awareness-raising.

Example

The Access Initiative in the environmental field¹⁰⁴

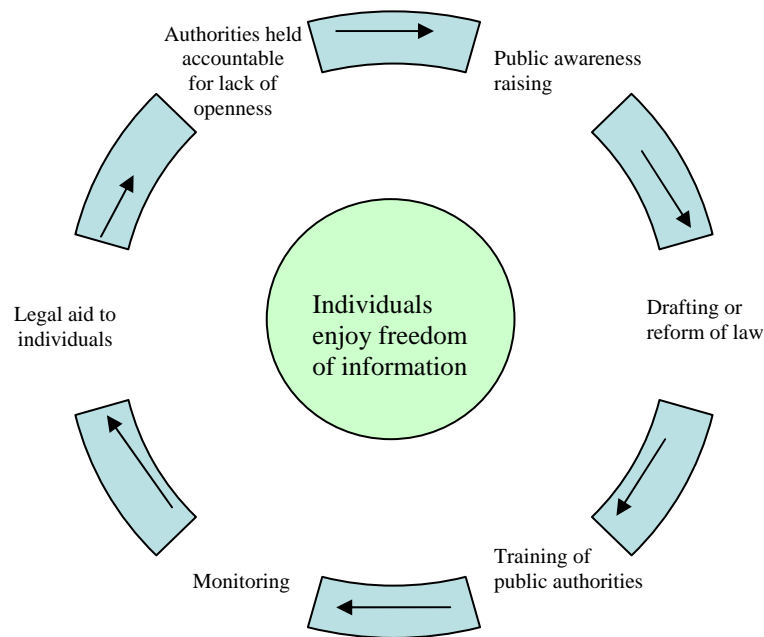
The international organization The Access Initiative (TAI) seeks to ensure that people have a voice in the decisions that affect their environment and their communities. TAI partners promote transparent, participatory, and accountable governance as an essential foundation for sustainable development. To achieve this goal, partners form national coalitions 1) assess government progress using a common methodology, 2) raise public awareness, and 3) set priorities for improvements in policy and practice.

Types of societies and cultures of openness

NGOs across the world work with the promotion of openness and access to information in different types of societies and with different degrees of success. The effectiveness and practicability of such promotion tools depend on the context in which they are used. Whilst some organizations e.g. battle to promote an access culture and access to information acts in their countries, it might be possible for organizations in countries having legislation in place to work on a more refined level, for instance in support of training of public officials to combat corruption and abuse of power. And where some NGOs operate in countries with good telecommunication infrastructures others are bound to use alternative choices of communication tools for economic or technological reasons.

Roughly speaking there are three types of societies, namely democracies, transitional democracies, and authoritarian societies. NGOs promoting openness and access to information are typically located in democratic and transitional democracies, simply because full or some level of openness is considered a basic societal value. In most authoritarian societies NGOs barely exist. And if they exist they may not stand many chances to actively and directly promote openness measures with public institutions. Attempts to break with a culture of secrecy in such societies may still be possible, although they may be difficult and sometimes even dangerous for those involved. Therefore, promotion work is mostly carried out indirectly and often through external actors. In Belarus local organizations such as the Belarusian Association of Journalists therefore resort to use of international counterparts to pressure the Belarusian leadership to provide information and change conditions. The cooperation is also used to lobby international bodies.

The model below illustrates efforts which NGOs can make to promote openness of public authorities with public as well as private bodies and individuals:



Tools of NGOs promoting openness of public authorities

NGO initiatives directly targeting openness may aim at different groups in society according to the aim pursued and the stage of openness in the concrete society. It depends on the context, the connections and resources of the concrete NGO which strategy it chooses to follow. Common for all such initiatives seems to be that an initial phase of awareness raising is necessary before embarking on concrete activities. Nobody can be expected to press for openness if the person does not understand the value of this principle and how s/he may benefit from it him- or herself. And official structures cannot be expected to embark on a sometimes painful path of change from secrecy to openness unless they see the advantages flowing from public trust, scrutiny and participation.

A culture of openness is a societal value which needs to be accepted and adhered to by public authorities. It goes hand in hand with other democratic values such as the rule of law, responsibility, accountability and customer orientation. To foster and nurture a culture of openness is a process rather than a single project. The realization of such a process does not happen overnight. If anything, it takes place at a speed corresponding to the readiness of the given society to change its mindset from a closed to an open one. In such circumstances respected NGOs may be very influential in moving the development of a culture of openness forward.

But which initiatives can be taken to introduce an openness culture and move it forward? And which public institutions or

persons are obvious for NGOs to target in such work? NGOs can take different measures in this regard. Below we have sought to map out such tools, starting with development of a strategy on how to promote openness and access to information. The section on 'strategy' is thought as a sequence of steps to take and therefore lists a number of openness measures which are all treated further in the following sections. However, all measures can be used independently of one another. There is some degree of overlap between the different sections since some of the tools are closely interrelated.

The list of measures or tools does not pretend to be exhaustive; there may be other measures which are more apt for NGOs to use in a given situation.

Strategy

A strategy is a tool that all institutions, including NGOs, can use to focus their mission, objectives and activities. It may be used to plan priority areas as well as to adjust activities along the course. NGOs may also make use of strategies to define institutions to cooperate or dialogue with in order to realize the set objectives. It should be kept in mind that in some societies the institutional memory and the continuity of institutions are still weak factors and that the success of a specific initiative therefore may depend on the involvement of particularly proactive persons of that specific body.

When working on promotion of openness and access to information strategic choices to make depend of course on the actual level of openness in the country, including whether the right of access to information is protected by the Constitution or by statute. Concrete activities to embark on in different phases of building respect for the openness principle include:

- Analysis and research of international standards on openness, freedom of information and anti-corruption measures to prepare the ground for general understanding of the underlying principles.
- Promotion of principles with the general public.
- Promotion of principles with public authorities.
- National as well as international networking to exchange information and receive support.
- Promotion of preparatory work and draft law.
- Training of civil servants and private professionals.
- Monitoring implementation of law.
- Legal aid in cases where access to information has been rejected by authorities.
- Legal aid to particular groups, e.g. whistle blowers.
- Continuous provision of comments on draft laws and laws not complying with international standards.

Example

Mission and objectives of Bulgarian Access to Information Programme¹⁰⁵

As an example, the Bulgarian NGO, Access to Information Programme (AIP), has defined its mission and objectives in very clear terms:

- The **mission** of AIP is
 - to facilitate implementation of Article 41 of the Bulgarian Constitution which establishes the right of information.
- The **goals** of AIP are:
 - To encourage individual and public demand for information through civic education in the-right-to-know area,
 - To work for transparency of government at different levels, advocating a more open supply of information,
 - To facilitate the execution of the right to know.

AIP started to work on access to information in Bulgaria in 1996 and has achieved surprisingly good results with its promotion work in relation to official structures. The organization has deliberately sought to be a neutral actor in Bulgarian society, being neither partisan nor affiliated with media organizations. This is part of the explanation of its success as well as the authority it has gained with the public administration.

Analysis and research

To advocate for a culture of openness with official structures as well as with the general public, NGOs must themselves be familiar with the core of the underlying principles. To give a fair overview of international and national legal standards as well as the actual state of openness, subjects to examine could follow, or be inspired by, this structure:

- literature examining the content of the principles of openness and transparency,
- binding international standards on the right to access to information,
- international standards on anti-corruption measures,
- practice according to international standards,
- international standards of non-binding nature,
- level of protection of freedom of information in national constitution,
- existing national legislation on the right to access to information and anti-corruption measures,
- existing guidelines for use of access to information acts,
- procedures of national authorities
- existing level of information provided on own initiative by national authorities,
- examples of practice under national law,
- examples of law and practice of other countries.

Research and analysis provide a number of useful arguments in relation to promotion work with structures and individuals who could be instrumental in promoting preparatory legislative work.

The following organizations provide information relating to the openness principle, standards of freedom of information and anti-corruption measures which could be useful to any analysis and research:

- Article 19 Global Campaign for Free Expression¹⁰⁶,
- Transparency International¹⁰⁷,
- Open Society Justice Initiative¹⁰⁸,
- Commonwealth Human Rights Initiative¹⁰⁹,
- Freedom of Information Advocates Network¹¹⁰,
- Statewatch¹¹¹,
- Human Rights Watch¹¹²,
- Privacy International¹¹³,
- Electronic Privacy Information Center¹¹⁴,
- World Bank¹¹⁵,
- UNDP¹¹⁶.

Freedominfo.org publishes a Global Survey on the state of freedom of information and access to government records¹¹⁷. Country by country, the report goes through all information acts around the world, although without focusing at the level of implementation. A supplementary comparative legal survey was elaborated by UNESCO in 2003¹¹⁸.

Public awareness raising

To empower the general public to engage in interaction with public authorities and to make requests for information it is important to raise the general awareness of rights and possibilities. Within the 'general public' individual citizens, civil society and the media are important target groups of public awareness raising.

A couple of basic things are specifically important to underline in such awareness raising activities:

- the content of the right to know principle,
- why it matters to know,
- what is corruption,
- what information is it important to get access to,
- where to get information,
- when does the public have a right to be heard in specific cases of public interest,
- when does the public have a right to participate in meetings of public institutions,
- that the public must be willing to take part in public affairs in order to influence the conduct of public affairs and fight maladministration and corruption,
- examples or cases showing that it matters to demand the right to know and to participate, including examples from other countries.

Awareness raising activities can be conducted in different ways. Some of these ways include campaigns in written and audio-visual media, websites at the internet, theatre plays illustrating

specific situations, public distribution of information leaflets and teaching in seminars or schools.

Example

Wireless communication in Cambodia and Uganda

A couple of projects also use wireless communication: DakNet in Cambodia makes use of wireless entities placed on motor bikes to send e-mails from one village to the next. And HealthNet in Uganda provides hospital doctors with updated information on epidemics and the like through a combination of hand held computers and mobile phones.

The choice of ways to communicate should correspond with communication infrastructures and level of education of the country in mention. For instance it does not make sense to conduct an internet campaign in a country where extremely few people have access to the Internet and where illiteracy is widespread.

Examples

Journalist network in Bulgaria

In Bulgaria the Access to Information Programme (AIP) started a massive campaign on access to information in 1997 by contacting a number of journalists. The journalists were invited to send cases on refusals of access to information to AIP. The purpose was not only to provide legal assistance to the journalists, but indeed also to initiate a public discussion of the right of access to information with a view to press for elaboration and adoption of an information act. Many journalists contacted the organization and still today some of these are involved in a national monitoring network set up by AIP.

Anti-corruption television sketches in Niger

In 2001 the Association Nigérienne de Lutte contre la Corruption sought to raise public awareness about the problem of corruption in Niger through a series of television sketches. 3 films were produced on sensitive issues in relation to the administration of health, education and customs. The films contributed to a public understanding of the negative impact of corruption on society as a whole.

In countries where access to information acts do exist, it is important to guide the public to exercise their right to information. The public e.g. needs information about:

- list of relevant legislation, including international legal framework,
- understanding of the legal basis,
- how to make an information request,
- how the law has been used by others – successfully as well as unsuccessfully,
- list of addresses of important public institutions.

Examples

Informing the public in Armenia¹¹⁹

The Armenian organization Civil Society Institute conducted a freedom of information campaign in 2002-2003. The campaign aimed at increasing public knowledge of the right to access to information. The organization used newspapers and wide distribution of brochures to reach their audience.

20 years of campaign in the United Kingdom

The Campaign for Freedom of Information, a small UK-based NGO, is another example of an awareness raising campaign. The campaign is supported by approximately 90 British organizations and is not affiliated with political parties. The campaign is 20 years old and was originally established to lobby for the introduction of an information act. The campaign succeeded in securing adoption of such legislation and the act entered into force on 1 January 2005. One of the remaining purposes of the campaign is to assist the public to make use of it. The campaign has therefore run a series of training courses to help users learn how to apply the act. Some of the topics addressed in these training sessions include: how to use the act to challenge decisions and uncover stories, how to formulate requests and avoid pitfalls, navigating the way round the exemptions of the act, the public interest test and how to challenge refusals and enforce the right of access to information.

Plain language in South Africa¹²⁰

Part of awareness raising is to make specific information meaningful. In order to make the Promotion of Access to Information Act accessible to the general public the South African NGO Open Democracy Advice Centre (ODAC) developed a plain language version of the act. The plain language version poses and answers questions covering all articles and aspects of the act. The purpose of this effort was to rewrite the legal text into language easily understandable to the population thus encouraging many more to make use of the right of access to information which the act ensures.

The international “Right to Know Day”

A completely different way of raising awareness of the right of access to information, is the decision of the international organization ‘Freedom of Information Advocates’ to nominate 28 September to be the international "Right to Know Day". The day is used by freedom of information activists around the world to promote the right of access to information and to campaign for open, democratic societies in which there is full citizen empowerment and participation in government. Most members use this day to give a prize to a member of the general public who has fought actively for the right of access to information.

Networking

Networking or cooperation across professions and borders is a way to join forces with like-minded individuals and institutions and allows for exchange of information and expertise. Network cooperation can take many shapes, including physical meetings as well as electronic mailing-lists and newsletters. Depending on the structure and quality of such a network it may be a powerful tool to strengthen pressure on a particular institution or to clearly introduce a certain topic to the official agenda. Experience from the network approach shows that it may be to the benefit of work at the national level and also be an easier way to take up specifically sensitive issues.

Example

Regional information sharing in the Balkans¹²¹

Some networks have been established with a view to information sharing and working more intensively with freedom of information in terms of promoting adoption of information acts and supporting implementation of relevant legislation. Among these is a regional network in Southeast Europe which was established in 2002 to develop strategies to promote freedom of information in the region. Human rights NGOs from Macedonia, Croatia, Kosovo, Montenegro and Serbia initially worked together with Open Society Justice Initiative and Article 19 Global Campaign for Free Expression to map out the regional situation. Then strategy sessions were organized in the respective countries with the aim to promote adoption of information acts. In some of the countries, public officials were invited for the strategy discussions. As a result of the network's efforts freedom of information was put on the official agenda and most of the countries recently adopted information acts or are in the process of doing so.

Drafting or reform of law

NGOs may seek to influence the law drafting process with a view to encourage the public structures to introduce legislation guaranteeing access to information and maximum openness of procedures and decision making of public institutions. A series of steps are wise to follow to gain as much influence as possible on the initiation of the drafting process and the drafting itself:

- public promotion of the basic principle of openness, namely transparency in government, and the benefits flowing from it,
- carry out preparatory work through research or analysis and possibly draw up model law¹²²,
- promote preparatory work publicly,
- liaise with NGO-partners to get their support in the promotion process,
- seek support from key figures in parliament, parliamentary committees and political parties to advocate for the protection of the identified principles by law,
- seek support from the international community and organizations,
- participate in – or take responsibility for – work on law drafting, or selected openness provisions of a bill, in cooperation with NGO partners, responsible ministries and possibly national or international experts,
- offer to participate in debates of relevant parliamentary committees,
- promote the draft law, the underlying principles as well as proposed amendments through conferences or round-tables with parliamentarians, public officials, judges, ombudsmen, lawyers, NGOs and journalists. Participation of international experts can be useful to voice possible critical concerns.

Example

Draft Access to Information Act in Malawi
In Malawi the constitution of 1994 provides for access to information held by public authorities. The right to access to information is not implemented in practice since public authorities often refuse to disclose information. Moreover, the level of illiteracy constitutes a major hindrance to the public's possibility to claim their right to access to information. Seeing this as a problem, experts of the National Media Institute of South Africa (MISA) drafted an Access to Information Act along international standards with the assistance of the Malawi Human Rights Resource Centre. These organizations are currently sensitizing key political stakeholders in Parliament and Ministries to translate the draft into law. Two of the methods used for sensitization are:

- 1) Hosting of seminars where participants are introduced to the openness principles and invited to give their input to the draft in order to create ownership to it, and
- 2) Creation of networks in favour of the draft law to lobby for it in political circles.

Follow up

Not all recommendations from NGOs are followed in the law drafting process and therefore the final act may deviate from the standards suggested. It may be strong in some parts and have shortcomings in others. If NGOs are left with the view that legislative changes are still necessary to make the act comply with international standards, they may choose to make supplementary recommendations at regular intervals. They could also choose alternative ways to illustrate that certain provisions are misplaced or should be repealed, e.g. through legal aid to citizens to ensure that cases of fundamental concern are tried in court.

Strengthening the capacity of public authorities and civil society

Public authorities The adoption of laws and procedures is but one step on the road towards implementation of the principle of openness in government. Implementation of the principle itself takes knowledge of the law as well as subordinate legislation and openness procedures, their purpose and how public authorities may benefit from applying these instruments. To reach this level of recognition and action flowing from it takes time, but the amount of time can be reduced through capacity building efforts.

Training Training is far from always required by or even offered from public training institutions themselves and NGOs are therefore well placed to fill this gap or lack of training capacity. In providing such a service to public institutions, the role of NGOs is to build up a positive idea of open government and to give public officials an incentive to use the legislation and openness principles in practice.

Public officials from all parts of the state apparatus, be it the judiciary or the public administration, sometimes know little or nothing at all about openness principles and how to apply them in practice. NGOs who are experts in openness standards therefore have an important mission to pass on information about these principles as well as on how to implement them.

The fact that it is important for public authorities to receive feed-back from those using the right of access to information in practice is an advantage for NGOs. NGOs themselves are customers of openness and can therefore assist the authorities in pinpointing types of obstacles encountered by users of access to information. Such experience can e.g. be passed on through role plays illustrating specific situations which are troublesome to a person requesting access to information.

It is important to conduct training at a general level in order that all public employees be gradually introduced to a culture of openness. However, training is especially important to public officials directly responsible for handling requests of access to information as well as to their superiors. NGOs wishing to provide capacity building to public employees should seek invitations to train at institutions providing in-service training or at further and higher education institutions.

Example

Article 19 Freedom of Information Training Manual for Public Officials¹²³
 Article 19 has produced this manual as a training resource for use by trainers and participants undergoing training on freedom of information. It primarily addresses public officials, and can therefore be used by NGOs wishing to produce training material within this field.

Structuring work and organization

NGOs experienced in management may be in a position to assist authorities to structure their work in a more responsible and coherent manner thus allowing an increased degree of transparency. This could e.g. be in terms of building up databases, providing information on electronic governance or providing best-practice examples of participatory decision-making.

Civil society

It is not only important to build up the capacity of public authorities. Also civil society should be trained in how they can contribute to opening up society. With a strong and knowledgeable civil society it becomes more difficult for public authorities to keep secretive attitudes.

To build capacity in civil society not only involves training in terms of how to use openness legislation in their work. It also demands transfer of technical skills which enable civil society to promote the specific cause they work for. Advocacy work is but one example of such relevant technical skills.

Example

Advocacy training in Kosova¹²⁴

The Advocacy Training and Resource Center was established in 2001 with the purpose of increasing citizens' and civil society's participation in decision-making in order to further democratic development and regional stability. One of the services that the organization provides is training in advocacy. This training aims at transforming the NGOs from reactive service providers to proactive agents of change who know what techniques to use to support a cause. In 2002, 25 Kosovar NGO leaders were trained together in five thematic groups, based on the issues they work on. Beyond technical training the participants made study tours to advocacy groups in other countries and were requested to make small advocacy campaigns within their field of expertise to learn from their own successes and failures.

Holding public authorities accountable for lack of openness

Monitoring

Monitoring work generally serves the purpose of measuring the extent to which something is in conformity with a specific standard. Monitoring is a tool that NGOs can use to hold public institutions accountable for the progress of implementation of information acts – or lack of it.

Monitoring compliance

In relation to openness and access to information, one way of monitoring is to look at the compliance of national legislation with international standards. Another way is to monitor whether the implementation of the legislation is in accordance with the underlying principles and provisions of the legislation and standards in mention.

Measuring a national act or principles against international standards, the so-called compliance monitoring, is a way to judge whether the act itself protects the right of access to information as prescribed under international law and practice. The result of such monitoring typically calls for adoption of an act, amendments of acts or provisions or for total repeal of an act. National NGOs often make such analyses or statements jointly with international organizations or NGOs to give more weight to critical arguments.

Monitoring implementation

Monitoring the implementation of an act, on the other hand, is a way to evaluate how well this specific act has been translated into action. Has the act been applied at all? Does practice conform to the purpose of the act? Do public authorities chose to offer maximum openness and information? The monitoring assessment should take into account information from authorities themselves, second-hand information as well as information stemming from actual information requests. Parametres to look at include:

- Whether public authorities have knowledge about national and international standards.
- Whether internal guidelines of the public institution exist and whether they promote an active policy of openness.
- Whether it is clear to the public who handles information requests of the public institution.
- Available reports and statistics from public authorities on compliance with their obligation to provide information.
- Whether the public authorities have active communication policies and to which extent they comprise information of public interest.
- Whether meetings of decision-making bodies are open to the public and to what extent this is notified to the public.
- Whether hearings are used to involve the public in decision-making.
- Whether public authorities actually account for their own acts and omissions.
- What level of protection do whistle blowers enjoy.

If it is possible to gather the results of access to information requests, either from caselaw or from people having received positive as well as negative decisions, this allows an analysis of the way and to what extent access to information is provided by the authorities. Useful questions in this respect include:

- Which type of individuals request information.
- How do they request it (in writing or orally).
- Whether any discrimination of specific types of persons can be detected (e.g. minorities or disabled persons).
- Whether help is provided to persons unable to formulate their request.
- Whether help is provided to forward requests to correct institution.
- Whether disclosure takes precedence to refusal of access to information.
- Whether non-disclosure of information is justified insofar as
 - non-disclosure protects legitimate interests,
 - disclosure would cause substantial harm, and
 - non-disclosure is a proportional measure.
- Whether the information provided is timely, precise and easy to understand.
- Whether costs incurred, if any, are not inhibitive or discriminatory.
- Whether refusals are reasoned and accompanied by information on possibility to appeal to higher or other authorities.
- Comparison of practice of different public authorities, including private bodies with public mandates.

Further ideas are developed in the ‘Principles on Freedom of Information Legislation’ of Article 19 Global Campaign for Free Expression. The principles can be used as a tool to monitor the level to which domestic legislation permit access to official information¹²⁵.

Example

Testing public authorities in India through an implementation audit¹²⁶

In 2002 the Indian branch of Commonwealth Human Rights Initiative tested how well a recently adopted Act on Right to Information functioned in the state of Karnataka. A meticulous procedure involving 4 phases was elaborated as a basis for the assessment. Roughly speaking the four phases aimed at:

- 1) Developing a user's guide on the basis of an analysis of the act. A number of volunteers were identified and prepared to submit information requests relevant to themselves to specific public bodies.
- 2) Information requests were filed in a systematic manner and support from high ranking officials was secured. Appeals were filed wherever requests were turned down.
- 3) The findings of the assessment were put together in an 'Implementation Audit of the Karnataka Right to Information Act 2000'. Based on specific criteria the public bodies from whom information had been requested, were rated as 'responsive', 'tentative' or 'inactive'. A public hearing was made involving all the bodies approached as well as key government officials. At the hearing recommendations were put forward and public officials responded by sharing their perceptions and constraints vis-à-vis the act.
- 4) Intensified public campaign and cooperation with volunteers.

All through the assessment the Indian organization supported the volunteers with technical and legal advice at the same time as gathering monitoring experience from them. The volunteers still work with the organization to promote more operational efficacy within public institutions.

Monitoring through test requests¹²⁷

An interesting method used to monitor the level of access to information was developed by NGOs in 5 countries in cooperation with Open Society Justice Initiative. The NGOs arranged simultaneous test requests in 2003 with a number of authorities in their countries (Armenia, Bulgaria, Macedonia, Peru and South Africa). A specific access to information monitoring tool had been developed for the purpose. The requests were made to enable a structured evaluation of how and to which extent access to information was provided by authorities in the respective countries – some of which did not have information acts. Following the test, interviews were sought with all bodies monitored to explain the reasons for the monitoring and its result. Based on the request results it was possible to draw up statistics and analysis. The monitoring showed a will in all 5 countries to conduct public affairs in a transparent manner although the level of transparency was far from satisfactory. A second and more ambitious phase of the monitoring initiative is under way with three times as many countries included.

The same approach was used by the Latvian transparency organization Delna which asked a number of researchers to file requests with state and municipal institutions in 1999. The initiative was taken to promote implementation of the Freedom of Information Act adopted the previous year.

Legal aid

Enforcement of openness provisions and principles is necessary to ensure compliance in practice. Therefore legal aid is an effective tool to apply in the fight against lack of compliance with the authorities' obligation to provide access to information. Litigation is a particularly relevant method to challenge the

possible use of Freedom of Information Acts as shopping lists for exemptions.

Depending on the resources of the NGO, legal aid may be provided both for the initial information request and for helping unsuccessful applicants to formulate and file their appeals as well as to argue their case in court. Usually, selection criteria are developed to focus aid on landmark cases and questions.

Providing assistance in relation to the initial information requests may consist of counsel in relation to what the right of access to information covers, who is entitled to information, how to apply it and where to seek the information. For judicial appeals the aid can also be provided as litigation with a view to strengthen the openness argument.

Case law is not published in all countries, or at least not in its entirety, and NGOs engaging in legal aid may therefore find publication of decisions to be a useful way to inform the judiciary as well as public officials of good and bad practice.

Examples

Freedom of Information Clearinghouse in the United States¹²⁸

The Clearinghouse provides technical and legal assistance to individuals, public interest groups and the media who seek access to information held by public bodies. The organization can be consulted by phone or e-mail. Moreover, the organization has set up a website which contains links and resources to assist citizens in using the Freedom of Information Act as well as information and documentation of issues and cases in which the organization has been involved.

Free litigation and legal consultancy services in Mexico¹²⁹

LIMAC is an NGO working with the promotion of freedom of information in Mexico. Since 2004 LIMAC has offered litigation and legal consultancy services to citizens wishing to exercise their right of access to public information. The organization primarily works with emblematic cases

- 1) Which serve to challenge important but unclear provisions of law,
- 2) Which can establish a precedent in the Mexican judicial system,
- 3) Which can broaden the interpretation of the normative framework for informational freedoms,
- 4) Which favour the general interest in guaranteeing the right to information in a way that benefits Mexican society,
- 5) And which allows legal reform to be promoted or questionable legal dispositions to be repealed.

LIMAC publishes extracts of the decisions at its homepage.

Legal aid to South African whistle blowers fighting corruption
One of the goals of the Open Democracy Advice Centre (ODAC) is to promote the fight against corruption. Therefore the organization has decided to support actual and potential whistle blowers who wish to uncover information about unlawful or corrupt conduct by their employers in line with the procedures in the Protected Disclosures Act.

Lawsuits

Another way for NGOs to promote accountability is by filing lawsuits at their own initiative in cases where they assess that general public interest is at stake if information is not released or if the understanding of a legal provision remains unchallenged. Such cases do not necessarily involve complainants.

Example

Lawsuit against the Hungarian Constitutional Court
In February 2005, the Hungarian Civil Liberties Union (HCLU) lost a lawsuit which it had filed against the Constitutional Court. The lawsuit was filed to get access to a petition which a Member of Parliament had made with the Constitutional Court in order to ask for change of several paragraphs of the Criminal Code. HCLU argued that such a request is information of public interest and that it should therefore be publicly disclosed. The case was lost because the court decided that a petition is not information and therefore not subject to the right of access to information. HCLU has decided to appeal the decision.

Conclusion and recommendations

Conclusion

Initiatives on openness and access to information in official structures often stem from other parts of society than official structures themselves. Often the non-state character of NGOs makes these more apt to be involved in the preparation of openness initiatives.

NGOs working with openness and access to information should promote these standards not only with public institutions, but also with civil society. By addressing both providers and requesters of information and services NGOs can contribute to a better understanding of the standards at the same time as pressing for use of them.

A series of tools are at the disposal of NGOs which promote openness and access to information. They include assistance to law drafting, awareness-raising, networking, monitoring and legal aid.

Recommendations

- When requesting openness from public institutions NGOs must lead by example.
- NGOs should promote openness of public institutions both

- generally in relation to the legal and procedural framework, and
 - specifically in relation to the NGO's subject area.
- Within their subject areas NGOs should seek to provide the public with information which state bodies fail to provide.
- NGOs should raise public awareness about the benefits of openness of public affairs and should encourage the public to participate in policy- and decision-making processes.
- NGOs should seek alliances with national as well as international counterparts to strengthen efforts to promote openness.
- NGOs should monitor
 - whether public bodies comply with legal requirements on openness,
 - the openness performance of public bodies and raise awareness about it.
- NGOs should consider providing legal assistance to individuals to challenge openness practices of public institutions.

4. Conclusions and openness checklists

Conclusion	Openness is a precondition for the development of dynamic and democratic societies and institutions. Openness promotes trust between citizens and the public authorities and it builds on the principles of public participation and consensus, accountability and effectiveness. Internal openness also promotes good and reliable administration of public affairs.
Openness principles	<p>An overall set of openness principles can be deduced from international and national law. At the international level the commitment to protect access to information, to combat corruption and to promote good governance is slowly, but steadily, increasing. Corruption Conventions have been adopted on most continents, and in Europe the possibility of adopting a binding instrument protecting the right of access to official records has been discussed for a number of years. At the same time more and more countries incorporate the principles into national legislation thus paving the way for making use of them in practice.</p> <p>When leaving aside NGOs, which are private organizations not bound by these standards, all public institutions looked at in this introduction should be bound by them as a matter of principle. Organizations and public institutions which are not bound by the standards in legal terms can lead by example when promoting openness through adherence to them anyway.</p>
Growing a culture of openness	<p>It takes time to develop a culture of openness and to make all parts of society aware of the advantages flowing from openness. However, it takes an open and dedicated leadership to set the direction and to promote openness as a value within almost any type of institution. Adoption of procedures and establishment of an organization supporting openness are some of the concrete steps which the leadership can take.</p> <p>A culture of openness does not necessarily arise from within an institution. It is also crucial for the development of such a culture that there are critical voices in society which consistently push for transparency of public affairs. Such action supports the efforts which may have started to grow within public institutions themselves.</p>
Stick or carrot?	<p>In some cases incentives can be a way to change behaviour. Economic incentives may be a way to push openness forward. But in other cases institutionalized monitoring and control are necessary means to challenge public bodies' practice of the principles thereby promoting openness.</p>

Assessing the level of openness

When analyzing the level of openness whether at the national or institutional level, a series of indicators provide a useful instrument to single out strengths and weaknesses of the national openness regime or that of an institution. In that context, the type of political system is decisive for the level of openness to be expected, both at the national and at the institutional levels. Whereas authoritarian systems can automatically be expected to rely on a culture of secrecy and control, one of the cornerstones of democracy is to build open and transparent societies founded on mutual trust between authorities and the public.

Below, a set of overall indicators have been defined to provide practitioners with a tool to assess the level of openness at the overall national level, and to determine the level of openness of different types of public institutions.

Openness checklist at national level

Legal standards have been adopted

- Country has ratified international and regional instruments obliging member states to respect freedom of information and data protection and to combat corruption.
- Constitution guarantees freedom of information.
- An Information Act has been adopted.
 - The Act builds on the principle of maximum disclosure.
 - The Act applies broadly to public bodies (incl. to the legislature and the judiciary).
 - The Act includes a general right of access to publicly held information.
 - The Act implies a duty for public authorities to actively inform the public about their activities.
 - The Act contains a limited and clearly formulated scope of exceptions.
 - In principle, no costs for applicants are charged.
- Specific acts apply to some public bodies, e.g. the judiciary.
- An act on anti-corruption measures has been adopted.
- An act on the protection of personal data has been adopted.
- An act on archives has been adopted.
- National legislation or procedures oblige authorities to involve the public actively in relation to specific activities, plans or the like (e.g. through public hearings or debates).

- National legislation or procedures prescribe that the curriculum of relevant further and higher education must comprise introduction to good administration.
- Civil society promotes law reform where no legal framework exists.

Legal standards are promoted in practice

- Authorities make the public aware of the legal standards, including their right to access information.
- There are civil society initiatives focusing on creating public awareness of the right of access to information.
- The public makes use of the standards to get information from public authorities.
- Public officials are made aware of the standards (e.g. general education, specific training).
- Professionals and legal practitioners are made aware of the standards.

Legal standards are applied in practice

- Public employees provide information upon request.
- Refusals are justified with reference to law.
- Authorities mention number of access to information requests granted and/or denied in annual reports or other publicly available material.
- Research exists about national legislation and the application of it in practice.

Relevant and independent review and control mechanisms exist

- Control bodies are empowered to review decisions on openness and access to information (e.g. Ombudsman or Information Commissioner).
 - Control body has made decisions.
 - Decisions of control body are respected by public authorities.
- A specific body has been tasked with overseeing the respect for personal data protection regulation.
- A National State Auditor institution exists and makes institutional audits.
 - What type of audits is it empowered to undertake (financial, performance)?
- Courts are competent to deal with issues of conduct of public authorities.
 - Which courts (e.g. administrative courts or ordinary courts)?

- Case-law exists on issues relating to openness and access to information.

The level of openness is monitored

- National NGOs and/or independent bodies monitor the level of openness and access to information.
- International NGOs monitor the level of openness and access to information (e.g. Transparency International measuring corruption index).
- International Governmental Organizations carry out monitoring.
- Monitoring recommendations are respected by public institutions and implemented in practice.
- Monitoring has led to cooperation between civil society and state institutions, e.g. in terms of capacity building assistance.

Openness checklist at institutional level

Legal framework

- A legal framework on openness applies to the institution.
- Staff has access to legal framework.

Procedures

- A policy of openness/service has been adopted by the institution (information strategy, service strategy) incorporating openness as a crosscutting element of all activities.
- Procedures have been developed for provision of information upon request and at the institution's own initiative.
- A procedure has been developed for multimedia approach to information (meetings, e-government, TV, radio, local newspapers, news bulletin, letters) in order to optimize communication with the citizens.
- An information support system has been established for the staff ((electronic) filing system, database, intranet) to enhance communication with the public.

Organization

- There is a unified access/point of entry to the institution, e.g. supported by a one-stop shop, a homepage or a service handbook.
- Professional staff is responsible for handling public information and press relations (press officers, service officers, webmaster).

- The institution has an archive, which is maintained and being used.

Information is provided at own initiative

- The institution provides information about its activities and functions at its own initiative.
- The institution has established a maximum response time for citizens'/media's enquiries (applications, enquiries, complaints, requests for/ access to documents) if this is not defined by law.
- Lists of daily mail sent to/from the institution are made available to the public (preferably on a webpage or at a one stop shop desk).
- The library of the institution serves as information centre of the institution (service handbook, internet access, access to development plans etc.).
- Evaluations of the institution are made public.

Public participation is encouraged

- Public hearings take place prior to major decisions with implications at national or local level (town and country planning, budgeting, sector policies, education, environment, welfare).
- Key meetings, such as city council meetings, are open to the public together with agendas and minutes of meetings.
- User Boards have been established to enhance openness about - and participation in - service delivery.
- Citizen Advisory Groups/Panels have been established to discuss broader policy issues and to enhance communication with the institution on development and service delivery.

Openness capacity is strengthened

- The leadership of the institution demands or encourages the staff to upgrade their openness capacity.
- The institution exchanges experience with other institutions regarding best practices.

Accountability

- The institution has established benchmarking or evaluation of its administration. Findings are reported to the public.
- The institution provides information about its budgets and its accounts.

Mechanisms to
review and control
the institution exist

- The institution has transparent auction and tender procedures for public procurements.

- The institution has set up an internal complaints mechanism and/or accepts appeals of its decisions.
- Public bodies review and control the institution.
- The institution respects decisions and/or recommendations of review and control bodies.

Monitoring

- NGOs monitor the information performance of the institution.

Annex 1 Relevant literature and internet references

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Civil society

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Accountability <http://www.accountability.org.uk>

Article 19 Global Campaign for Free Expression <http://www.article19.org/>

Access to Information Programme in Bulgaria http://www.aip-bg.org/index_eng.htm

Campaign for Freedom of Information in Great Britain <http://www.cfoi.org.uk>

Commonwealth Human Rights Initiative <http://humanrightsinitiative.org>

Electronic Privacy Information Center <http://epic.org>

Foundation for Local Government Reform in Bulgaria <http://flgr.org>

Freedominfo.org <http://www.freedominfo.org>

Freedom of Information Advocates Network <http://foiadvocates.net>

Human Rights Watch <http://www.hrw.org>

International Conference of Information Commissioners
<http://dev.telecomabmex.com/infocancun/index.php?lang=eng&seccion=linksAcceso>

International Records Management Trust <http://www.irmt.org/about.html>

Open Democracy Advice Centre in South Africa <http://www.opendemocracy.org.za>

Open Society Justice Initiative <http://justiceinitiative.org>

Privacy International <http://www.privacy.org>

Statewatch <http://www.statewatch.org/foi.htm>

The Carter Center <http://www.cartercenter.org>

Transparency International www.transparency.org

Public administration

Department of Constitutional Affairs of Great Britain <http://www.lcd.gov.uk/foi/>

Ireland FOI Central Policy Unit <http://www.foi.gov.ie>

Independent institutions

British Information Commissioner <http://www.informationcommissioner.gov.uk>

Ombudsman of the European Union <http://www.euro-ombudsman.eu.int>

Information Commissioner of Canada <http://www.infocom.gc.ca>

Irish Information Commissioner <http://oic.gov.ie>

International Conference of Information Commissioners
<http://dev.telecomabmx.com/infocancun/index.php?lang=eng&seccion=intro>

International Ombudsman Institute <http://www.law.ualberta.ca/centres/ioi/>

The OmbudsNet in Latin America <http://www.iidh.ed.cr/Comunidades/Ombudsnet>

International governmental organizations

Council of Europe Media Section http://www.coe.int/T/E/Human_Rights/media/

European Commission Governance Section <http://europa.eu.int/comm/governance/>

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http://www.oecd.org/topic/0,2686,en_2649_37447_1_1_1_1_37447,00.html

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- ¹ See Stephen Lamble in 'Freedom of information, a Finnish clergyman's gift to democracy' at http://members.optusnet.com.au/~slamble/freedom_of_information.htm.
- ² See www.article19.org.
- ³ For Indian Freedom of Information Act see <http://www.manupatra.com/downloads/acts/the%20freedom%20of%20information%20act%202002.htm>. For Freedom of Information Ordinance of Pakistan see http://www.crcp.sdnpk.org/ordinance_of_2002.htm.
- ⁴ Article 3 of the Law Concerning Access to Information Held by Administrative Organs of 1999. See <http://www.soumu.go.jp/gyoukan/kanri/translation3.htm>.
- ⁵ Cf. Article 14 of the Promotion of Access to Information Act of 2000. See Bill at <http://www.opendemocracy.org.za/Promotion%20of%20Access%20to%20Information%20Act.pdf>.
- ⁶ See The Role of Public Administration in Providing Information, Information Offices & Citizens Information Services, by Bart W. Èdes, presentation at the EIPA Seminar on 'An Efficient, Transparent Government and the Rights of Citizens to Information, 29-30 May 2000, Maastricht, The Netherlands.
- ⁷ Ibid, section 26.
- ⁸ Simon Burall, Hetty Kovach, and Caroline Neligan, Global Accountability Report I: Power without Accountability. To be found at http://www.wto.org/english/news_e/news03_e/gar2003_e.pdf.
- ⁹ Cf. Article 6 of the Access to Public Administrative Files Act.
- ¹⁰ More recently, the Council of Europe has drawn up a set of minimum principles to guide member states in their law and practice. Recommendation R (2002)2 of the Committee of Ministers to member states on access to official documents. Adopted on 21 February 2002.
- ¹¹ The Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters adopted by the United Nations on 25 June 1998. The Convention entered into force on 30 October 2001.
- ¹² In 1993, the United Nations Commission on Human Rights decided to appoint a Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The mandate of the Rapporteur is to communicate with states about violations of freedom of information, to undertake fact-finding country visits and to submit reports to the Commission on Human Rights.
- ¹³ See Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, E/CN.4/1998/40, paras 11 – 19 and Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, E/CN.4/2000/63, paras 42 - 44.
- ¹⁴ Cf. E/CN.4/2000/63, page 15 f and annex II.
- ¹⁵ The Charter was adopted by the Organization of African Unity in 1981, and it entered into force 5 years later in 1986. All African countries are state parties to the Charter.
- ¹⁶ Adopted at the 32nd Ordinary Session of the African Commission on Human and Peoples' Rights, October 2002. <http://www.article19.org/docimages/1600.pdf>.
- ¹⁷ The Convention entered into force in July 1978. 25 out of 34 American countries are states parties to the Convention.
- ¹⁸ The Rapporteur took office in 1998. The office has included freedom of information and access to information as an integral element of its work as also documented in all annual reports since 1999.
- ¹⁹ For principles and accompanying background documents see <http://www.oas.org/main/main.asp?sLang=E&sLink=../documents/eng/aboutoas.asp>.
- ²⁰ AG/Res. 1932 (XXXIII-O/03), adopted at fourth plenary session on 10 June 2003.
- ²¹ See Article 4 of Inter-American Democratic Charter, adopted on 11 September 2001 in Lima, see http://www.oas.org/charter/docs/resolution1_en_p4.htm.
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- ²³ See <http://www.ahrchk.net/charter/>.
- ²⁴ See <http://www.pogar.org/themes/reforms/documents/dacharter.pdf>.
- ²⁵ The Convention entered into force in September 1953.
- ²⁶ Adopted by the Committee of Ministers on 25 November 1981 at the 340th meeting of the Ministers' Deputies.
- ²⁷ DH-MM(95)4, Declaration on Media in a Democratic Society, 7 – 8 December 1994.
- ²⁸ See [http://www.coe.int/T/E/Human_rights/rec\(2002\)2_eng.pdf](http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf).

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- ²⁹ The Convention entered into force on 30 October 2001. There are currently 32 States Parties to the Convention.
- ³⁰ See <http://www.unece.org/env/pp/acig.pdf>.
- ³¹ See Case of Leander versus Sweden, number 10/1985/96/144 of 27 March 1987.
- ³² *Ibid*, para 74.
- ³³ See <http://europa.eu.int/en/record/mt/top.html>
- ³⁴ See <http://statewatch.org.COUNCODE.html> and <http://europa.eu.int/en/comm/accdoc/comdec.html>.
- ³⁵ See <http://europa.eu.int/eur-lex/en/treaties/dat/amsterdam.html#0001010001>.
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- ³⁸ Case T-194-94, Carvel and Guardian Newspapers versus Council [1995] ECR II-2765. See http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61994A0194.
- ³⁹ See para 65 of decision.
- ⁴⁰ See <http://www.euro-ombudsman.eu.int/code/en/default.htm>.
- ⁴¹ Resolution 55/2, United Nations Millennium Declaration, adopted by the General Assembly on 8 September 2000, see <http://www.un.org/millennium/declaration/ares552e.htm>.
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- ⁴³ See http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf.
- ⁴⁴ See http://www.oas.org/juridico/english/ga03/agdec_31.htm.
- ⁴⁵ See <http://www.oas.org/juridico/english/Treaties/b-58.html>.
- ⁴⁶ See <http://www.oecd.org/daf/ASIAcom/ActionPlan.htm>.
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- ⁵⁴ The Human Rights Committee is a body of independent experts who monitor the implementation of the ICCPR by the state parties to the Convention. The Committee publishes its interpretation of the content of the human rights provisions contained in ICCPR. These are known as general comments.
- ⁵⁵ Paras 7 and 10 of CCPR General Comment 16, see footnote 16.
- ⁵⁶ See http://europa.eu.int/comm/internal_market/privacy/instruments/un_en.htm.
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- ⁶⁰ IACHR, Annual Report 2001, Volume II, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, Report on Action with Respect to Habeas Datas and the Right to Access to Information in the Hemisphere. See <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=137&IID=1>.
- ⁶¹ See section 2.2.5.
- ⁶² See M.S. versus Sweden, number 74/1996/693/885 of 27 August 1997, paras 35-41.
- ⁶³ See [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-63583&als\[theme\]=Data%20Protection%20and%20Privacy%20Laws](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-63583&als[theme]=Data%20Protection%20and%20Privacy%20Laws).
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- ⁶⁶ Recommendation of the Council Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data, adopted on 23 September 1980, see http://www.oecd.org/document/18/0,2340,en_2649_34255_1815186_1_1_1_1,00.html.
- ⁶⁷ It was directly warranted under Article 10 of the South African Promotion on Access to Information Act of 2000 that such guidelines were to be elaborated to assist the administration staff. See <http://www.opendemocracy.org.za/Promotion%20of%20Access%20to%20Information%20Act.pdf>.
- ⁶⁸ See <http://www.flgr.bg/?act=cms&cid=690&id=183.1>
- ⁶⁹ See terms of reference at <http://www.jm.dk/wimpdoc.asp?page=document&objno=63256>.
- ⁷⁰ See http://www.oefre.unibe.ch/law/icl/sw03000_.html.
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- ⁷⁴ See <http://www1.worldbank.org/publicsector/egov/seoulcs.htm>.
- ⁷⁵ See <http://www.noegletal.dk/>.
- ⁷⁶ See <http://www.oppnasverige.gov.se/>.
- ⁷⁷ <http://www.foi.gov.uk/>.
- ⁷⁸ Cf. Consolidated Act on General Education no. 535 of 14/06/2004. See http://www.retsinfo.dk/_GETDOC1/_ACCN/A20040053529-REGL.
- ⁷⁹ See <http://www.article19.org/>.
- ⁸⁰ See <http://www.accesspro.org/#about>.
- ⁸¹ To provide forums for discussion of standard setting as well as sharing of information and expertise at international and regional levels the International Organization of Supreme Audit Institutions (INTOSAI) as well as regional organizations were created. Further information to be found at: <http://www.intosai.org/>.
- ⁸² In 1991, the Danish National State Auditors' office was detached from the Ministry of Finance and came under parliamentary control in order to ensure the independence of the office. Since the institution is no longer part of the administration, openness of this institution is regulated by a separate Notice of Instruction for the Auditor General on relations to the Public and the General Administration. Further information to be found at: <http://www.rigsrevisionen.dk/uk/default.htm>.
- ⁸³ Principles Relating to the Status of National Institutions. The principles were defined at an international workshop in 1991 and were codified by the UN Commission on Human Rights in Resolution 1992/54 of 3 March 1992, annex (E/1992/22) and the General Assembly in Resolution 48/134 of 20 December 1993, annex.
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- ⁹⁰ See <http://www.nhri.net/>.
- ⁹¹ See <http://dev.telecomabmex.com/infocancun/index.php?lang=eng&seccion=intro>.
- ⁹² See Section 124 of the Malawian Constitution at <http://www.sdn.org.mw/constitut/intro.html>.
- ⁹³ See http://www.oic.gov.ie/2136_3c2.htm.
- ⁹⁴ See e.g. information about the British Information Commissioner at <http://www.informationcommissioner.gov.uk/eventual.aspx?id=1039&expmovie=1>.
- ⁹⁵ General Comment No.13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84. See [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument).
- ⁹⁶ Ibid.

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- ⁹⁷ The Court Administration was founded on 1 July 1999 pursuant to the Court Administration Act 1998. Prior to that date, the Ministry of Justice was responsible for the administration of the judiciary. The administration of the judiciary is thereby separated from the executive and the legislature. See <http://www.domstol.dk/page17.aspx>.
- ⁹⁸ See <http://www.tsj.gov.ve/userzone/form.asp>.
- ⁹⁹ See http://www.courts.state.hi.us/page_server/News/Reports/8A591A7CE7C27A3EB352F6F2B.html.
- ¹⁰⁰ See <http://www.unece.org/env/hs/wpla/docs/laguidelines.html>.
- ¹⁰¹ See <http://www.landregistry.ie/index.asp>.
- ¹⁰²¹⁰² See <http://www.asianjournalism.com.ph/research-projects-judiciary2.htm>.
- ¹⁰³ See <http://www.advocacy.ge/magazine/ThethirdsectorwillguidethroughEthicsCodenorms.shtml>
- ¹⁰⁴ See www.accessinitiative.org
- ¹⁰⁵ See <http://aip-bg.org>
- ¹⁰⁶ See <http://www.article19.org>
- ¹⁰⁷ See <http://www.transparency.org/>
- ¹⁰⁸ See <http://www.justiceinitiative.org>
- ¹⁰⁹ See <http://www.humanrightsinitiative.org>
- ¹¹⁰ See http://www.foiadvocates.net/index_eng.html
- ¹¹¹ See <http://www.statewatch.org/foi.htm>
- ¹¹² See <http://www.hrw.org>
- ¹¹³ See <http://privacyinternational.org>
- ¹¹⁴ See <http://www.epic.org>
- ¹¹⁵ See <http://www.worldbank.org/wbi/governance/wp-transparency.html>
- ¹¹⁶ See <http://www.undp.org/oslocentre/civilsoc.htm>
- ¹¹⁷ See <http://www.freedominfo.org/>
- ¹¹⁸ See http://portal.unesco.org/ci/en/ev.php-URL_ID=3815&URL_DO=DO_TOPIC&URL_SECTION=201.html
- ¹¹⁹ See <http://www.csi.am/eng/>
- ¹²⁰ See <http://www.opendemocracy.org.za/>
- ¹²¹ See http://www.justiceinitiative.org/activities/foiofoe/foi/foi_adoption
- ¹²² See example of model law at <http://www.article19.org/docimages/1112.htm>
- ¹²³ See <http://www.article19.org/ViewArticle.asp?AreaID=40&SubAreaID=127&PageID=307&ElementID=313&ArticleID=1721&Comment=>
- ¹²⁴ See www.advocacy-center.org/eng
- ¹²⁵ See www.article19.org
- ¹²⁶ See www.humanrightsinitiative.org/programs/ai/rti/india/states/karnataka/imp_audit_methodology.pdf
- ¹²⁷ See www.justiceinitiative.org/activities/foiofoe/foi/foi_aimt
- ¹²⁸ See www.citizen.org/litigation/free_info/
- ¹²⁹ See www.limac.org/mx/modules.pjp?name=Content&pa=showpage&pid=135