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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Freedom of opinion and expression

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted in accordance with Human Rights Council resolution 44/12, focuses on good practices for establishing national normative frameworks that foster access to information held by public entities. After describing the current situation, the Office of the United Nations High Commissioner for Human Rights sets out good practices at the international, regional and national levels and makes recommendations.



I. Introduction

1. In its resolution 44/12 on freedom of opinion and expression, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on good practices for establishing national normative frameworks that foster access to information held by public entities. The Council also requested OHCHR, in the preparation of the report, to seek the views of States, non-governmental organizations, national human rights institutions and other relevant stakeholders, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and to submit the report to the Council at its forty-seventh session.

2. At its forty-seventh and forty-eighth sessions, the Human Rights Council was informed that, in the light of the ongoing financial constraints faced by the Organization, OHCHR had not been in a position to implement that mandate within the relevant deadlines and that it aimed to submit the report to the Council at its forty-ninth session, as the financial situation permitted.¹

3. In preparing the present report, OHCHR sought contributions from States, international and regional organizations, national human rights institutions and non-governmental organizations.² In addition, it sought the views of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The report also draws on public sources, including the work of United Nations and regional human rights mechanisms and of scholars, practitioners and civil society organizations.

II. Applicable international and regional norms and standards

4. The right of access to information is recognized in international human rights law. Article 19 of the International Covenant on Civil and Political Rights, echoing article 19 of the Universal Declaration of Human Rights, protects everyone's right to seek, receive and impart information of all kinds. States have the obligation to respect and ensure the right of access to information to everyone within their jurisdiction without distinction of any kind.³ States must take all necessary measures, legislative and otherwise, to give effect to human rights within their domestic systems.⁴ The right of access to information covers information held by public authorities. As highlighted by the Human Rights Committee, the obligation applies to all branches of government⁵ and may include other entities carrying out public functions.⁶ The right applies irrespective of the content of the information and the manner in which it is stored.⁷

¹ [A/HRC/48/37](#).

² As of 28 December 2021, contributions had been received from Afghanistan, Argentina, Armenia, Bahrain, Brazil, Chile, Colombia, Croatia, Ecuador, Honduras, India, Iraq, Italy, Lebanon, Maldives, Morocco, Mongolia, the Netherlands, Norway, Poland, Qatar, Romania, the Russian Federation, Saudi Arabia, Slovakia, Slovenia and Sweden. Contributions were also received from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Office on Drugs and Crime (UNODC), the International Criminal Police Organization (INTERPOL), the national human rights institutions of Argentina, Poland, Romania and Portugal, Commission d'accès à l'information d'intérêt public et aux documents publics of Côte d'Ivoire, Article 19: International Centre against Censorship, Asociación por los Derechos Civiles, Center of Law and Democracy, Comité Español de Representantes de Personas con Discapacidad, Child Rights Connect, Citizens against Hate, the Digital Rights Foundation, the International Federation of Library Associations and Institutions, the International Human Rights Commission, the Jubilee Campaign and the World Federation of the Deaf.

³ International Covenant on Civil and Political Rights, art. 2 (1).

⁴ Human Rights Committee, general comment No. 34 (2011), para. 8.

⁵ *Ibid.* and general comment No. 31 (2004), para. 4.

⁶ Human Rights Committee, general comment No. 34 (2011), paras. 7 and 18.

⁷ *Ibid.*, para. 18.

5. The right in article 19 (2) of the International Covenant on Civil and Political Rights may be restricted in accordance with the requirements provided in article 19 (3). That is, any restrictions must be provided by law,⁸ on grounds specified in article 19 (3),⁹ and be necessary¹⁰ and proportionate.¹¹ In addition, restrictions shall not be discriminatory.¹² The State restricting the right of access to information must demonstrate that the restriction is compatible with the aforementioned conditions.¹³

6. Legitimate grounds for restricting the right of access to information are the respect of the rights or reputations of others, as well as the protection of national security, public order and public health or morals. Information regarding alleged violations of human rights or violations of international humanitarian law is subject to an overriding public interest in disclosure and cannot be withheld on grounds of national security.¹⁴ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that widespread secrecy justified on national security grounds is particularly problematic in the context of investigations of human rights violations because it may represent one of the main obstacles to the clarification of responsibilities and consequences of serious violations, ultimately becoming a barrier to the promotion of justice and reparation.¹⁵

7. The right of access to information is also enshrined in other international and regional human rights treaties.¹⁶ The Convention on the Rights of the Child, in article 13, reaffirms that the right of access to information applies to children. The Convention on the Rights of Persons with Disabilities sets forth a general principle on accessibility in articles 3 (f) and 9, and includes specific obligations concerning the right of access to information in its article 21. In particular, article 21 (a) of that Convention stipulates that information intended for the general public should be disseminated in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.

8. At the regional level, article 9 (1) of the African Charter on Human and Peoples' Rights provides for the right to receive information, article 13 of the American Convention on Human Rights for the freedom to seek, receive and impart information, and article 10 of the European Convention on Human Rights for the right to receive and impart information.¹⁷

⁸ Ibid., paras. 22 and 24.

⁹ Ibid., paras. 22 and 28–32. See also, e.g., the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 18.

¹⁰ Human Rights Committee, general comment No. 34 (2011), para. 33.

¹¹ Ibid., para. 34, and general comment No. 27 (1999), para. 14.

¹² International Covenant on Civil and Political Rights, art. 26.

¹³ Human Rights Committee, general comment No. 34 (2011), paras. 27 and 35–36, and [CCPR/C/131/D/2652/2015](#), para. 7.5. On the timing of the assessment of the compatibility, see Human Rights Committee, general comments No. 31 (2004), para. 4, and No. 34 (2011), paras. 34–36.

¹⁴ Human Rights Committee, *Toktakunov v. Kyrgyzstan* ([CCPR/C/101/D/1470/2006](#) and [CCPR/C/101/D/1470/2006/Corr.1](#)), para. 7.7; [A/68/362](#), para. 66; the Global Principles on National Security and the Right to Information (Tshwane Principles), principle 10.A; and the Model Inter-American Law on Access to Public Information and its Implementation Guidelines of the Organization of American States, art. 44.

¹⁵ [A/68/362](#), para. 57.

¹⁶ The International Covenant on Economic, Social and Cultural Rights, art. 12, as interpreted by the Committee on Economic, Social and Cultural Rights in its general comments No. 14 (2000), paras. 11, 12 (b) (iv) and 21, and No. 22 (2016), paras. 7 and 18–19; the Convention on the Elimination of All Forms of Discrimination against Women, arts. 10 (h) and 14 (2) (b); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 13 (2).

¹⁷ See also European Court of Human Rights, *Magyar Helsinki Bizottság v. Hungary*, Judgment of 8 November 2016, and *K.H. and others v. Slovakia*, Judgment of 28 April 2009, para. 44; Inter-American Court of Human Rights, *Claude Reyes et al v. Chile*, Judgment of 19 September 2006; and Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework Regarding the Right to Freedom of Expression* (2010).

9. States have adopted regional treaties specifically on access to information. In 2009, the Council of Europe adopted the Convention on Access to Official Documents, the first treaty on a general right of access to information, which entered into force in 2020.¹⁸ Other treaties regulate the right of access to information on specific matters, such as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).¹⁹

10. The widespread recognition of the right of access to information reflects its importance as a safeguard for principles of international human rights law. In its resolution 44/12, the Human Rights Council stressed the fundamental importance of access to information for democratic participation, transparency and accountability and of combating corruption. This position reflects the approach taken in the 2018 guidelines for States on the effective implementation of the right to participate in public affairs,²⁰ which were prepared by OHCHR pursuant to a request of the Human Rights Council in resolution 33/22 and presented by the Council as a set of orientations for States and other relevant stakeholders in resolution 39/11. In line with the guidelines, States should promote the principles of openness and transparency in all aspects of decision-making processes, and of accountability of public authorities for the implementation of the right to participate in public affairs.²¹

11. At the regional level, the African Commission on Human and People's Rights has similarly expressed that access to information is a foundational requirement of the practice of democratic governance.²² The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has called the right of access to information “a critical tool for democratic participation, oversight of the State and public administration, and the monitoring of corruption”.²³ In connection with the Council of Europe Convention on Access to Official Documents, it has been stated that “transparency of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist ... The right of access to official documents ... strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them”.²⁴

12. Access to information is crucial for the promotion of personal autonomy. The Human Rights Committee has found that the rights in article 19 of the International Covenant on Civil and Political Rights are indispensable conditions for the full development of the person.²⁵ In addition, regional human rights mechanisms and national systems have recognized the so-called principle of habeas data.²⁶ The term refers to the right of access to

¹⁸ Within the European Union, see also the Treaty on the Functioning of the European Union, art. 15; and the Charter of Fundamental Rights of the European Union, art. 42.

¹⁹ See also the contribution of UNODC and the United Nations Convention against Corruption, art. 10. The importance of access to information and freedom of expression in the fight against corruption is also recognized in Council of Europe Committee of Ministers resolution (97) 24 of 6 November 1997 on the twenty guiding principles for the fight against corruption, principle 16; and in Organisation for Economic Co-operation and Development recommendation on public integrity, principle 13.

²⁰ A/HRC/39/28, para. 15.

²¹ *Ibid.*, para. 23. See also Human Rights Committee, general comments No. 25 (1996) and No. 34 (2011), para. 2.

²² Guidelines on Access to Information and Elections in Africa, p. 3. See also the Commission's Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 1.

²³ *Annual Report of the Inter-American Commission on Human Rights 2008: Volume II – Report of the Office of the Special Rapporteur for Freedom of Expression* (Washington, D.C., 2009), para. 144.

²⁴ See <https://www.europeansources.info/record/council-of-europe-convention-on-access-to-official-documents/>.

²⁵ General comment No. 34 (2011), para. 2.

²⁶ See, e.g., Human Rights Committee, general comment No. 34 (2011); Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Standards for a Free, Open and Inclusive Internet* (2017), para. 178.

information about oneself and to have incorrect information corrected,²⁷ and is also widely recognized in data protection regulations.²⁸

13. Furthermore, access to information is instrumental for the enjoyment of a range of other human rights,²⁹ such as the right to health (see below on the coronavirus disease (COVID-19) pandemic). In addition, as expressed in the preamble to the Aarhus Convention:

In the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.

The same link has been recognized between access to information and sustainable development in the Sustainable Development Goals.³⁰

14. The right of access to information is central to the right to remedy for victims of human rights violations. In particular, victims of gross violations of international human rights law and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth with regard to these violations.³¹

III. Current situation and good practices

A. Elements in the design of access to information laws

15. For national normative frameworks to best foster access to information, their compatibility with a State's human rights obligations should be ensured already at the drafting stage. In this process, States should be guided by international law norms and standards, as well as by good practices in the design of national normative frameworks on access to information. As discussed below, in accordance with international human rights law, the normative framework should be recognized by law, based on a principle of maximum disclosure, provide for proactive publication, incorporate procedures that facilitate access and include independent oversight and review. In addition, States should promote access to the Internet.

1. Recognition in law

16. The right to information is most fully realized when access to governmental information is guaranteed by freedom of information legislation.³² States should thus enact the procedures necessary for a person to gain access to information, such as by means of freedom of information legislation.³³ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has called upon States to adopt national normative frameworks that objectively establish the right of access to information

²⁷ Human Rights Committee, general comment No. 34 (2011), para. 18; and Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, principle 3. See also the contribution of INTERPOL.

²⁸ See, e.g., the Convention on Access to Official Documents. See also Regulation (EU) 2016/679 of the European Parliament and of the Council (27 April 2016) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

²⁹ Human Rights Committee, general comment No. 34 (2011), para. 4. See also *Standards for a Free, Open and Inclusive Internet*, para. 166.

³⁰ See Sustainable Development Goals indicator 16.10.2.

³¹ General Assembly resolution 60/147, para. 24.

³² E/CN.4/1998/40, para. 14.

³³ Human Rights Committee, general comment No. 34 (2011), para. 19.

held by public bodies in the broadest possible terms.³⁴ According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), 127 States have adopted freedom of information legislation.³⁵

17. When restricting access to information, States must ensure that the restricting measure is in compliance with international human rights law, should adhere to standards and recommendations established by international and regional human rights mechanisms and be guided by best practices. Secrecy laws should define national security limitations precisely and indicate clearly the criteria to be used in determining whether information can be appropriately declared non-disclosable on such grounds.³⁶ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information provide that the protection of national security cannot be used to justify restrictions on the right to freedom of expression unless the Government can demonstrate that the expression is intended to incite imminent violence, that it is likely to incite such violence and that there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.³⁷ In a recent report, concerns were raised regarding the continued prevalence of overly broad secrecy laws and national security grounds unduly limiting access to information.³⁸

18. The right of access to information may also be restricted to protect the rights of others. It may for instance be legitimate to restrict the right of access to information in order to protect the right of a person not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence or to unlawful attacks on their honour and reputation, as provided by article 17 of the International Covenant on Civil and Political Rights.³⁹ The term “others” relates to other persons individually or as members of a community, including a religious or ethnic community.⁴⁰

19. In exceptional circumstances in which it may be necessary to restrict the right of access to information on legitimate grounds, the burden is on the State to demonstrate that it has no other means to protect the interest at stake. Where restrictions are necessary for a legitimate purpose, they must be proportionate to the interest protected, they must be appropriate to achieve their protective function and they must be the least intrusive instrument among those which might achieve their protective function. The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities applying the law. The principle of proportionality must also take account of the form of expression at issue, as well as the means of its dissemination.⁴¹

2. Maximum disclosure

20. All information held by public bodies should be subject to disclosure, and this presumption may be overcome only in very limited circumstances.⁴² Rights holders should

³⁴ [A/68/362](#), para. 98. See also Sustainable Development Goal indicator 16.10.2, which measures the number of States that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.

³⁵ Contribution of UNESCO. See also the contributions of Brazil, Italy, Mongolia, Morocco, Romania, Saudi Arabia and Slovakia, and of the Commission d'accès à l'information d'intérêt public et aux documents publics of Côte d'Ivoire.

³⁶ Human Rights Committee, general comment No. 34 (2011), para. 30. See, e.g., the Tshwane Principles. See also [A/72/350](#).

³⁷ Principle 6.

³⁸ *Annual Report of the Inter-American Commission on Human Rights 2020: Volume II – Report of the Office of the Special Rapporteur for Freedom of Expression* (Washington, D.C., 2021), pp. 385 and 389 ff. On national security, see also the Tshwane Principles; the Johannesburg Principles on National Security, Freedom of Expression and Access to Information; and Human Rights Committee, general comment No. 34 (2011), para. 30. See also the contribution of the Digital Rights Foundation.

³⁹ Human Rights Committee, general comment No. 34 (2011), para. 28.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, para. 34, and general comment No. 27 (1999), para. 14.

⁴² [A/68/362](#), para. 76.

be able to access adequate, accessible and necessary information as soon as it is known.⁴³ Maximum disclosure is linked intimately with requirements to record and preserve information. An effective right of access to information depends on the manner in which information is handled, including for its recording, preservation and ease of retrieval. The Convention on Access to Official Documents thus for instance imposes an obligation on States to manage their documents efficiently, so that they are easily accessible, and to apply clear and established rules for the preservation and destruction of their documents.⁴⁴

21. The Model Law on Access to Information for Africa of the African Commission on Human and Peoples' Rights states that the authorities have a duty to create, keep, organize and maintain information.⁴⁵ In practice, to create and keep such records, it is necessary to invest in data and records management.⁴⁶

22. The obligation to fulfil the right of access to information thus requires establishing practices to ensure that information is recorded and preserved, and facilitating the public's access to that information. In this regard, the use of modern technologies as a means to archive information held by public authorities represents a good practice facilitating access to official documents. Some States reportedly provide access to public sector information on online databases.⁴⁷ The management of information digitally naturally facilitates access, research and reporting. Entities should disclose information of relevance to the public proactively and on a timely basis and ensure consistent and usable updates, especially of websites.

23. The obligation to provide access to information applies to the executive, legislative and judicial branches of government, and extends to all organs of the State, including all de facto entities and private entities carrying out elements of governmental functions.⁴⁸ The Model Inter-American Law on Access to Public Information and its Implementation Guidelines of the Organization of American States applies to non-State bodies that are owned or controlled by government and to private organizations that operate with substantial public funds or benefits or that perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake.⁴⁹ The Model Law on Access to Information for Africa goes further, and includes private bodies more broadly, giving access to "any information held by a private body that may assist in the exercise or protection of any right".⁵⁰ This has been argued to help remedy the increasingly blurred line between public and private bodies in the exercise of authority.⁵¹

⁴³ A/HRC/39/28, para. 68; and A/68/362, para. 76 (a). See also the Model Inter-American Law on Access to Public Information, p. 12; and the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 28.

⁴⁴ Convention on Access to Official Documents, art. 9 (c)–(d).

⁴⁵ See also the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 30.

⁴⁶ Marianna Belalba and Alan M. Sears, "Implementing a model access to information law in Africa: lessons from the Americas", in *Model Law on Access to Information for Africa and Other Regional Instruments: Soft Law and Human Rights in Africa*, Ololade Shyllon, ed. (Pretoria University Law Press, 2018), p. 34.

⁴⁷ Contributions of India and Norway. See also the Estonian Open Government Data Portal.

⁴⁸ See articles on the responsibility of States for internationally wrongful acts of the International Law Commission, arts. 4–5. See also Human Rights Committee, general comment No. 34 (2011), para. 18.

⁴⁹ Model Inter-American Law on Access to Public Information, pp. 13–14. The legal frameworks in Argentina and Colombia, for example, have a similar scope (see the contributions of Argentina and Colombia, and of Asociación por los Derechos Civiles).

⁵⁰ See also Marianna Belalba and Alan M. Sears, "Implementing a model access to information law in Africa: lessons from the Americas", pp. 48–70; See also the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, principles 21 and 31.

⁵¹ Fola Adeleke, "The Impact of the Model Law on Access to Information for Africa", in *Model Law on Access to Information for Africa and Other Regional Instruments*, pp. 14–47.

3. Proactive publication

24. States should seek to proactively disclose information in the public interest.⁵² States should also implement general policies for the proactive publication of information as a measure to complement the right of individuals to access information. States have a positive obligation to put information in the public domain as may be necessary to comply with international human rights obligations, such as information required for the exercise of other human rights.⁵³

25. Under article 10 of the Convention on Access to Official Documents, public authorities “shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest”. The Model Law Model Inter-American Law on Access to Public Information recommends the adoption of schemes for the proactive publication of information as a measure to promote openness and lists key classes of information that should be disclosed proactively.⁵⁴ The Declaration of Principles on Freedom of Expression and Access to Information in Africa echoes that position by recommending that States publish information about functions, powers, structures, officials, decisions, budgets and expenditures, among other information, relating to the activities of public entities. In addition, that Declaration highlights that proactive disclosure by relevant private bodies should apply to activities for which public funds are utilized or public functions or services are performed.⁵⁵

26. In its 2019 review of Sustainable Development Goal indicator 16.10.2, UNESCO looked at 14 types of information in relation to 17 countries,⁵⁶ including the proactive release of information by public authorities. UNESCO found that more than 70 per cent of the reviewed States released four types of information,⁵⁷ that an additional five types of information were released by more than 50 per cent of the reviewed States⁵⁸ and that the remaining five types of information were released by more than 39 per cent of the reviewed States.⁵⁹ In contributions for the present report, several States reported that a duty to proactively disclose information in the general interest was included in their national legal frameworks and practices.⁶⁰

27. To the extent possible, information should be published in formats that would permit its reuse. In 2019, the European Union adopted a directive on open data,⁶¹ which seeks to stimulate the publication of information held by public authorities in open data formats. As expressed in the directive, allowing the reuse of documents held by a public sector body adds

⁵² A/HRC/39/28, para. 22; and Human Rights Committee, general comment No. 34 (2011), para. 19. See also the Convention on Access to Official Documents, art. 10; and the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 29. The obligation to publish proactively information may also follow from the general obligation of the State to protect the rights of individuals, including their rights to life and health (see, e.g., A/HRC/44/49, para. 20; European Court of Human Rights, *Guerra and Others v. Italy*, Judgment of 19 February 1998, paras. 58 and 60). This due diligence obligation entails that States must take appropriate positive measures to protect the enjoyment of rights enshrined in the International Covenant on Civil and Political Rights against reasonably foreseeable threats (see Human Rights Committee, general comments No. 31 (2004), para. 8, and No. 36 (2018), para. 21).

⁵³ *Annual Report of the Inter-American Commission on Human Rights 2008: Volume II – Report of the Office of the Special Rapporteur for Freedom of Expression*, para. 22.

⁵⁴ Model Inter-American Law on Access to Public Information, pp. 15 ff.

⁵⁵ Principle 29 (2).

⁵⁶ UNESCO, “Powering sustainable development with access to information: highlights from the 2019 UNESCO monitoring and reporting of SDG indicator 16.10.2” (2019), p. 8.

⁵⁷ In other words, information on structure, annual reporting, expenditure and manuals.

⁵⁸ In other words, information on contracts, the budget, the right to information guide, data sets and audits.

⁵⁹ Information on policies, the right to information report, officials’ curricula vitae, salary scales and minutes agenda.

⁶⁰ See contributions of Colombia, Croatia, India, the Netherlands and Slovenia, as well as those of the national human rights institutions of Argentina and Romania.

⁶¹ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the reuse of public sector information.

value for the benefit of reusers, end users and society in general. In many cases, the reuse will benefit the public sector body itself by promoting transparency and accountability and by providing feedback from reusers and end users, which allows the public sector body concerned to improve the quality of the information collected and the performance of its tasks.⁶²

4. Procedure

28. Human rights mechanisms have extensively addressed applicable standards for the receipt and processing of requests for access to information. As a threshold consideration, requests for access should be available at a reasonable cost.⁶³ The Human Rights Committee has held that fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.⁶⁴ In some States, access to information is free of charge.⁶⁵

29. While States may have legitimate grounds to restrict access to information, requests for access should be processed in a timely manner.⁶⁶ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has highlighted that unreasonable delays in responding to requests for information are a very frequent concern and deadlines are sometimes not enforced.⁶⁷ Delays in responding to requests cannot amount to a de facto denial of access to information or be dissuasive to the exercise of the right. The Convention on Access to Official Documents, article 5 (4), requires that requests be dealt with promptly and that decisions be reached, communicated and executed as soon as possible or within a reasonable time limit, which has been specified beforehand. Information requests falling within the scope of the Aarhus Convention must normally be decided within one month.⁶⁸ Some domestic systems include similar standards.⁶⁹

30. The procedure for making requests should be simple and readily understandable, allowing for fair and rapid processing,⁷⁰ while respecting the rights of others. As highlighted in the Convention on Access to Official Documents, article 4 (3), “formalities for requests shall not exceed what is essential in order to process the request”. Regional instruments provide that, unless required for processing requests, there should be no requirement for requesting individuals to reveal their identity, nor for requests to be justified.⁷¹ Several States have reportedly taken advantage of digital technologies to facilitate processes. India, for example, has developed a right to information portal designed to facilitate online requests for access to information and first appeals of refusals. As of February 2021, the country’s central public authorities were aligned with the portal.⁷²

31. As mentioned above, the procedure should also respect the rights of others. States should facilitate access to information, particularly for individuals and groups that are marginalized or discriminated against. This may include establishing procedures for the provision of assistance, from formulation of requests for information through to their delivery, for the purpose of promoting equal access to information.⁷³ UNESCO reports that,

⁶² *Ibid.*, paras. 8 and 14. See the contributions of Slovenia and Qatar, as well as of the national human rights institution of Argentina.

⁶³ See [A/HRC/39/28](#), para. 22.

⁶⁴ General comment No. 34 (2011), para. 19. See also [A/68/362](#), paras. 76 and 82; the Convention on Access to Official Documents, art. 7; the Model Law on Access to Information for Africa, pp. 31–32; the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 31 (4); and the Model Inter-American Law on Access to Public Information, pp. 20–21.

⁶⁵ See, e.g., the contribution of Norway. See also Law No. 27275 of Argentina.

⁶⁶ Human Rights Committee, general comment No. 34 (2011), para. 19.

⁶⁷ [A/68/362](#), para. 79.

⁶⁸ Art. 4 (2).

⁶⁹ See, e.g., the contributions of Armenia, India, Norway, Poland and Slovenia.

⁷⁰ [A/HRC/39/28](#), para. 22.

⁷¹ See the Convention on Access to Official Documents, art. 4 (2); the Model Inter-American Law on Access to Public Information, p. 14; and the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 31 (2).

⁷² Contribution of India. See also the contribution of Norway.

⁷³ [A/HRC/39/28](#), para. 22 (c).

although 181 States have ratified the Convention on the Rights of Persons with Disabilities, much work still needs to be done to protect the rights of persons with disabilities and to encourage policies and strategies that are equitable for all and foster the availability of accessible information and communications technologies and information. UNESCO analyses demonstrate that out of 127 countries with access to information laws in force, 64 (only 50 per cent) mention assistance or any form of accommodation for persons with disabilities requesting information.⁷⁴

32. The effective implementation of the right of children to access information, enshrined in the Convention of the Rights of the Child, is essential for the enjoyment of other rights particular to children, such as the right to participate in accordance with children's evolving capacities.⁷⁵ These rights of children highlight how important it is for authorities to assist the requesting individual wherever necessary. However, it is worth noting that a general duty to assist individuals requesting access to information applies generally wherever necessary. For example, in accordance with article 5 (1) of the Convention on Access to Official Documents, public authorities "shall help the applicant, as far as reasonably possible, to identify the requested official document".⁷⁶

33. According to some regional instruments, States should ensure that the denial of a request to access information is subject to review by an impartial body established by law and/or by a court.⁷⁷ The Global Principles on National Security and the Right to Information (Tshwane Principles) provide that the requirements of timeliness and low cost should apply to the review process and that the relevant authority should have the competence and resources necessary to ensure an effective review, including full access to all relevant information, even if classified.⁷⁸ The competent court or body should give the reasons for a refusal of access to information to the requesting individual and it should make publicly available fact-specific reasons and its legal analysis in writing, except in extraordinary circumstances.⁷⁹

5. Independent oversight

34. Independent oversight provides an important safeguard against abuse. The guidelines for States on the effective implementation of the right to participate in public affairs recommend that States establish independent and impartial oversight mechanisms with a mandate to monitor and report on the implementation of the right of access to information. The reports of such a mechanism should be made public.⁸⁰ The establishment of independent oversight mechanisms has been recommended in the Inter-American and African model laws on access to information.⁸¹

35. While many States have indicated in their contributions for the present report that they have established oversight mechanisms, there appears to be no uniform practice as regards

⁷⁴ Contribution of UNESCO.

⁷⁵ The child's right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views and procedures for complaints, remedies or redress (see general comment No. 12 (2009), para. 48).

⁷⁶ See also the Model Law on Access to Information for Africa, p. 24; the Model Inter-American Law on Access to Public Information, pp. 20–21; and the Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 31 (3).

⁷⁷ See the Convention on Access to Official Documents, art. 8 (2), on access to an expeditious and inexpensive review procedure. The Model Law on Access to Information for Africa sets out the right of internal review, which is a new review by the same organ that refused the initial request (pp. 40–42), and grants an independent oversight mechanism the power to review refusals for access (pp. 56 ff). See also the Tshwane Principles, principle 26 (c).

⁷⁸ Principle 26 (a)–(b).

⁷⁹ Convention on Access to Official Documents, art. 5 (6); and the Tshwane Principles, principle 26 (d).

⁸⁰ A/HRC/39/28, para. 22. See also the Tshwane Principles, principle 3; and UNESCO, "Powering sustainable development with access to information: highlights from the 2019 UNESCO monitoring and reporting of SDG indicator 16.10.2" (2019).

⁸¹ Model Inter-American Law on Access to Public Information, pp. 31–32; and the Model Law on Access to Information for Africa, pp. 43–45.

the type of institutions or the powers granted to them. In Argentina, monitoring is reportedly carried out by the Agency for Access to Public Information.⁸² Contributions, including from national human rights institutions, have detailed the types of institutions and information commissioners or commissions reportedly engaged in oversight in Armenia, Chile, Croatia, Ecuador, India, Maldives, Portugal and the Russian Federation.⁸³ In its 2019 review of Sustainable Development Goal indicator 16.10.2, UNESCO found that the 17 reviewed States had reported having oversight bodies.⁸⁴

36. In general, human rights instruments and mechanisms call for oversight functions to be based on the principles of independence and autonomy. This entails ensuring institutional autonomy, in other words ensuring that oversight bodies are independent of the organs they oversee. Oversight bodies must be granted the competencies and powers necessary to monitor compliance with access to information regulations and must receive sufficient budgetary allocations to be able to conduct such monitoring effectively.⁸⁵

6. Internet access as a vehicle for promoting access to information

37. The Human Rights Council has reaffirmed the importance of access to the Internet for the protection of human rights.⁸⁶ According to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, an open and secure Internet should be counted among the leading prerequisites for the enjoyment of the freedom of expression.⁸⁷ As the Special Rapporteur for Freedom of Expression has noted, the Internet offers new opportunities for developing policies on proactive transparency and dissemination of information and ideas of all kinds.⁸⁸ Likewise, the Committee on the Rights of the Child has highlighted that the digital environment, including the Internet, affords new opportunities for the realization of children's rights, including the right of access to information.⁸⁹

38. The Internet provides the means for making information available to societies in ways that are unprecedented and for greatly facilitating searches and requests for information through the development of appropriate platforms. Yet, the effectiveness of such means depends in part on the extent to which the population has access to the Internet. Major challenges remain in this area. More than 4 billion people do not have regular access to the Internet, 90 per cent of whom live in the developing world.⁹⁰ The Human Rights Council has expressed concern that many forms of digital divide remain between and within countries and regions, and has recognized the need to close the divide, highlighting that the gender digital divide undermines women's and girls' full enjoyment of human rights.⁹¹ In this regard, the African Commission on Human and Peoples' Rights has urged States to take specific measures to ensure that marginalized groups can effectively exercise their rights online.⁹² Bridging the divide requires the development of an appropriate infrastructure and a significant financial commitment. In this respect, the High-level Panel on Digital Cooperation, in a statement echoed by the Human Rights Council and the Special Rapporteur

⁸² Contribution of the national human rights institution of Argentina.

⁸³ Contributions of Armenia, Chile, Croatia, Ecuador, India, Maldives and the Russian Federation, as well as the national human rights institution of Portugal.

⁸⁴ See UNESCO, "Powering sustainable development with access to information: highlights from the 2019 UNESCO monitoring and reporting of SDG indicator 16.10.2" (2019), p. 5.

⁸⁵ See, e.g., the Model Law on Access to Information for Africa, pp. 45–46; the Model Inter-American Law on Access to Public Information, p. 29; and Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Specialized Supervisory Bodies for the Right to Access Public Information* (2016), para. 89 (available from <https://www.oas.org/en/iachr/expression/docs/publications/AccessoEN.pdf>).

⁸⁶ See Human Rights Council resolution 47/16.

⁸⁷ See [A/HRC/44/49](#), para. 24; and [A/HRC/29/32](#), para. 11. See also [A/HRC/17/27](#).

⁸⁸ See *Standards for a Free, Open and Inclusive Internet*, para. 175.

⁸⁹ General comment No. 25 (2021), paras. 3 and 50.

⁹⁰ See <https://www1.undp.org/content/brussels/en/home/sustainable-development-goals/goal-9-industry-innovation-and-infrastructure.html>.

⁹¹ Human Rights Council resolution 47/16.

⁹² Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 37 (4).

on the promotion and protection of the right to freedom of opinion and expression, has called for greater international coordination and support for digital connectivity.⁹³

39. In parallel, States can explore measures to alleviate the effects that unstable access to the Internet has on individuals. For example, many libraries' experiences with facilitating access to e-government offer a possible model for ensuring broader access for the public. Moreover, the e-Government Survey 2020 highlights that public Internet access in venues such as libraries and educational institutions can help more people make use of e-government services by reducing connectivity costs for users.⁹⁴

B. Capacity-building and other measures to ensure effective implementation

40. Building the capacity of public authorities and strengthening civil society and individuals to exercise their rights are crucial for promoting the right of access to information.

1. Strengthening civil service

41. Building the capacity of public authorities is essential for promoting compliance with the right of access to information.⁹⁵ This means fostering a culture of openness and transparency within the public sector and taking measures to enable individuals, civil society representatives and journalists to exercise the right of access to information and other related rights.

42. Significant efforts have been made to assist States in promoting and developing a culture of transparency. In this respect, UNESCO has reported on programmes launched, including in partnership with regional organizations, aimed at training public officials in access to information standards. In South Africa, UNESCO has trained information commissioners and their staff from different African countries. In South Sudan, it provided capacity-building assistance to the information commission to develop training manuals on access to information. In Samoa, it launched an advocacy project to draft a policy that will lead to the preparation of access to information legislation. UNESCO also reports having strengthened the rule of law approach and implementation of access to information through capacity-building for the judiciary, including by training, over the past decade, 15,000 members of the judiciary in Latin America, also in partnership with the Inter-American Court of Human Rights. UNESCO launched a massive open online course on international and African standards on freedom of expression for the judiciary in Africa. The training programme, set up in cooperation with the African Court on Human and Peoples' Rights, made it possible to train close to 2,000 judges, prosecutors, lawyers and civil society representatives on international and regional standards of freedom of expression and access to information.⁹⁶

43. At the national level, independent mechanisms such as national human rights institutions, parliamentary ombudspersons, supreme audit institutions and information commissioners, possess important potential in monitoring compliance with access to information standards, reporting and providing recommendations. In Argentina and Honduras, for example, training initiatives were held on access to information and transparency.⁹⁷ In Chile, the Council for Transparency launched a series of training sessions for students at the primary, secondary and tertiary levels.⁹⁸ Civil society organizations too reportedly contribute to training public officials in the right of access to information through the production of training material.⁹⁹ In order to ensure that capacity-building efforts have

⁹³ High-level Panel on Digital Cooperation, "The age of digital interdependence" (June 2019); [A/HRC/44/49](#), para. 29; and Human Rights Council resolution 47/16.

⁹⁴ See also the contribution of the International Federation of Library Associations and Institutions.

⁹⁵ Model Inter-American Law on Access to Public Information, p. 33; and the Convention on Access to Official Documents, art. 9.

⁹⁶ Contribution of UNESCO.

⁹⁷ Contributions of Argentina and Honduras.

⁹⁸ Contribution of Chile.

⁹⁹ See Article 19, *Freedom of Information Training Manual for Public Officials*.

maximum effect, they should be complemented by a political commitment to transparency and openness and be followed up by additional capacity-building measures implemented throughout the public service.

2. Strengthening civil society

44. The roles of journalists, media outlets and human rights defenders are crucial to access to information.¹⁰⁰ The non-governmental organization Article 19: International Centre against Censorship has reported on training local communities in how to use national access to information laws. In Bangladesh, for example, local communities have reportedly used the access to information law to protect their right to a healthy and sustainable environment by holding authorities accountable for violations of national environmental standards.¹⁰¹ In Brazil, rural communities have used information laws to find information about water supplies, water programmes, the amount of money allocated to providing water and how it was spent, the number of water trucks in operation and the results of water quality tests in a certain area.¹⁰² In Indonesia, local communities in disadvantaged districts have made use of the national freedom of information law to obtain information on education assistance and to participate in decision-making and monitoring of the use of education funds.¹⁰³

45. To ensure the effective implementation of the right of access to information, more should be done to strengthen the capacity of individuals to exercise that right. States should carry out and promote awareness-raising and capacity-building, particularly focused on civil society and professional organizations, such as organizations of journalists, indigenous peoples and local communities. As more information is made accessible online, States should support measures to enhance data literacy and raise awareness about the availability, relevance and possible uses of public sector information. Some such initiatives reportedly already exist. For example, some libraries have hosted so-called hackathons, bringing together experts and specialists, among others, to find creative solutions to problems based on available data and to raise awareness about the value of open data.¹⁰⁴

C. Access to information and the COVID-19 pandemic

46. In its resolution 74/306 on a comprehensive and coordinated response to the COVID-19 pandemic, the General Assembly recognized the importance of the free flow of information and knowledge, including through the dissemination of accurate, clear and evidence- and science-based information. In his report entitled “Our Common Agenda”, the Secretary-General likewise noted that a key lesson from COVID-19 was the importance of the State as a provider of trustworthy information, goods and services, and called for a global code of conduct that promoted integrity in public information.¹⁰⁵ As observed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, public-health threats strengthen the arguments for open government, for it is only by knowing the full scope of the threat posed by disease that individuals and their communities can make appropriate personal choices and public health decisions.¹⁰⁶

47. States and local governments, as well as international organizations, have issued a series of policy recommendations on how States should keep their populations informed during the pandemic, consistent with their human rights obligations.¹⁰⁷ In that vein, States should report publicly and regularly on the impact of the pandemic. This includes reporting on the direct impacts of the pandemic and the virus, including epidemiological data in anonymized form, consistent with the right to privacy. States must ensure that any restrictions

¹⁰⁰ “United Nations guidance note: protection and promotion of civic space” (September 2020).

¹⁰¹ Contribution of Article 19.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Contribution of the International Federation of Library Associations and Institutions.

¹⁰⁵ A/75/982, paras. 22 and 26.

¹⁰⁶ A/HRC/44/49, para. 20.

¹⁰⁷ OHCHR, “COVID-19 guidance” (13 May 2020). See also UNESCO, “The right to information in times of crisis” (2020); and https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf.

imposed on rights implemented for public health reasons are fully in compliance with international human rights law. States should also assess the impact of such measures on individuals' rights, particularly on their enjoyment of economic, social and cultural rights. Information should also be published concerning available medical resources, including hospital facilities, staffing and equipment, testing sites and processing laboratories, vaccine suppliers and supply agreements, and doses available. In addition, reporting should include information on spending, including emergency spending relating to the pandemic.

48. States have indeed taken a variety of measures to keep the public informed about the disease and the response measures taken.¹⁰⁸ Some States have reportedly created dedicated websites on which information on the pandemic is published and continuously updated, held regular press briefings, produced infomercials and engaged heavily on social media.¹⁰⁹ States should also consider fostering initiatives to provide accurate information, such as the United Nations' "Verified" campaign, which aims to supply digital spaces with facts and objective information amid the COVID-19 pandemic.¹¹⁰

49. Measures to keep the public informed should provide information in an accessible manner, including for vulnerable populations. The World Federation of the Deaf has reported that, during the COVID-19 pandemic, over 100 countries provided national sign language interpretation during public announcements on the pandemic, although the quality of the interpretation varied.¹¹¹

50. Some States have introduced measures to improve the ways in which information on the pandemic, its risks and government responses are communicated to children. For example, the Parliament of Finland established a live television programme during which children could address questions to the Prime Minister and other members of government. The Independent Authority for Children and Adolescents of Italy reportedly developed guidance on how to explain risks and recommendations during the COVID-19 pandemic to children.¹¹²

51. Although authorities should process requests for access to information without delay, circumstances relating to the pandemic may hamper their ability to act expeditiously.¹¹³ Such circumstances, however, do not suspend the obligation to respect the right of access to information. The Inter-American Commission on Human Rights has held that priority should be given to requests for access to information related to the public health emergency. If deadlines for requests for information on matters not linked to the pandemic have to be extended, the competent authority should explain the reasons for such measures, set a deadline by which the obligation is to be met and allow for appeals against such decisions.¹¹⁴

52. When a state of emergency is declared in a manner consistent with international human rights law, States must inform the population, in particular those most affected, of the exact substantive, territorial and temporal scope of the application of the state of emergency and related measures. Sufficient information about emergency legislation and measures should be communicated swiftly and in all the official languages of the State, as well as in as many other languages that are widely spoken in the country as possible, and in an accessible manner so that the public at large is aware of the new legal rules and can conduct themselves accordingly.¹¹⁵

¹⁰⁸ See [A/HRC/44/49](#), para. 22.

¹⁰⁹ See the contribution of Ecuador.

¹¹⁰ United Nations, "UN launches new initiative to fight COVID-19 misinformation through 'digital first responders'" (27 May 2020). See also <https://shareverified.com/>.

¹¹¹ Contribution of the World Federation of the Deaf.

¹¹² Contribution of Child Rights Connect.

¹¹³ Contribution of Asociación por los Derechos Civiles.

¹¹⁴ Inter-American Commission on Human Rights resolution 1/2020, para. 32.

¹¹⁵ OHCHR, "Emergency measures and COVID-19: guidance" (27 April 2020). See also [A/HRC/44/49](#), para. 22; and General Assembly resolution 74/306.

IV. Conclusion and recommendations

53. The right of access to information enjoys universal recognition. As the present report shows, there is an abundance of normative guidance and good practices to design, align and amend national legal frameworks in line with international human rights law and allow for effective ways of providing access to information.

54. Despite the existing guidance, implementation continues to lag in many respects. Of particular concern are undue restrictions on the right of access to information, including those relying on overly broad or vaguely formulated national security grounds, which fail to meet the requirements of necessity and proportionality and which jeopardize the practical enjoyment of the right. Equally, much work still needs to be done to ensure that States implement policies and strategies in an equitable manner for all and that they foster effective access to information for all individuals and groups. Additional efforts by States are required to promote more open and inclusive government through the proactive publication of information and by strengthening the capacity of individuals to exercise their rights.

55. In order to ensure respect for and protect the right of access to information and in order for national normative frameworks to foster access to information held by public entities:

(a) States should ensure that the right of access to information is recognized in their laws and protect and implement this right in compliance with international human rights law. Restrictions on this right must respect the requirements of legality, necessity, proportionality and non-discrimination;

(b) The procedure for making requests for information should be easy and allow for fair, rapid processing, while respecting the rights of others. States should facilitate access to information, in particular for individuals and groups that are marginalized or discriminated against. This may include establishing procedures for the provision of assistance for the formulation of requests for information;

(c) States must ensure effective review procedures by courts or other impartial bodies established by law in cases of denial of access to information, and should create mechanisms for the independent oversight of compliance with the right of access to information;

(d) States should proactively publish information in the public interest on a continuous basis in an accessible manner, including on the COVID-19 pandemic and on measures taken to address it. Where possible, information published should be in formats that permit its reuse by third parties. Progress on proactive publication should be included in State reports on the implementation of Sustainable Development Goal indicator 16.10.2;

(e) States should redouble their capacity-building efforts, demonstrate political commitment to openness and transparency within the public service and ensure adequate training of the public sector. They should also support capacity-building efforts by civil society actors, among others;

(f) States should make use of online solutions to ensure access to information and take effective measures, including through international cooperation, to ensure Internet access to everyone without discrimination, mindful of the fact that digital technologies enable the rapid management of information and completely transform possibilities of access to information.