



United Nations Development Programme  
Bureau for Development Policy  
Democratic Governance Group

## Right to Information Practical Guidance Note

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## List of Acronyms

<b>AIP</b>	–	Access to Information Programme
<b>ATIN</b>	–	Access to Information Network
<b>CO</b>	–	UNDP country office
<b>CSO</b>	–	Civil Society Organization
<b>FOI</b>	–	Freedom of Information
<b>FOIA</b>	–	Freedom of Information Act
<b>IDP</b>	–	Information and Disclosure Policy
<b>MDGs</b>	–	Millennium Development Goals
<b>MKSS</b>	–	Mazdoor Kisan Shakti Sangathan
<b>NCPRI</b>	–	National Campaign for the People’s Right to Information
<b>NGO</b>	–	Non-Governmental Organization
<b>OAS</b>	–	Organization of American States
<b>ODAC</b>	–	Open Democracy Advice Centre
<b>OIC</b>	–	Official Information Commission
<b>POATIA</b>	–	Promotion of Access to Information Act
<b>UNDP</b>	–	United Nations Development Programme

## Glossary

<b>‘Access to information’</b>	The policies, practice, laws and procedures that help guarantee openness in the conduct of public affairs.
<b>‘Freedom of expression’</b>	The human right to express and exchange opinions, beliefs and information with others.
<b>‘Freedom of information’</b>	The human right to secure access to publicly held information and the corresponding duty upon a public body to make information available.
<b>‘Habeas data’</b>	The right to secure access to personal data held by public authorities.
<b>‘Horizontal right’</b>	A right exercised by a private legal person against another private legal person e.g. by an individual against a corporation, as opposed to a vertical right which is exercised against a public body of some kind.
<b>‘Official information’</b>	‘Information held by a public body.
<b>‘Ombudsman’</b>	An administrative body established to receive and adjudicate upon complaints against public bodies – these can be local, national or service based, for example a health Service Ombudsman.
<b>‘Principle of maximum disclosure’</b>	The assumption that all documents held by a public body should be open to the public.
<b>‘Process right’</b>	A right which is concerned with establishing a process rather than securing an outcome. For example the right to a fair trial is a process right – it does not assume any particular outcome. The right not to be tortured is a substantive – it requires a particular outcome – not being tortured.
<b>‘Public body’</b>	A ‘public body’ is defined by the type of service provided and includes all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalized industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organizations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines).
<b>‘Right to information legislation’</b>	Legislation that gives effect to the right to secure access to publicly held information and the corresponding duty upon a public body to make information available.
<b>‘Wrongdoing’</b>	«Wrongdoing» in this context includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not.

## Executive Summary

**In the last decade, governments around the world have become increasingly more open. By 2003, over 50 countries had comprehensive laws to facilitate access to official information and more are enacting such legislation. Governments increasingly recognize the importance of access to information for enhancing democratic engagement, building confidence in government institutions and strengthening their credibility and effectiveness. However, in many States, including democracies, people are still routinely denied access to information that should be in the public domain. Only 30 of the countries in which UNDP is present have laws requiring the disclosure of government records.**

This Practical Guidance Note aims to:

- Heighten awareness and knowledge within UNDP country offices (COs) on right to information generally and right to information legislation specifically
- Assist COs by providing practical information and guidance for right to information legislation programming
- Signpost additional resources, sources of expertise and further reading.

Chapter one explains what is a right to information and why it is important, particularly the contribution right to information legislation can make to creating a more open and democratic society, challenging corruption and enhancing transparency and poverty reduction (achievement of the Millennium Development Goals (MDGs)). Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamic that exists between people marginalised through poverty and their governments. This transparent approach to working also helps poor communities to be visible on the political map so that their interests can be advanced.

UNDP can play an important role in promoting right to information in a number of ways including leveraging its relationships with host governments; acting as a catalyst for change by supporting different right to information initiatives; identifying opportunities for constructive intervention in the debates and discussions that are likely to be taking place; using its own global expertise and experience of working on democratic governance issues; and meeting the commitments set out in its own Information and Disclosure Policy (IDP).

Chapter two focuses on promoting the right to information in different contexts. While demand for right to information legislation may be fuelled from different concerns or contexts (i.e. political

transition, corruption concerns, environmental concerns, external pressures for economic reform) the role of civil society organizations, including the media in articulating that demand and contributing to its realisation in actual legislation is all important. UNDP can support campaigns for a right to information by raising awareness on the importance of right to information legislation; supporting activities that feed local civil society initiatives into wider debate; and providing space for dialogue between civil society organisations (CSOs) and public officials.

Chapter three explores the content of right to information legislation particularly the legal guarantees provided in it and the scope of the legislation. These aspects significantly influence the extent to which the legislation can contribute to creating an open and democratic society, challenging corruption and reducing poverty. The legislation must meet minimum international standards which are described in this guidance note among these include the principle of maximum disclosure, limited exceptions for withholding information and the establishment of effective and efficient appeals mechanisms.

Chapter four focuses on implementation considerations - right to information legislation will be completely ineffectual without measures and mechanisms focused on implementation. Building public awareness on the right to information, promoting an informed civil service on the implications of the legislation through specific capacity development activities, encouraging cultural change within the civil service built on the premise that official information belongs to the people, developing an efficient and well organized information management system and establishing an effective regulatory machinery including the courts and an information commission or ombudsman are key in this regard.

The final section of the paper, chapter five, signposts additional resources and further reading.

# 1. The right to information

1 UNDP Practice Note on Access to Information (October 2003)  
[www.undp.org/policy/practicenotes.htm](http://www.undp.org/policy/practicenotes.htm)

**In its Practice Note on Access to Information<sup>1</sup>, UNDP recognizes that the more readily understandable official information is made available to the people, the more a governance system can be declared as democratic and open. The Practice Note promotes the establishment of legal mechanisms that ensure that people, especially the poor, have access to information which enhances their ability to exercise their rights. It also supports enhancing awareness of citizens' rights to official information, particularly official information that impacts directly on poor people's lives.**

This Practical Guidance Note focuses on one critical aspect of UNDP's Access to Information programme support – the need for legislation on the right to information. It defines what is meant by the right to information and its importance in UNDP's development and democratic governance agenda. The right to information is not only fundamental for an open and democratic society but is a key weapon in the fight against poverty and corruption.

## 1.1 What is a right to information?

The terms right to information and freedom of information are often used interchangeably and have long been regarded as a fundamental human right. In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, «Freedom of information is a fundamental human right and ... the touch-stone of all the freedoms to which the United Nations is consecrated.» Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his 1995 Report to the UN Commission on Human Rights, stating:

Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.<sup>2</sup>

2 UN Doc. E/CN.4/1995/32, para. 35.

This quotation highlights the importance of freedom of information at a number of different levels: in itself, for the fulfilment of all other rights and as an underpinning of democracy.

## 1.2 Why is the right to information important?

The right to information is important for many reasons. Chief among these is the contribution it makes towards:

- i. Creating a more open and democratic society
- ii. Reducing poverty (achieving the Millennium Development Goals (MDGs))
- iii. Challenging corruption and enhancing transparency



### **1.2.1 Creating a more democratic and open society**

There can be no democratic participation in decision-making without transparency and sharing information. Secretive government is nearly always inefficient in that the free flow of information is essential if problems are to be identified and resolved. Furthermore, a secretive governing culture fosters suspicion and encourages rumours and conspiracy theories. In such a culture, the public is likely to treat all government information with scepticism including public education campaigns, such as those dealing with important health issues like HIV/AIDS or those which may be particularly sensitive. People are more likely to be politically malleable, sceptical of government and its intentions, and resistant to change unless sanctioned by informal opinion leaders. This in turn makes achieving UNDP development objectives more difficult.

### **1.2.2 Reducing poverty and achieving the MDGs**

Right to information legislation is fundamental in furthering the development of society and in eradicating poverty. Effective anti-poverty programmes require accurate information on problems hindering development to be in the public domain. Meaningful debates also need to take place around the policies designed to tackle the problems of poverty. Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamic that exists between people marginalized through poverty and their governments. This transparent approach to working also helps poor communities to be visible on the political map so that their interests can be advanced. The right to information is therefore central to the achievement of the MDGs.

### **1.2.3 Challenging corruption**

Right to information laws are critical tools in the fight against corruption, which allows inefficiency to thrive and distorts the potential for growth. Although corruption exists in all societies, it has a particularly pernicious effect on less developed countries. Corruption discourages foreign investment and eats away at the budgets allocated to public procurements which enable basic infrastructure such as roads, schools and hospitals to be built. It also debilitates political institutions by reducing public confidence in their operation. If unbridled corruption continues to infect a society or political system, it may eventually lead to social unrest due to the division it creates between those who have easy access to goods and services and those who remain excluded. It is the poor who always bear the greatest burden of a corrupt society.

If the public administration must publish regular accounts, including the particulars of specific deals that have been negotiated; if companies are forced to set out their side of the arrangement, and

business is agreed with the expectation that the details will one day come to light, the margin for corrupt activity is dramatically reduced. The result is that with more information in the hands of citizens, even where corruption persists, it can be exposed and eliminated. As many freedom of information advocates quite rightly quote, «sunshine is the best disinfectant».

### **1.3 Right to information is an increasing priority for many states**

In the last decade, governments around the world have become increasingly more open. As at March 2004 over 50 countries now have comprehensive laws to facilitate access to state records; many more are in the process of enacting such legislation. Thirty countries, in which UNDP supports programmes, have laws requiring the disclosure of government records. These countries are Albania, Armenia, Belize, Bosnia and Herzegovina, Bulgaria, Colombia, Czech Republic, Estonia, Georgia, Hungary, India, Jamaica, Latvia, Lithuania, Mexico, Moldova, Pakistan, Panama, Peru, Philippines, Poland, Romania, Slovakia, Slovenia, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uzbekistan and Zimbabwe. (Annex 1 provides 'at-a-glance' information on right to information legislation in these 30 countries as of March 2004).

Although right to information laws have existed since 1776, when Sweden passed its Freedom of the Press Act, the last 10 years have seen an unprecedented number of states adopting access to information legislation. There are a number of reasons for this including:

#### *i. The emergence of new democracies following the collapse of authoritarian regimes.*

The emergence of new democracies (especially in the 1980s) has given rise to new constitutions that include specific guarantees of the right to information. These constitutional guarantees often require the adoption of new laws on right to information.

#### *ii. Increasing attention from multilateral organizations and bilateral donors.*

International bodies such as the Council of Europe and the Organization of American States (OAS) have drafted guidelines or model legislation to promote freedom of information. The World Bank, the International Monetary Fund and other donors are also encouraging countries to adopt right to information laws as part of an effort to increase government transparency and reduce corruption.

#### *iii. Increasing attention from civil society organizations and the media.*

Finally, there is pressure from media and civil society groups, both domestic and international, for greater access to government-held information.

#### 1.4 How can UNDP promote right to information?

*«Our partnerships with civil society organizations are going to be as important as our partnerships with governments in shaping the future of development»*

UNDP Administrator, Mark Malloch Brown (2003)

It is through effective partnerships that UNDP is best able to support efforts to promote right to information. Partnerships for improving right to information necessarily involve a diversity of stakeholders from government to civil society, the media, judiciary and others. Levering UNDP's relationship with government (the public administration and other government bodies) is all-important, while partnerships with CSOs and other stakeholders have particular importance in specific stages (pre-legislation, developing legislation and post-legislation implementation).

Right to information initiatives raise sensitive issues that will require a nuanced approach by country offices. Each CO will select different entry points to promote right to information depending on the specific development and political context. Initiatives may involve working with one or more of a range of actors including civil society, governments, journalists, lawyers and international experts.

UNDP can play an important role in promoting right to information in a number of ways including:

- Levering its relationships with host governments;
- Acting as a catalyst for change by supporting different right to information initiatives;
- Identifying opportunities for constructive intervention in the debates and discussions that are likely to be taking place;
- Using its own global expertise and experience of working on democratic governance issues;
- Meeting the commitments set out in its own Information and Disclosure Policy (IDP). This policy is intended to ensure that information concerning UNDP's operational activities will be made available to the public in the absence of a compelling reason for confidentiality.<sup>3</sup>

<sup>3</sup> [www.undp.org/cso/pdf/pubinf\\_dispol.pdf](http://www.undp.org/cso/pdf/pubinf_dispol.pdf)

## 2. Promoting the right to information in the pre-legislation stage

**Recent experience tells us that the circumstances in which right to information legislation comes into being vary enormously and often depend on the circumstances that have spawned specific campaigns, the nature of the campaigns themselves and the factors that conspire to result in the approval of legislation. Some right to information laws have been promulgated in response to the collapse of communist regimes, others as a reaction to revelations over corruption or other politically scandalous events.**

### 2.1 Different approaches to campaigning for right to information legislation

What the most successful campaigns for change have in common is that they have built upon an issue that people felt was relevant to their lives. The following examples illustrate different but ultimately successful approaches to campaigning for right to information legislation, in contrasting circumstances. These include:

- i. Political transition
- ii. Corruption concerns
- iii. Environmental concerns
- iv. External pressures for economic reform

#### 2.1.1 Political transition

The following two examples of South Africa and Thailand illustrate how a right to information law has been a key part of democratic change.

In **South Africa**, after many years of apartheid in which the minority government suppressed information in order to immobilize the opposition and repress the population, information became key to the liberation movement both within the country and for its supporters outside of South Africa. Following a period in which press freedom had been summarily restricted, the government had operated in profound secrecy and misinformation was mainstreamed, the architects of the new South Africa recognized the right to freedom of information in the new Constitution of 1996. The drafting of the right to information law which eventually expanded upon this right began in 1994 and continued until February 2000, when the *Promotion of Access to Information Act (POATIA)* was finally approved, (although in a form that bore little resemblance to the original first draft, reflecting the intense debate inside the governing party as well as between the governing party and civil society groups).

The *POATIA* was seen as one of the important elements of transition from apartheid and was both radical and broad-ranging in its scope. Civil society groups such as the Open Democracy Advice Centre

(ODAC) worked closely with sympathetic members of parliament to ensure the law was broad based in scope. The role of civil society was explicitly recognized by the sponsor of the Bill and there was an assumption that government information should be in the public domain.

In **Thailand**, the campaign for right to information legislation dates from the May 1992 uprising against Prime Minister, General Suchinda. In an attempt to restore order, General Suchinda implemented an information and media blackout, imposing a news embargo and enforcing curfews. However, through the use of modern technology such as satellite receivers and mobile phones, the Thai public were kept unofficially informed of the Prime Minister's response, and his ultimate resignation. Consequently, the transparency of information was a cornerstone of the emergent post-May 1992 democracy movement in Thailand, culminating in The Official Information Act and the implementation of a new constitution in 1997. The reform minded government recognized that this legislation was an essential part of building public trust in the new government, particularly given the country's recent history.

### 2.1.2 Corruption concerns

Concerns about corruption have fuelled demand for right to information legislation in Argentina, Peru and the Philippines.

Following the financial crisis that overwhelmed the **Argentinean** government in 2001, there was widespread public disillusionment with government and public concern about corruption. The government's own anti-corruption unit played an important role in stimulating debate about the need for right to information legislation, whose form was itself influenced by regulations on the right to information at the municipal level of Buenos Aires.

In **Peru**, concern about corruption drove the campaign for more information. With the fall of the regime of President Alberto Fujimori in the year 2000, an important opportunity arose in Peru to break with the culture of secrecy which had characterized his government. The release of incriminating videos revealing the then Intelligence Chief engaged in acts of bribery, acted as a catalyst for the unravelling of the administration and drew public attention to the high levels of corruption engrained in public life. An important first step in the campaign for access to State-held information in Peru was the drafting of the document *The Principles of Lima: Freedom of Expression and Access to Information in Possession of the State*. Written by a group of national and international experts, and presented on 16<sup>th</sup> November, the day it was announced that Ex-President Fujimori had fled the country, the Principles of Lima were signed by the then Special Envoys for Freedom of Opinion and Expression from the UN

and from the OAS. This strong international element gave great encouragement to domestic campaigners both inside and outside of government.

In the **Philippines** mass support for openness grew out of concern about corruption. Under Ferdinand Marcos, 1972-1986, there was a virtual information blackout, with almost all government documents classified as secret. As a reaction to the repressive information policy, following the revolution in 1986, the framers of the new Constitution in 1987 took the step of guaranteeing press freedom and information access within the Constitution itself. Section 7 of the Constitution's Bill of Rights states that «the right of the people to information on matters of public concern shall be recognized.» Article 2, Section 28 mandates the state to adopt «a policy of full disclosure of all transactions involving public interest.» In addition, the Supreme Court has been a staunch defender of the right to information, holding the constitutional provision on the right to information as self-executing and consistently ruling against state agencies seeking to restrict the release of information deemed to be in the public interest.

However, in spite of the constitutional guarantee and judicial affirmation of the right to information, without an official right to information law, the lack of access to information in the Philippines remains widespread. In 2002, a number of NGOs which had encountered difficulties accessing important official information, came together to form the Access to Information Network (ATIN). In late 2002, ATIN drafted a Freedom of Information Law which is currently being considered by the Senate. Between 1998 and 2003, more than a dozen Freedom of Information Bills have been brought before the senate, but it has failed to ratify a single one. ATIN is working hard to increase public awareness of the right to information and is pressing for the Act to be enshrined in law in the near future.

### 2.1.3 Environmental concerns

Environmental concerns have also been a driving force for the existence of right to information legislation.

At the regional level, following the Rio summit on the environment, the United Nations Economic Commission for Europe – representing a gathering of European states - adopted a Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters at Aarhus in Denmark on 25<sup>th</sup> June 1988.<sup>4</sup> This pioneering Convention sets out three key rights:

- The right of everyone to receive environmental information held by public authorities
- The right to participate in environmental decision-making

4 The Aarhus Convention on Access to Environmental Information - [www.unece.org/env/pp/](http://www.unece.org/env/pp/)

- The right to challenge alleged abuses of these two rights in a court of law.

The Convention emphasizes how access to information lies at the heart of securing wider social benefits and its example is mirrored by developments at national level.

In **Bulgaria**, environmental concerns about the aftermath of the Chernobyl disaster led to the passing of a right to information law. For 35 years, Bulgaria was ruled by an authoritarian regime until President Todor Zhivkov was ousted from power in a palace coup in 1989. The first free parliamentary elections were held in 1990 and administrative reform was initiated slowly in the period that followed. The campaign for a specific law to guarantee right to information grew, in part, out of an awareness of the need to gain access to information about the environment with groups calling for full disclosure of documents relating to environmental concerns. The *Access to Information Programme (AIP)* was formed by individuals, primarily concerned with the environmental and social consequences in the post-Chernobyl period, when information was scarcely disseminated by the government so that the public was forced to rely on the foreign media for news of events. An Environmental Protection Act had been in place since 1991, which established a right of access to information pertaining to the environment, but this right was untested in other spheres.

The AIP, composed of lawyers, economists, journalists, sociologists and political scientists, initially banded together in order to inspire a public debate around the need for a full access to information law. The challenge that faced them was considerable, with a survey revealing that even expert groups such as journalists and lawyers believed that information should only be sought with a 'legitimate interest'. The public were unfamiliar with linking the lack of information with the everyday difficulties their country faced. Public awareness was raised, however, when it was discovered that the failure to disclose information had concealed massive deficits, the redistribution of public funds to off-budget accounts and the resultant hyper-inflation which led to an economic crisis in 1996 and 1997. The campaign for right to information legislation also gathered strength as it tapped into people's preoccupation with accessing the archives of the Communist Party, the previous governments and past Security Services. The Access to Public Information Act was finally approved in 2000, and the impressive non-governmental organization AIP has been working since to ensure its effective implementation.

### 2.1.4 External pressures for economic reform

In **Pakistan**, civil society pressure for a right to information law had been present for years without it impacting on public policy. In 2001 however, the Asian Development Bank offered a loan of US \$130 million, subject to the condition that the records of all financial deals would be open to public scrutiny. From these discussions came an official initiative to pass a Freedom of Information Act.

## 2.2 The roles of civil society and the media

Both civil society and the media can play various crucial roles in furthering the demand for right to information legislation.

### 2.2.1 What types of role can civil society play?

#### *Grass-roots campaigning - civil society in India*

It is often assumed that right to information laws are only of interest to the urban elites, or those concerned with policy making. However, one of the most imaginative campaign histories can be found in India in which a grassroots organization was able to successfully illustrate the link between a lack of transparency and corruption. Its grass-roots approach was able to convince people of the direct relevance of access to information on their everyday lives. This work served as the inspiration for a national campaign and inspired international efforts – ODAC in South Africa have used their model to challenge corruption in rural South Africa.

In spite of India's status as the world's most populous democratic state, there was not until recently an obligation at village, district, state or national level to disclose information to the people – information was essentially protected by the Colonial Official Secrets Act, dating from 1923, and there was an ingrained culture of bureaucratic secrecy.

The campaign for right to information legislation stemmed from the work of a grass-roots Rajasthan-based organization, *Mazdoor Kisan Shakti Sangathan* (MKSS), the «Organization for the Power of Labourers and Farmers». Founded in 1990, MKSS worked with poor villagers to organize groundbreaking participatory social audits, in which government officials were brought face to face with citizens in a public gathering. Their popularity and success prompted the Chief Minister of Rajasthan to promise a Right to Information Act for the People of Rajasthan in April 1995.

Through a campaign of non-violent direct action between 1995 and 2000, MKSS was able to force the State authorities to honour their pledge in full and to apply their access to information legislation in practice. Their work inspired a nationwide campaign in which campaign groups were established in a number of Indian states, and



the National Campaign for the People's Right to Information (NCPRI) was founded in Delhi. The Rajasthan State Right to Information Act was finally passed in 2000, and between 1997 and 2002, right to information acts had been passed in eight other Indian states. The NCPRI, in close collaboration with the Press Council, submitted a draft national bill to Government in 1997. A FOI bill was introduced to parliament in 2000, and in December 2002, the Government finally passed The Freedom of Information Bill, institutionalising the public's right to information.

#### *Innovative Partnerships - civil society and the military in Peru*

In Peru the campaign for a right to information law took place with vigour, due to a series of activities organized by civil society groups, among them, the establishment of a free telephone line to receive complaints from citizens to whom the public administration had denied information. In parallel, a working group met regularly to draft legislative proposals. In a groundbreaking and unique development, members of all the Armed Forces participated in meetings in order to contribute to the drafting of documents on national security. Given the role played in internal politics by the armed forces, it was necessary to reassure them that a right to information law did not threaten their ability to defend the country. The Transparency and Access to Public Information Law N° 27806 was finally approved on 3 August 2002 after being submitted to two rounds of votes and approved unanimously.

#### *Coalition action - civil society in Romania*

In 2001, a coalition of Romanian NGOs successfully acted as a catalyst in building consensus for the adoption of a Law on Access to Public Information<sup>5</sup> (also known as «Freedom of Information Act» – FOIA). In a context where legislative initiatives from the Government and the Opposition had been submitted to the Parliament, and a law on classified information was also envisaged, in March, 2001 a civil society coalition was forged, which effectively facilitated consultations between the Government (Ministry of Public Information) and the Opposition (National Liberal Party). The result of this process was the common agreement by all parties to a draft law, which was subsequently adopted by the Parliament in September 2001. The final version of the FOIA included articles proposed by the NGOs who participated in the consultations.

<sup>5</sup> The text of this legislation (in English) is available at [www.publicinfo.ro/ENGLEZA.html](http://www.publicinfo.ro/ENGLEZA.html) (Ministry of Public Information website)

### **2.2.2 The role of the media**

The media can sometimes play an ambiguous role in the drive for right to information legislation. Although it is often thought that journalists are the main beneficiaries of the right to information, they can be indifferent or even opposed to legislation. This is partly because journalists may have better access to official information than the general public – indeed a journalist may establish their

reputation based on their access to secret sources. Journalists can also see themselves as gatekeepers and interpreters of information for the general public and are reluctant to see that monopoly role pass. Nevertheless there are examples where journalists have helped lead the campaign for a right to know such as in the Philippines.

The **Philippines** has a strong journalistic tradition and, since 1987, a number of journalists have sought to challenge government departments, lodging complaints with the Civil Service Commission and the Office of the Ombudsman, and on several occasions resorting to litigation, usually successfully. Civil society groups (NGOs and Lawyers Associations) have played an active role in obtaining and disseminating official information, including forcing the publication of all of Marcos's unpublished presidential decrees and executive orders. In 2001, a coalition of opposition media groups, using information obtained through the constitutional guarantee, launched a vigorous and successful multi-media campaign exposing former President Estrada's corrupt dealings, resulting in his overthrow. This brought home the importance of free access to information to prevent such corruption from occurring in the future.

### 2.3 How can UNDP engage in the pre-legislation stage?

There are a number of ways that UNDP can engage in progressing right to information in the pre-legislative stage. These are: (i) undertaking a scoping exercise; (ii) raising awareness on the importance of right to information legislation; (iii) supporting activities that feed local initiatives into wider debate; and (iv) providing space for dialogue between CSOs and public officials.

#### 1. *Scoping exercise* .

In circumstances where there is little co-ordinated interest in a right to information law, it might be useful to begin with a scoping exercise that analyses the current state of law and practice in the country concerned. Such a study should identify the most important institutional allies and potential blockages. It should also document the key stakeholders and current initiatives which could feed into a wider national movement. The key interest groups that might support such an initiative should be identified and the most relevant issues sketched out. In China for example, there is no doubt that recent health concerns such as SARS, which have caused economic damage, have made the Ministry of Health very sympathetic to reform in this area. UNDP's knowledge base and its awareness of the relevant expertise are particularly important here.

## *2. Raising awareness on the importance of right to information legislation.*

Many countries will have a constitution which provides for a general right to information but this will often lack real teeth without specific right to information legislation. Information rights and real openness needs to become part of the institutional fabric rather than an option for public officials. Legislation provides this fabric. UNDP has a role in promoting the importance of legislation in moving towards amore open and democratic culture.

## *3. Supporting activities that feed local initiatives into wider debate.*

The transition from a closed society to an open society can be spearheaded from below by effective grassroots campaigns. Such campaigns will tend to be rooted in the day to day concerns of people's lives and to use a language that speaks directly to those who are otherwise marginalised. It is equally important however, that local initiatives feed in to a wider national debate – that information access is not just seen as a discretionary act by local officials but as a basic human right to be guaranteed at national level. UNDP can support local organizations involved in these activities to help them lever influence at the national level. They can also seek to ensure that civil society campaigns engage in dialogue with public officials at the local and national level. Developing dialogue and facilitating an exchange of views is a clear UNDP competence.

## *4. Providing space for dialogue between CSOs and public officials.*

One initiative that can help ensure steps towards a right to information is to bring the key stakeholders together in a series of round tables, or other fora to develop a consensus on their common interest and the best way forward. Key stakeholders may include public officials and politicians, representatives of civil society, journalists, lawyers and academics and – when appropriate international and relevant regional expertise. Building an effective consensus among these varied groups is not easy or rapid, but it is a key to success. It is also important to involve public officials and those institutions (they may be academic or legal) that are involved in the drafting of legislation for the national Assembly or parliament. Their expertise is vital and their support crucial.

## *5. Draw attention to other instruments which may strengthen access to information.*

There are a range of initiatives that can be undertaken by government which will make government more open – the publication of court decisions, of parliamentary records; ensuring that meetings of central and local parliaments assemblies are open to the public. UNDP offices can encourage all of these initiatives, particularly where legislation may be difficult to agree or time consuming to pass.

## 3. The content of right to information legislation

**This section explores some of the key content considerations for right to information legislation. It focuses on three main areas (i) constitutional provision for right to information (ii) the legal guarantees provided in right to information legislation and (iii) the scope of the legislation.**

### 3.1 Constitutional provision for right to information

The right to information can be guaranteed in a number of ways. Many countries provide for the right in their constitutions, usually by means of a broad statement guaranteeing the right of access to information. In other cases only the constitutional right to freedom of expression is specified and the right to information is inferred from this constitutional right.

Constitutional provisions can be effective where there is a mature legal system capable of giving effect to constitutional rights in law. In many countries this is not the case and a constitutional provision will be empty of meaning. In other cases the constitutional right may be even countermanded by other laws.

Some countries that are undertaking democratic transitions, such as **Thailand, Nepal** and the **Philippines**, have incorporated a right to information into their constitutions. Across the world the picture is varied. A number of African countries, including **Malawi** and **South Africa**, possess the constitutional right to information whilst many **Latin American** Constitutions tend to focus on one dimension of the right to information, *habeas data*, which is the right of anyone to access personal data, whether held by public or private bodies and where necessary, to update or correct it.

### 3.2 Legal guarantees provided in right to information legislation

It is generally accepted therefore, that the most effective way of guaranteeing the right to information is to pass a specific law protecting this right and granting people the right to official information. Such a law is best understood as a «process» right and in its legal form sets out a series of procedures. Any such law should have the following three characteristics:

- i. Right to information legislation should assume that the maximum information possible is disclosed, which means a presumption that all information held by public bodies is open;
- ii. Any exceptions to this (i.e. information that is withheld) should apply only in very limited circumstances, and these circumstances should be defined in law rather than left ambiguous;
- iii. Finally there should be an effective and efficient appeals mechanism in the event of an information request being denied.

### 3.2.1 The principle of maximum disclosure

The principle of disclosing maximum information means there is a presumption that all information held by public bodies can be accessed by members of the public and that any restrictions should only apply in very limited circumstances. More specifically this principle assumes that:

- Public bodies have a duty to release information and, in turn those members of the public have the equivalent right to request that piece of information;
- The right of access to information is one that can be claimed by any resident in the country (as is the case with any other human rights and recognizing the fact of mobile populations in the modern world);
- The state should not require any person requesting information to demonstrate a need for or interest in the information. If a public body does not want to release the information requested, it is for the public body to justify that refusal at every stage of subsequent proceedings, not for the individual to justify their interest;
- Not only that public bodies release information if specifically requested to do so, but that they also publish and disseminate information of significant public interest, (such as details of budgets and spending programmes). The type of information that is to be published will obviously depend on the public body concerned. Any law should therefore establish the general obligation to publish information and key categories of information that must be published.

The right to information is not unlimited – it has to be balanced against the need to protect other rights and freedoms, or to protect the wider public interest. Such restrictions are known as exceptions to the general principle that all information should be released and are elaborated below.

### 3.2.2 Limited exceptions for withholding information

The most important way of testing whether a right to information law is really effective is to assess the kinds of information that the law specifies can be withheld, for whatever reason. These are known as «exemptions» and all exemptions should be clearly defined in the law. A complete list of these exemptions should also be set out in the law. It is always potentially controversial trying to identify those reasons for legitimately withholding information – a general rule is that the basis for refusing a request for information should only be one where there is a legitimate public interest in withholding the documents. Such grounds might be if the release of information:

- is detrimental to the pursuit of a criminal case or law enforcement
- violates personal privacy

- constitutes a threat to national security
- affects commercial and other kinds of confidentiality
- endangers the safety of the public or an individual
- would undermine the effectiveness and integrity of government decision-making processes

When these exceptions are defined in law, it is very important that the wording should be narrowly drawn so as to avoid giving public officials too much discretion to loosely interpret their powers and withhold information that does not genuinely fit in one of the categories above. In addition, restrictions should be based on the content, rather than the type, of the document. It might also be necessary for some restrictions to be time-limited. For example, the justification for classifying information on the basis of national security may well disappear after a specific national security threat disappears. The exceptions should therefore be subject to regular review by the legislature.

Once these types of exemption have been defined in the law it is necessary to establish a further safeguard. It might be that the law is specific and clear on what exemptions are allowed but that public officials abuse or ignore these legal provisions. To help prevent this, it is important that the law sets out procedural safeguards.

Such safeguards might be as follows. If there is a refusal to disclose information, assuming it falls within the categories set out above, any such refusal should meet the following strict three-part test.

1. The information being withheld must fall into a category specified in the law;
2. Disclosure must threaten to cause substantial harm to that aim; and
3. The harm to the aim must be greater than the public interest in having the information.

These provisions are designed to ensure that perfectly harmless information which might fall loosely into a category being excluded from the scope of the law is not withheld. The three part test is designed to ensure that genuine damage would be done by releasing the information.

Some laws might seek to exempt whole agencies – such as the security services – from the remit of the law. However, - it is information that is exempt, not agencies. No public bodies should be completely exempt from complying with the right to information law - even if the majority of their functions fall within the range of exemptions.

The law should apply to all branches of government (that is, the executive, legislative and judicial) as well as to all functions of government (including, for example, security and defence bodies). Non-disclosure of information must be justified on a case-by-case basis.

Restrictions whose aim is to protect governments from embarrassment or the exposure of wrongdoing can never be justified.

### **3.2.3 Effective and efficient appeals mechanisms**

Wherever practical, if an information request is refused, there should be some mechanism for making an internal appeal to a designated higher authority within the public body who can review the original decision.

In all cases, the law should allow individuals to appeal to an independent administrative body if an information request is refused. This could be to an existing body, such as an Ombudsman or Human Rights Commission, or one especially established for this purpose, such as an Information Commissioner. Whichever is chosen, it should meet certain standards and have certain powers. Its independence should be guaranteed, both formally and through the process by which the head and/or board is/are appointed.

### **3.2.4 Other provisions to be considered in right to information legislation**

There are a number of other factors that need to be considered and provided for in right to information legislation. These include:

- The *cost of gaining access to information* held by public bodies should not be so high as to deter those seeking information, given that the whole rationale behind access to information laws is to promote openness.
- Right to information legislation should also require that *other legislation be interpreted, as far as possible, in a way that is consistent with its provisions*. Where this is not possible, other legislation dealing with publicly held information should be subject to the principles underlying the freedom of information legislation. Over the longer term, a commitment should be made to bring all laws relating to information into line with the principles underpinning the freedom of information law. A particular need is to set the right to information law alongside any data protection laws – the right to information cannot be used to access data of a personal nature held by the state to enable it to provide services. But data protection laws should not be used to conceal personal information whose release maybe in the public interest – such as any illegal financial transactions carried out by public figures.

- There should be a *strict time limit imposed on the length of time taken to respond to requests* – most laws specify between two and six weeks. However, the effectiveness of such a limit will depend upon the efficiency of the information system inside the public body, how accurate are the archives, how coherent the information management system etc. This is discussed further in a later section.
- Individuals should be *protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing*. «Wrongdoing» is a broad term whose meaning includes the committing of a criminal offence, failing to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration. It can also include a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. In the circumstances when employees are carrying out a public function and one of these offences is committed, there is a clear public interest in the offence being brought to light. In the first instance, any employee has a responsibility to report the matter to their manager. If, however, that manager refuses to act, then the employee must be able to alert the public to the problem, notwithstanding the provisions of their employment contract. This «*whistle blowing*» provision is a crucial safeguard of the public interest and an important element of an access to information law (although it is sometimes the subject of separate legislation).

### 3.3 The scope of the legislation

Right to information legislation may vary in scope in terms of what entities are covered under it. Broadly speaking the entities can be divided into 'public bodies' and private sector.

#### 3.3.1 Public bodies

Most right to information legislation applies to public bodies. It is worth considering briefly what is meant by such a term. For the purposes of disclosing information, the understanding of the term 'public body' relates to the type of service provided rather than on legal nature of the body itself. A public body can be assumed to include all branches and levels of government including local government and elected bodies. It includes all those institutions established by a legal mandate, such as nationalised industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organizations) and judicial bodies. It should also include those private bodies which carry out public functions (such as those who provide utilities, maintain roads or operate rail lines). Private bodies themselves should also be included if they hold information whose disclosure is likely to reduce the risk to key public interests, such as the environment and health.



### 3.3.2 The private sector

The **South African** right to information law includes private sector companies in the scope of the legislation. This untypical measure was introduced as part of the wave of constitutional radicalism that marked the birth of the new South Africa. A right of information against a private company is sometimes known as a «horizontal» right – as it is directed «horizontally» at another private actor rather than «upwards» to the state. It is significant, because it represents an unprecedented experiment and a unique opportunity to impose accountability through transparency in relation to private as well as public power.

It is too early to say exactly what impact this legislation has had on the private sector but the main domestic NGO monitoring the Act, the Open Democracy Advice Centre (ODAC) believes that the private sector is beginning to respond to the operation of the new law in South Africa, by having to keep proper records of its operations and that in the very process of keeping records, it allows for a greater degree of accountability than was the case before.

This obviously raises the much broader issue, outside of the scope of this guidance note, as to the legal accountability of corporations. International law does not offer any clear guide as to whether corporations can be accountable in this way. There have been attempts to argue that companies, particularly large multi-national companies, bear responsibilities to the wider community but this is still a contested area. All it is safe to say at present is that states are free to pass those laws they wish to bind corporations to an access to information regime, but that generally they choose not to. It must also be remembered that companies will need to protect their commercial confidentiality and this will require a different approach to exemptions than that which applies to governments. It may also be the case a public body holds the desired information about private companies and that the public can get that information directly from the public body itself.

### **3.4 How can UNDP engage in the development of right to information legislation?**

The process by which a law on the right to information is passed can be intensely political and UNDP cannot be seen to be intervening in the political process or taking any particular side in the national debate. Nevertheless there are number of ways in which UNDP can use its skills and capacity to assist. The nature of a CO's relationship with its host governments, its experience of democratic governance issues and its ability to identify and draw upon resources and expertise internationally will all be relevant in deciding the appropriate approach. Possible areas of engagement include:

#### *1. Facilitating dialogue around the drafting of the law*

If interest was expressed in drafting a law, but no mechanism existed for undertaking the draft, UNDP could offer to facilitate a process involving international and national experts to identify the key issues that should be included in any draft law. It is important that those supporting reform do not just talk to the like minded – those who are sceptical must have the opportunity to have their concerns addressed. The Peruvian experience of involving the armed forces is a particularly useful example to be borne in mind. As well as the military, key stakeholders will be judges and lawyers (who need to understand the proposed law, journalists, and officials from the justice and interior ministry where some of the most sensitive information may be held.

#### *2. Identifying local and international expertise*

Assuming that there is a draft bill of some kind, UNDP can offer to identify relevant international expertise to contribute to providing advice on the draft to help ensure it complies with the highest international standards.

#### *3. Ensuring the draft is subjected to wide debate and that public debate informs redrafts of the Bill*

The first draft of the legislation may arise from a group of experts, from a group of elected members, or even from an NGO. Whatever its origin it is important that the bill is subject to public debate and discussion and is scrutinised for its compliance with accepted international principles. In parallel, civil society groups should be encouraged to raise awareness of the significance of such a reform and encourage popular participation in the debate.

## 4. Implementation of right to information legislation

**Although the passing of a law is an extremely important part of securing the right to information it is not the final step. Any law still has to be implemented. There are a number of considerations which affect the effective implementation of right to information legislation.**

This section elaborates on these and focuses on five important factors:

- i. Building public awareness on the right to information
- ii. Promoting an informed civil service on the implications of the legislation
- iii. Encouraging cultural change within the civil service that official information belongs to the people
- iv. Developing an efficient and well organized information management system
- v. Establishing an effective regulatory machinery including the courts and an information commission or ombudsman

### 4.1 Building public awareness

The government should inform the public of their right of access to information, including specifically how they can apply. This should be seen as part of promoting a culture of openness and responsiveness within government. Government supported *public information campaigns* are an extremely important complement to a law – and it is essential if the goals of access to information legislation are to be realized. These campaigns need to employ a variety of communications mechanisms in order to reach the widest possible segments of the public, including those in rural areas and those who are illiterate. Governments also need to proactively produce and distribute literature in a variety of forms, including through Government department websites, on how citizens can use the legislation.

Many Governments recognize that maintaining their own websites and developing effective national *information and communications strategies* to make information available is an essential part of open and transparent government. The *Internet* in particular has opened up new possibilities for governments to interact with citizens. There is growing interest among donors and recipients alike in the possibilities of e-government. Combined with the right to information it undoubtedly opens up possibilities for greater public participation in decision making at all levels. This may in turn require support for programmes that assist people to use information technologies to look for, find and analyse information.

The *media* have an important role to play, as does civil society in raising awareness on the right to information. Frequently the media can be indifferent to the right to information, undercutting as it does

their own privileged access to the official world. If the media can be persuaded to see the right to information as a means to report on substantive issues in a way they have not been able to before, then they are likely to stimulate public interest. With civil society, active groups who are monitoring the law – like ODAC in South Africa or AIP in Bulgaria can contribute considerably to public awareness of the importance of this legislation.

The most effective implementation however, will come when people themselves demand it. Usually such demand is driven by a pressing social need of some kind – such as the demand for information about a major public health or environmental issue – or education.

An example of education providing the key to mass concern about access to information comes from Thailand. Article 58 of the Constitution underlined the public's fundamental 'right to know'. The Official Information Act is wide-ranging and is backed up by an Independent supervisory committee, the Official Information Commission (OIC), and by an Independent Information Disclosure Tribunal. Both bodies have successfully stood up against government agencies and private-sector interests in a number of high-profile cases in an attempt to force the rightful disclosure of information. In 1999, the Disclosure Tribunal forced the Counter Corruption Commission to disclose the results of its investigation into corruption within the Ministry of Public Health.

The most famous case, however, involved the successful appeal of a mother, Sumalee Limpavart, who challenged the decision of Kasetsart School, one of Thailand's elite colleges, to reject her daughter following a public admissions exam. After a two and a half year struggle, backed by the OIC and the Information Disclosure Tribunal, Sumalee's claim was upheld by the Supreme Court, and the school was forced to disclose its records, admitting that they had accepted a number of students with the same exam results as Sumalee's daughter because they had rich and well-connected parents.

The case attracted widespread attention and resulted in the government re-affirming their commitment to the disclosure of information and passing legislation to enhance the transparency of educational admissions and examination results. As a result of such cases, public awareness of their right to know is extremely high - over 500,000 members of the public submitted requests for information between 1997 and 2000, and the Official Information Act is seen as a vital component of the country's commitment to a system of participatory democracy. In April 2001, an Information Act

Amendment Committee was established to look into ways to enforce the act more efficiently and effectively.

#### **4.2 Promoting an informed civil service**

Even the most effective civil service will require a period of adjustment, although it is important that any preparation period is not allowed to be used to simply delay the implementation of the law. How a right to information law should be promoted will vary from country to country, depending on how the civil service is organized, how effective the internal information systems of the government are, general levels of literacy and the degree of awareness of the general public. The law itself should set out how it is proposed to address the culture of secrecy within government. An important element of this is the provision of right to information *training* for employees. Such training should deal with why access to information is important, the scope of any law, the procedures by which people request information and how requests should be responded to, how to maintain and access records. It is important to institute or support such training programmes so that countries are able to take advantage of the opportunities offered by the law and so that the law is seen as a positive benefit to officials, rather than another burden.

#### **4.3 Encouraging cultural change**

Where state capacity is weak or there is a long history of single party control, public officials may regard the files they hold as their own personal property and remove them at the conclusion of their employment. Within traditionally secretive bureaucracies, information itself is a form of power and officials may be reluctant to share it with other officials or even be transparent about the information they hold. This is a formidable challenge to effective government, let alone an effective right to information system. This is where training programmes are so important – to try and tackle the ingrained mindset that may go back for several generations.

#### **4.4 Developing an effective information management system**

If a right to information law is to be effective, a number of institutional supports are required. This is true for both national and local levels. Processing requests for information must be facilitated through effective decentralised structures and mechanisms. A big challenge is likely to be the chaotic nature of the information and public records system itself, the lack of proper archives and the lack of any consistent system for managing information across the government as a whole. This need not imply any conscious desire to obstruct the process of implementation but merely be a reflection of existing institutional weaknesses. In some countries for example there is no common information system extending across the public

service as a whole – so that managers and politicians genuinely do not know what records they might possess.

One of the significant advantages to any government of implementing access to information legislation is the drive it gives to providing a more effective internal information system. It is a stepping stone to wider institutional reform. It is of significant importance that broader initiatives aimed at addressing the modernisation of the public administration put emphasis on strengthening information and records management systems.

#### **4.5 Establishing the regulatory and enforcement machinery**

The *role of the courts* is crucial. Sometimes, courts undermine the intent of the law, so citizens give up. In addition, independent bodies that process information requests can succumb to political pressure or are made ineffective by lack of funds. The strength of the legal system – which is the ultimate enforcer of any law, is therefore very important. Without independent judges and a culture of «rule of law» this reform, like any other, will be difficult to have effect.

However, the courts themselves are rarely the first line of defence in implementation – they are too expensive and remote in most countries. It is therefore important to establish an administrative mechanism of some kind – either an *Information Commissioner*, or by using an existing office such as that of the *Ombudsman* as they do in Peru. This public body can then act as the first port of call for those whose information requests are denied.

Such an office could be given a wide variety of powers. In the first instance it should be able to hear simple administrative appeals against refusals to release information and it should have the power to demand the release of the information if the appeal is upheld. It can also be given the power to investigate systemic problems in the release of information and make recommendations to a public body as to how it might improve its procedure and processes. It can also have the power to make an annual report to the parliament or Congress, setting out how effective the law has been and recommending any changes in the law that may be necessary to make its operation more effective.

This office should be backed up by clear legal powers to enforce the law. This is necessary because in many countries, the access and enforcement mechanisms in the legislation will have been designed to be weak or unenforceable. Governments with a long history of secrecy will tend to resist releasing information. Public officials weaned on secrecy will tend to regard information as power and be reluctant to give it up. They also delay the processing of information request or impose unreasonable fees to discourage access. In order

to deal with this problem, some reform minded governments have included tough penalties in the law for officials who refuse to release information. Whether imposing penalties on individual officials is an appropriate means of enforcing the law is controversial. Many find it more useful to specify in law that the managers of the public body are responsible for ensuring that the right to information is guaranteed – making individual officials liable may encourage managers to push responsibility down the line to those too weak to resist but too powerless to change the policy. It may be better in the long run and more effective for the public body as a whole to be the subject of legal sanction is the law if broken, rather than penalise individuals.

#### **4.6 Government abuse of right to information legislation**

For the most part, experts believe that it is better to have a law protecting the right in place, however weak or flawed, than having no law at all. Once legislation has been adopted, it can be improved and strengthened through testing, monitoring and timely political review. There are however exceptional cases when the right to information law is used to deprive people of their rights, where the right to information legislation is approved in name only and where its real purpose is to gag the media and undermine civil rights. Fortunately, these cases are few and far between. They do, however, act as a warning for campaigners – any proposed legislation has to be carefully scrutinised to ensure it meets the highest possible standards.

In one case, a country passed a right to information law which was more concerned with controlling the media than about creating mechanisms for citizens to access information held by the state. Among its provisions was the compulsory regulation of journalists, creating the offence of «abuse of journalistic privilege». It set out measures to ban foreign journalists and established a statutory body to regulate the media. There were some positive provisions in the law – it established a right to access information held by public bodies. It imposed limits on the collection of personal information by public bodies and controls upon the way such information is used. But it did not enshrine a meaningful right to information act. In fact, in these circumstances, the overall repression of domestic opponents by the government concerned and the widespread international opposition this produced, meant that few people took this legislation seriously.

In another case a country passed two laws meant to establish the right to information, after considerable pressure to introduce such a law fuelled by public (and international) concern about corruption. These laws were widely seen as not enhancing, but restricting access to information. One law made it more difficult to secure public

records and enabled officials to refuse to hand over requested material. Under heavy domestic and international pressure, this law was repealed. A second law tried to regulate private information and prohibited making public «sensitive» information about people, restricting the publication of information about their assets. It was clearly aimed at preventing investigations into corruption in government. However, in the face of criticism by the media of the law's potential to undercut access to information, this law was later modified substantially, to stipulate that the law will not apply to any database, information related to journalistic work, or freedom to inform the general public. These two laws caused widespread concern among civil society, both domestically and in the region. Many governments were under pressure to introduce reforms and people felt that if this government were able to pass these laws as genuine reforms, they would set the benchmark for the rest. It underlines the importance of insisting, wherever possible, that legislation complies with the accepted norms of international standards.

#### **4.7 How can UNDP engage in this area?**

There are several important ways that UNDP can promote effective implementation of right to information legislation. These include:

##### *1. Supporting public awareness campaigns*

UNDP can play an important role in ensuring that communication channels which are used by more vulnerable groups are incorporated into the design public awareness campaigns around right to information legislation.

##### *2. Include a focus on information and records management systems within broader e-governance and ICT for Development initiatives*

UNDP has extensive experience in assisting partner countries with the development of national ICT for Development strategies and in supporting e-governance initiatives. UNDP can try to ensure that information and records management systems are a key feature of e-governance and ICT for Development support.

##### *3. Capacity development of public officials*

UNDP can support initiatives to develop the capacity of public officials at local and national levels by supporting training courses. Furthermore, UNDP could bring together public officials, civil society, journalists and lawyers on the same training courses to facilitate better understanding of the others' motivations and interests. This has been done to great effect in parts of Eastern Europe.

##### *4. Facilitating advice on appropriate enforcement mechanisms*

UNDP can provide advice on the appropriate administrative enforcement mechanism – a specialist commissioner, an



Ombudsman, an Anti-Corruption office for example – depending on the local circumstances that the office knows best.

#### *5. Providing ongoing support to civil society organizations*

UNDP can also continue to support civil society in its ongoing efforts to make right to information a reality for people. This might include support for programmes that increase public awareness of the potential of ICTs for popular empowerment.

#### *6. Providing support to parliamentary initiatives that promote the right to information*

UNDP has extensive experience working with members of domestic parliaments. Where there are interests, UNDP offices can support initiatives that help MPS to develop their own legislative proposals, encourage cross-party co-operation and build their capacity to analyse and respond to both government and civil society initiatives in this field.

## 5. Resources and further reading

### 5.1 General reading

UNDP Practice Note on Access to Information (available in English, French, Spanish, Russian and Arabic) [www.undp.org/policy/practicenotes.htm](http://www.undp.org/policy/practicenotes.htm)

Open Sesame: Looking for the Right to Information in the Commonwealth, Commonwealth Human Rights Initiative (2003) [www.humanrightsinitiative.org/publications/chogm/chogm\\_2003/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/default.htm)

Freedom of Information: A Comparative Legal Survey, Toby Mendel for UNESCO (2003) [www.article19.org/docimages/1707.pdf](http://www.article19.org/docimages/1707.pdf)

Freedom of Information and Access to Government Record Laws around the World, David Banisar (September 2003) [www.freedominfo.org/survey/survey2003.pdf](http://www.freedominfo.org/survey/survey2003.pdf)

Transparency International Global Corruption Report 2003 (special focus on Access to Information) [www.globalcorruptionreport.org/download.shtml](http://www.globalcorruptionreport.org/download.shtml)

Access to Information: UNDP's Engagement and a Guide to Key Actors (December 2003) [www.undp.org/oslocentre/docsdec03/Full%20guide%20-%20single%20paged.pdf](http://www.undp.org/oslocentre/docsdec03/Full%20guide%20-%20single%20paged.pdf)

### 5.2 Standards and Laws

Universal Declaration of Human Rights – Article 19 [www.un.orgrights/50/decal.htm](http://www.un.orgrights/50/decal.htm)

International Covenant on Civil and Political Rights (ICCPR) [www1.umn.edu/humanrts/instree/b3ccpr.htm](http://www1.umn.edu/humanrts/instree/b3ccpr.htm)

The Principles of Lima: Freedom of Expression [www2.britishcouncil.org/peru/peru-governance\\_and\\_society/peru-society-info-for-democracy-ii/peru-society-the\\_principles.htm](http://www2.britishcouncil.org/peru/peru-governance_and_society/peru-society-info-for-democracy-ii/peru-society-the_principles.htm)

The Aarhus Convention on Access to Environmental Information [www.unece.org/env/pp/](http://www.unece.org/env/pp/)

The Johannesburg Principles <http://article19.org/docimages/511.htm>

The South African – Promotion of Access to Information Act [www.opendemocracy.org.za/publications.htm](http://www.opendemocracy.org.za/publications.htm)

Article 19's Principles for Freedom of Information Legislation, June 1999 [www.article19.org/docimages/512.htm](http://www.article19.org/docimages/512.htm)

### 5.3 International institutions

Office for Security and Co-operation in Europe  
[www.osce.org](http://www.osce.org)

The Commonwealth Secretariat [www.thecommonwealth.org](http://www.thecommonwealth.org)

Organization of American States [www.oas.org](http://www.oas.org)

Council of Europe [www.coe.int](http://www.coe.int)

### 5.4 Civil Society Organizations

ARTICLE 19 [www.article19.org](http://www.article19.org)

ODAC in South Africa [www.opendemocracy.org.za/](http://www.opendemocracy.org.za/)

Access to Information Programme (AIP) in Bulgaria  
[www.aip-bg.org/index\\_eng.htm](http://www.aip-bg.org/index_eng.htm)

The Access Initiative [www.accessinitiative.org](http://www.accessinitiative.org)

The Freedom of Information Advocates Network  
[www.aip-bg.org/~foianet/](http://www.aip-bg.org/~foianet/)

Access to Information Network (ATIN) in the Philippines can be contacted through Transparency and Accountability Network (TAN) web  
[www.tan.org.ph](http://www.tan.org.ph)

Southeast Asian Press Alliance [www.seapa.org/](http://www.seapa.org/)

Background on MKSS and its work  
[www.undp.org/governance/docsaccess/right\\_to\\_information.pdf](http://www.undp.org/governance/docsaccess/right_to_information.pdf)

National Campaign for Peoples Right to Information (NCPRI)  
[www.righttoinformation.info/about\\_us.htm](http://www.righttoinformation.info/about_us.htm)

International Records Management Trust (IRMT) [www.irmt.org](http://www.irmt.org)

Commonwealth Human Rights Initiative (CHRI)  
[www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

Freedominfo.org [www.freedominfo.org](http://www.freedominfo.org)

## Right to information in UNDP programme countries

UNDP Programme Country	Name of law	Date passed/ takes effect
<b>Albania</b>	The Constitution of Albania	1998/1998
	The Law on Right to Information for Official Documents	- /1999
	The Law on Classified Information	
	The Law on the Protection of Personal Data	1999/-
	The Aarhus Convention	1998/2001
<b>Armenia</b>	The Law on Freedom of Information <sup>6</sup>	2003/Pending
	The Law on State and Official Secrets	1996/-
	The Aarhus Convention	1998/2001
<b>Belize</b>	The Constitution of Belize	1981/ -
	The Freedom of Information Act <sup>7</sup>	1994/1994
<b>Bosnia &amp; Herzegovina</b>	The Freedom of Information Act <sup>8</sup>	2000/2002
	The Law on the Protection of Personal Data	/2001
<b>Bulgaria</b>	The Constitution of Bulgaria	1991/-
	The Access to Public Information Act	2000/2000
	The Law for Protection of Classified Information	2002/-
	The Personal Data Protection Act	- /2002
<b>Colombia</b>	The Constitution of Colombia <sup>9</sup>	1991/1991
	The Law Ordering the Publicity of Official Acts and Documents	1985/-
	The General Law of Public Archives	2000/-
	Data Protection Bill	2001/Pending
<b>Czech Republic</b>	Charter of Fundamental Rights and Freedoms	1993/-
	The Law on Free Access to Information	1999/2000
	The Protection of Classified Information <sup>10</sup>	1998/1998
	The Protection of Personal Data <sup>11</sup>	2000/2000
	Act on Access to the Files of the Former Secret Police	1996/-
	The Aarhus Convention	1998/Pending
	The Access to Information on the Environment	1998/1998
<b>Estonia</b>	Estonian Constitution	1992/1992
	The Public Information Act	2000/2001
	The State Secrets Act <sup>12</sup>	1999/1999
	The Personal Data Protection Act	1996/1996
	The Archives Act	1998/1998
	The Aarhus Convention	1998/2001
	The Environmental Register Act	2002/2003

6 Will come into effect ten-days after it is published

7 Revised in 2000

8 Passed in Republika Srpska on May 2001

9 Revised in 2001

10 Revised June 2002

11 Excluding articles 16,17 & 35 which took effect on 01.12.2000

12 Revised 2001

<b>UNDP Programme Country</b>	<b>Name of law</b>	<b>Date passed/takes effect</b>
<b>Georgia</b>	Georgian Constitution	1996/-
	General Administrative Code of Georgia (chapter 3 -freedom of information) <sup>13</sup>	1991/-
	The Law on State Secrets	1996/
	The Aarhus Convention	1998/2000
	The Law on Environmental Protection	1996/
<b>Hungary</b>	The Constitution of Hungary	-/-
	The Protection of Personal Data and Disclosure of Data of Public Interest	1992/-
	The Secrecy Act <sup>14</sup>	1995/-
	The Screening Act <sup>15</sup>	1994/1994
	The Aarhus Convention	1998/2001
	The Act on Public Records, Public Archives and the Protection of Private Archives <sup>16</sup>	1995/1996
<b>India<sup>17</sup></b>	The Freedom of Information Act	2003/-
	The Official Secrets Act	1923/-
	The Public Records Act	1993/-
<b>Jamaica</b>	The Access to Information Act	2002/2003
	The Archives Act	1982/-
	The Official Secrets Act	1911/-
<b>Latvia</b>	The Constitution of Latvia <sup>18</sup>	1922/1922
	The Law on Freedom of Information <sup>19</sup>	1998/1998
	The State Secrets Act	1996/1997
	The Law on Personal Data Protection	2000/-
	The Law on Archives	-/1991
	The Law on Environmental Protection	-/-
<b>Lithuania</b>	The Aarhus Convention	1998/2002
	The Constitution of Lithuania	-/-
	The Law on the Provision of Information to the Public	1996/2000
	The Law on State Secrets and Official Secrets	1999/-
	The Law on Registering, Confession, Entry into records and Protection of Persons who have Admitted to Secret Collaboration with Special Services of the Former USSR	1999/2000
	The Law on Legal Protection of Personal Data	2003/2003
	The Law on Archives	1995/-
	The Aarhus Convention	1998/2002
	Order on Public Access to Environmental Information	1999/-

13 Revised 2001

14 Revised in 1999

15 Revised in 2003

16 Some exceptions ratified at a later date

17 Many Indian states have, adopted their own right to information laws, including Goa, Tamil Nadu, Madya Pradesh, Karnataka, Maharashtra, Delhi, and Rajestahn

18 Amended at various intervals

19 Amended in 2003

<b>UNDP Programme Country</b>	<b>Name of law</b>	<b>Date passed/ takes effect</b>
<b>Mexico</b> <sup>20</sup>	The Constitution of Mexico	1997/-
	The Federal Transparency and Access to Public Government Information Law	2002/2003
<b>Moldova</b>	The Constitution of Moldova	1994/-
	The Law on Access to Information <sup>21</sup>	2000/2000
	The Law on State Secrets	-/-
	The Aarhus Convention	1998/1999
	The Law on Archival Fund	
<b>Pakistan</b>	The Freedom of Information Ordinance	2002/-
	The Official Secrets Act	-/-
<b>Panama</b>	The Law on Transparency in Public Information	-/2002
<b>Peru</b>	The Constitution of Peru	-/-
	The Law of Transparency and Access to Public Information	2002/2003
<b>Philippines</b> <sup>22</sup>	The Constitution of the Philippines	/1973
<b>Poland</b>	The Constitution of Poland	-/-
	The Law on Access to Public Information	2001/2002
	The Classified Information Protection Act	-/1999
	Law to create the National Remembrance Institute	1998/-
	The Screening Act	1997/1998
	The Aarhus Convention	1998/2002
	The Act on Access to Information on the Environment and Its Protection and on Environmental Impact Assessments	2000/2001
The Act on Protection of Personal Data	1997/	
<b>Romania</b>	The Constitution of Romania	-/-
	The Law Regarding the Free Access to the Information of Public Interest	2001/2001
	The Law on the Access to the Personal File and the Disclosure of the Securitate as a Political Police	1999/-
	The Law on Protecting Classified Information	2002/2002
	The Law on Decisional Transparency in Public Information	2002/2003
	The Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption	2000/-
	The Law on the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data	2001/-
	The Law on National Archives	1996/-
	The Law on Free Environmental Access to Information	2002/-
The Aarhus Convention	1998/2000	

20 Nine states and one federal district have adopted freedom of information laws (Aguascalientes; Colima; Durango; Federal District(Mexico City); Jalisco; Michoacan; Nuevo Leon; Querataro; San Luis Pososi; Sinaloa)

21 Amended in March 2000 to include a note on environmental access

22 It is stated in the report 'Freedom of Information and Access to Government Record Laws around the World,' David Banisar (September 2003) that «there is no freedom of information act per se in the Philippines but a combination of the constitutional right and various other legal provisions» (e.g., the Code of Conduct and Ethical Standards for Public Officials and Employees) «makes it one of the most open countries in the region». [www.freedominfo.org/survey/survey2003.pdf](http://www.freedominfo.org/survey/survey2003.pdf)

<b>UNDP Programme Country</b>	<b>Name of law</b>	<b>Date passed/takes effect</b>
<b>Slovakia</b>	The Constitution of Slovakia	1992/-
	The Act on Free Access to Information	2000/2001
	The Act on Personal Data Protection	2002/2002
<b>Slovenia</b>	The Constitution of Slovenia	-/-2003/-
	The Act on Access to Information of Public Character	2001/2001
	The Classified Information Act	2001/2001
	The Personal Data Protection Act	1998/-
	The Aarhus Convention	1993/1993
	The Environmental Protection Act <sup>23</sup>	1997/-
<b>South Africa</b>	Constitution of South Africa	1996/-
	The Promotion of Access to Information Act	2000/2001
	The National Archives of South Africa Act	1996/-
<b>Thailand</b>	The Constitution of Thailand	Since 1991
	The Official Information Act	1997/1997
<b>Trinidad and Tobago</b>	The Freedom of Information Act	1999/2001
<b>Ukraine</b>	The Constitution of Ukraine	1996/-
	The Law on Information	1992/-
	The Order of Dissemination of Information on Public Bodies and Local Governments	1997/-
	The Law on State Secrets	1994/-
	The Law on National Archival Fund and Archival Bodies	1993/-
	The Aarhus Convention	1998/2002
	The Law on Protection of the Natural Environment	-/-
The Protection of Personal Data	Pending/Pending	
<b>Uzbekistan</b>	The Constitution of Uzbekistan	1992/1992
	The Law on the Principles and Guarantees of Freedom of Information	2002/2003
<b>Zimbabwe</b>	The Access to Information and Protection of Privacy Act <sup>24</sup>	2002 /2002

23 Article 14 states that environmental data is public property

24 Amended in June 2003