

## This document

This document was generated by Access Info Europe, a human rights organisation dedicated to the promotion and protection of the right of access to information in Europe and the defence of civil liberties and human rights with the aim of facilitating public participation in the decision-making process and demanding responsibility from governments. It was posted on the Inetrnet as a consultation document.

We think the standards defined herein form a useful basis for the work on Freedom of Information legislation for St. Helena, now underway.

The original papers and details of the consultation can be read here:

<http://www.opengovstandards.org/blog/open-government-standards-public-consultation/>

# Transparency Standards

That information about the activities of public bodies is created and is available to the public, with limited exceptions, in a timely manner and in open data formats without limits on reuse. This includes the disclosure of information in response to requests from the public and proactively at the initiative of public bodies. In addition that key information about the private bodies is available either directly or via public bodies.

## 1. Right to Know

**Standard:** That governments recognise the fundamental right of the public to access information, with limited exceptions, and that they make information available in response to requests and proactively.

*What is it?* Access to information is a fundamental right that has been recognized as such by international human rights tribunals and at least 50 constitutions around the world. This right is has been linked to the fundamental right to freedom of expression, and is essential to protect other human rights.

The fundamental nature of the right of access to information has been confirmed by the following:

- » Inter-American Court of Human Rights
- » European Court of Human Rights
- » UN Human Rights Committee
- » UN Special Rapporteur on Freedom of Expression
- » Organization for Security and Cooperation in Europe
- » Organisation of American States
- » European Union

In line with these standards, all countries should recognise the right of everyone (including non-citizens and legal entities) to access information without giving reasons, in reasonable time, and with no more exceptions than those established by law and in line with international standards.

The recognition of the right of access to information is the basis for building transversal and comprehensive transparency systems, which should be at the heart of any modern democracy.

*Why is it important?* Recognising access to information as a fundamental right is essential to ensure that the right is granted the highest levels of protection to which fundamental rights are entitled.

Another reason why the recognition of this right as a fundamental right is important is to ensure that other fundamental rights, such as the right to privacy, do not unduly trump the right to know.

Assuring the fundamental right of all persons to access information is essential to prevent discrimination and reduce information disparities.

*What is the role of civil society?* It is thanks to civil society activism over the past two decades that the right of access to information has been recognised as a fundamental right and that over 90 countries now have access to information laws.

For countries where law and/or practice still falls short of the international standards, civil society can:

- » *Campaign*: Press their governments and other political forces to make a commitment to recognising the fundamental rights of access, for example through a commitment in the Open Government Partnership action plan.
- » *Litigate*: many national and international courts have recognised the right of access to information as a fundamental right. In your country you may use the existing international jurisprudence to seek judicial recognition of the fundamental character of the right of access to information.

### Standards for the Right of Access to Information

In order to recognize access to information as a fundamental right and to guarantee that this right is complied with in practice, each country should:

- Include specific language in the constitution and/or relevant laws.
- Ensure that their legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.
- Ensure that their legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law.
- Ensure that their legal framework emphasizes the benefits of the right to information.

## 2. All information, all public bodies

**Standard:** That the right of access to information applies to all information held by national and supranational bodies, including all bodies performing public functions and operating with public funds (this includes the legislative and judicial branches and privatised companies performing public functions as well as private bodies holding information that relates to or is necessary for protection of human rights).

*What is it?* One of the key elements in access to information regulations is the scope: to give true effect to the right of access to information, it must apply to all public bodies and to some information held by private bodies. This is essential in an access to information law is because it doesn't matter how good or fast the process to ask for information is, if the information you have the right to access is very limited.

Almost all access to information laws apply to administrative bodies but not all countries yet have laws which apply to all other branches of government. A first open government challenge is to ensure a broad scope for the right to request and received information.

*Why it is important?* The scope and the definition of information are important because they define the level of transparency that a country may reach.

If for example a country decides to limit the information that may be accessible to decisions, we would be excluding the decision making process, that mean we would not be able to understand why and how decisions are taken.

If a country decides to exclude institutions from the scope of the law, which means that the function that this institution covers will either be completely opaque or regulated by a specific law. The last option is not recommendable for two reasons: because international standards establish that all information held by public institutions is public; and because having different laws for each institution generates legal uncertainty and unequal levels of transparency.

*What is the role of civil society?* The role of Civil Society is essential at all levels, when asking for a law that does not exist, when implementing a law that has just be approved and when pushing to improve the transparency standards that are already running.

In this particular case, CSO can:

- » Promote law reform: campaigning so that a broader range of bodies is covered by the scope of the access to information law.
- » Monitoring: Demonstrate the lack of transparency in practice through monitoring and use the finding to press for more information to be included in the scope of access to information laws.

### **Standards on the scope of access to information laws**

Access to information laws must include specific mentions to the scope of the right of access to information, both for the type of information that can be accessed and for the institutions that fall under the application of the law.

### **Standards for all information:**

- That the right of access to information should apply to all information held by national and supranational bodies, including all bodies performing public functions and operating with public funds (this includes the legislative and judicial branches and privatised companies performing public functions as well as private bodies holding information that relates to or is necessary for protection of human rights).
- The right of access should apply to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.
- Requesters should have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).

### **Standards for all institutions:**

The decision of what institutions should be included in access to information laws is very important as it needs a redefinition of what public institution means. Nowadays many private institutions perform public functions or are funded with public funds, in those cases they should also be considered a public institution in the access to information law.

- The right of access should apply to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.
- The right of access should apply to the legislature, including both administrative and other information, with no bodies excluded.
- The right of access should apply to the judicial branch, including both administrative and other information, with no bodies excluded.
- The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).
- The right of access should apply to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).
- The right of access should apply to a) private bodies that perform a public function and b) private bodies that receive significant public funding.

### 3. Access is the Rule - Secrecy is the Exception

**Standard:** Information can be withheld only if its disclosure would cause demonstrable harm to legitimate interests as permitted by international law and only after consideration of the public interest in disclosure. These protected interests must be clearly and specifically defined in national law and must be applied on a case-by-case basis. The same exceptions hold for information disclosed in response to access to information requests and that disclosed proactively, including under open data policies.

**What is it?** The access to information laws should establish a closed list of exceptions which can only be applied to deny totally or partially a request for information if it the public body determines and is able to demonstrate that publication of the requested information would harm another legitimate interest that need to be protected. The refusal shall only be applied if the public interest of the publication is not higher than the interest that would be damaged.

**Why it is important?** The recognition of this principle is very important to ensure that the refusals for information are not arbitrary or unfair. In order to ensure that, access to information laws must include a list of exceptions in line with international standards, harm and public interest tests, and the right to appeal to an independent review body.

**How can it be effective?** An exceptions regime will be effective if it is clearly defined in law and subject to clearly established harm and public interest tests. This is not, however, sufficient: there must be mechanisms to train public officials in how to apply the exceptions appropriately and there must be a strict requirement that any application of the exceptions is motivated and justified in detail to the requester in the response. There should be a strong emphasis placed on promoting partial disclosure of information. There must be efficient and effective mechanisms for distribution of decisions of the information commissioner and/or court rulings.

**What is the role of civil society?** For many requesters, it will not be easy to understand whether a refusal has been fair. CSOs can help monitor responses (particularly if they are filed by a public portal using such as those using [Alaveteli](#), for example, [AsktheEU.org](#), [Whatdoteyknow.org](#), [tuderechoasaber.es](#), etc.) and can provide support to requesters:

- *Help Desk*: CSO can help people to whom information has been denied. CSO can analyse the answer and figure out whether it is a fair denial. This function is especially important in those countries where there is not an independent review body.
- *Litigate*: When you think that information has been denied without a legitimate reason, the only solution is to appeal against that decision. As appealing is in most of the countries a difficult process CSO are a key element to engage in those process.

### Standards on limits for accessing information

The standards to follow when regulating the limits to the right of access to information include not only the list of exception but also how to apply those and what the consequences of the refusal of information are. These are the principles that access to information law should include:

- » Information can be withheld only if its disclosure would cause demonstrable harm to legitimate interests as permitted by international law and only after consideration of the public interest in disclosure. These protected interests must be clearly and specifically defined in national law and must be applied on a case-by-case basis. The same exceptions hold for information disclosed in response to access to information requests and that disclosed proactively, including under open data policies.
- » The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.
- » The exceptions to the right of access are consistent with international standards. Permissible exceptions are limited to the following:
  - national security;
  - international relations;
  - public health and safety;
  - the prevention, investigation and prosecution of legal wrongs;
  - privacy;
  - legitimate commercial and other economic interests;
  - management of the economy;
  - fair administration of justice and legal advice privilege;
  - conservation of the environment;
  - legitimate policy making and other operations of public authorities.
- » A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.
- » There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.

- » Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.
- » There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.
- » When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.

#### 4. Proactive Publication

**Standard:** That public bodies should proactively publish information of public interest, making every effort to ensure easy, prompt, effective and practical access to such information.

*What is it?* The right of access to information includes the right to request information and the obligation of public institutions to publish essential information. Both sides of the right are necessary to ensure a sustainable transparency system. Proactive publication of information means publishing information without the need for it to be requested.

Access to information laws should include a list of the minimum information that public institutions should publish proactively. That information is considered essential to understand the functioning of public institutions.

The tendency worldwide is to invest in and develop proactive disclosure regimes to reinforce transparency. Open Data policies are becoming common, with increasing numbers of government deciding to build open data portals. There has been some confusion between proactive publication and open data, when in fact they are essentially the same thing: an open data portal will contain a subset of all the information which a government should public proactively. The fact that new data, not previously available, is not released via an open data portal, does not change the fact that this is part of complying with the proactive obligations under the right of access to information.

*Why it is important?* Proactive publication of information is nowadays considered as the future of transparency for various reasons:

- » No transparency system could function on requests alone as this would create huge information inequalities in society. The only way to achieve truly transparent public administrations is through the proactive publication of information.
- » Proactive publication reduces the costs of transparency systems, ensuring more rapid delivery of information to the public without the need to process and respond to requests.
- » Proactive publication permits public authorities to ensure that the information available to the public is regularly updated. It ensures that members of the public have the

information they need to exercise their rights and fulfill their obligation as citizens and residents of a particular country.

- » Proactive publication stimulates the use and reuse of information, providing material and data which can contribute to public debate, to participation processes, contributing to quality journalism, fact-based analysis by CSOs and think tanks, and can underpin a variety of social and economic activity.

*How can it be effective?* When publishing information proactively, both the content and the form of the information are important. These are the criteria to follow before deciding how to publish the information:

- » Ensure that proactively disclosed information reaches members of the public;
- » Put information where it will be found;
- » Organize information in ways that make it relevant to users;
- » Ensure that in addition to disclosing complete information, core information is presented in a way so that it can be easily understood;
- » Proactively disclosed information should be free of charge; and
- » Ensure timely disclosure, taking into consideration the need to apply exceptions

The manner of publishing the information depends on the place and target audience. Internet is a first choice for disclosing the information but is not a universal solution and it should only be used if the majority of the people who are supposed to access that information is really able to use internet.

*What is the role of civil society?* To make sure that proactive information becomes a reality and matches the needs of your country, CSO can monitor the publication of information. CSOs can also initiative and participate in a range of mechanisms to define the priorities for proactive publication such as focus groups.

### **Standards on Proactive Publication of Information**

The following list includes all the information that has been considered as essential by international standards.

- » Institutional information: Legal basis of the institution, internal regulations, functions and powers.
- » Organizational information: Organizational structure including information on personnel, and the names and contact information of public officials.
- » Operational information: Strategy and plans, policies, activities, procedures, reports, and evaluations—including the facts and other documents and data being used as a basis for formulating them.
- » Decisions and acts: Decisions and formal acts, particularly those that directly affect the public—including the data and documents used as the basis for these decisions and acts.
- » Public services information: Descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees and deadlines.
- » Budget information: Projected budget, actual income and expenditure (including salary information) and other financial information and audit reports.
- » Open meetings information: Information on meetings, including which are open meetings and how to attend these meetings

- » Decision-making & public participation: Information on decision-making procedures including mechanisms for consultations and public participation in decision-making.
- » Subsidies information: Information on the beneficiaries of subsidies, the objectives, amounts, and implementation.
- » Public procurement information: Detailed information on public procurement processes, criteria, and outcomes of decision-making on tender applications; copies of contracts, and reports on completion of contracts
- » Lists, registers, databases: Information on the lists, registers, and databases held by the public body. Information about whether these lists, registers, and databases are available online and/or for on-site access by members of the public.
- » Information about information held: An index or register of documents/information held including details of information held in databases.
- » Publications information: Information on publications issued, including whether publications are free of charge or the price if they must be purchased.
- » Information about the right to information: Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.

## 5. Free of charge and free for reuse

**Standard** That information is made public without charge (the prevailing international standard is that information requests are free of charge and the only charges that may be levied are copying costs and costs associated with information delivery) and without limits on reuse, including no limits on reuse imposed by licences or other restrictions; the right to reuse public information is consistent with access to information being part of the fundamental right to freedom of expression.

**What is it?** Information must be made public free of charge and there must be no restrictions on reuse consistent with the right of access to information as part of the right to freedom of expression.

Submitting access to information requests and consulting the information on the spot or receiving information in electronic format must be free of charge. Government may only charge for copies as long as the rates have been established by law.

**Why it is important?** The recognition of access to information as a fundamental right linked to freedom of expression has important consequences, in particular that it should always be free to request information and that it should be provided free of charge with the exception of any possible copying or postage charges for hard copies of information: hence the requester is given the maximum possible conditions to exercise the right to know with no inequalities or limits imposed by costs.

The right to use the information obtained in any way is also intrinsically linked to the right to freedom of expression: once information is in the public domain, it may be used as desired by the requester, it may be shared with others, it may be contrasted and compared with other information, it may be used as a resource in developing new information or creating new

analyses, it may be used in ways which are critical of government, it may be used as the basis for participating in public debate and in decision-making processes.

*How can it be effective?* To ensure that public officials respect the right of requesters to ask for information free of charge and that they do not place restrictions on reuse, the legal framework must make clear that these two principles apply with respect to all requests, and all information to be released proactively. Public officials should be trained on the right of requesters to access information for free and to make use of it: in particular, public officials should never ask requesters why they want the information or how they intend to use it.

**What is the role of civil society?** Civil society should monitor for and challenge any abuses of the right to request information for free, and should campaign to remove any limits on or charges for reuse of information.

### **Standards on charging for information**

- » That information is made public without charge (the prevailing international standard is that information requests are free of charge and the only charges that may be levied are copying costs and costs associated with information delivery) and without limits on reuse, including no limits on reuse imposed by licences or other restrictions; the right to reuse public information is consistent with access to information being part of the fundamental right to freedom of expression.
- » It is free to file requests.
- » There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free. There are fee waivers for impecunious requesters

### **Standards on reuse**

- » Once information has been released to one requester it is deemed to have entered the public domain and may be used and reused by the requester.
- » The only limits on reuse may be where the reuse would constitute breach of copyright or processing of personal data. The mere use of information for participating in public debate or forming an opinion, or communicating with public officials and members of government shall never be restricted.

## **6. Open Formats**

**Standard:** Information stored electronically should be delivered to those who request it electronically and in an open format. Information published proactively should always be made available in open formats.

*What is it?* Open Formats is a standard that relates to how the information is published. Whether information is published electronically, in hard copy, or in other formats, it must be free of copyright, licences or other restrictions on reuse.

Whenever information is published electronically it must be made available in an open format which means that it is machine readable format using commonly available, open source or free software tools, and can be processed, evaluated, and reused without limits.

*Why it is important?* The reason why is important that information is made available free and in open formats is first to make sure that everyone has the same opportunities to exercise the right of access to information. Making information available in open formats, helps unlock the social and economic potential of the information, particularly large data sets, but also other types of data. Open formats permit wide distribution of information, which in turn contributes to understanding of public institutions and increases opportunities to participate in decision-making processes.

*How can it be effective?* How can you make you data open: <http://opendatacommons.org/guide/>. The Open Data handbook: This handbook introduces you to the legal, social and technical aspects of open data. It can be used by anyone but is especially useful for those working with government data. It discusses the why, what and how of open data – why to go open, what open is, and the how to do open. <http://opendatahandbook.org/>

*What is the role of civil society?* When requesting information everyone could specify that they want to receive the information in open formats and appeal in case they don't comply with this demand.

Monitoring the information that Government are publishing proactively in order to see if they are using open formats.

### **Standards on Open Formats**

- » Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).
- » Information stored electronically should be delivered to those who request it electronically and in an open format. Information published proactively should always be made available in open formats.
- » Data must be machine-processable: Data are reasonably structured to allow automated processing of it.
- » Data Formats must be Non-Proprietary: Data are available in a format over which no entity has exclusive control.

## **7. Compilation of information**

**Standard:** That public bodies and private bodies falling under the scope of the right of access to information should compile information which is necessary for public participation and accountability. They should ensure that this information is compiled in a timely fashion, regularly updated, and that it is clear, comprehensive, and comprehensible.

*What is it?* The obligation to make information of public interest available (see UN Human Rights Committee) clearly entails an obligation on public bodies to compile information, in particular to capture effectively and comprehensively information about the activities of the public body and about the spending of public funds.

The legislative branch, in the same way, has an obligation to make the entire legislative process transparency and accessible. The judicial power must ensure that information is compiled which permits the public to evaluate the administration of justice.

Private bodies performing public functions or operating with public funds should ensure that information need to evaluate their performance is compiled and accessible to the public.

There is a particular onus on all public bodies to gather data and to organise the information they hold in a way which permits both them and the general public to evaluate their compliance with human rights obligations and with respect for the environment.

Hence, while “information not held” is a legitimate response to an information request if it is true, this does not obviate the responsibility to gather information.

*Why it is important?* Without the obligation to compile information, public bodies can avoid their transparency obligations as well as escape scrutiny for their compliance with other laws and human rights standards. Clear standards on compilation of data are essential.

*How can it be effective?* The requirement to compile data is not normally contained in access to information laws although it is implicit in regulations which set standards for proactive publication. Many other laws require collection and compilation of data and these should be linked to transparency requirements, which in some cases they are as with environmental information.

#### **Standards: [still in development and discussion with CSOs]**

- » Education
- » Health
- » Social services
- » Human rights protection
- » Development
- » Financial crisis

#### **Crime data**

##### **... from a human rights perspective:**

- » Racially motivated crimes
- » Gender violence
- » Crimes involving trafficking of persons
- » Stopping and searching of minorities / immigrants

## 8. Independent review mechanism

**Standard:** That the right of access to information is overseen by an independent body which reviews compliance, may undertake ex officio investigations, receives and rules on complaints from the public, is empowered to order appropriate action to ensure compliance, imposing sanctions where appropriate.

*What is it?* An independent review mechanism is a body in charge of reviewing appeals against decision about access to information. This body can be appeal when an institution denies partial or total access to the information requested, as well as in other instances, such as when the requester considers that a public institution has charge excessive fees for the information or does not want to give access in the requested format. The independent oversight body should also receive complaints in cases of failures to release information proactively according to the legal obligations on proactive disclosure.

The independent review mechanism should be charged with the promotion of the right of access to information so as to ensure that institutions know about their obligations and that the public knows how to make full use of their right to know.

*Why it is important?* An independent review mechanism is essential to ensure the effectiveness of the right of access of information. This appeal system reinforces the judiciary appeal system which insufficient to protect the right of access to information due to its nature.

Information expires. The right of access to information is a fundamental right, linked to freedom of expression and essential to protect other rights. People ask for information because they need it to do something, to take decisions. If that information is denied, appealing to the judicial power will take too long and is expensive.

*How can it be effective?* The only way to guarantee a strong review mechanism to protect the right of access to information is to establish by law specific characteristic and powers that will ensure:

- » That the body in charge of reviewing the right of access to information is independent.
- » That it has a mandatory power, meaning it can oblige a public institution to revoke a decision.
- » That it also has the mandate of promoting the right of access to information among the institutions and among the public.
- » Is sufficiently well resourced to carry out its functions in an effective way.

Around the world the models of review mechanism are basically two: An Information Commissioner in charge only of reviewer access of information violation or a body that is in charge both of protect data privacy and Access to information. Both models have proved to be effective and the choice of which will depend on the context of each country, and what bodies already exist.

*What is the role of civil society?* In order to demand an independent review body in your country CSO can:

- *Lobby their Government* and other political forces so that they recognise the need of having an independent mechanism to protect the right of access to information.
- *Talk to the international community*. Many Information Commissioners are closely involved and in contact with the international FOI Advocates, talking to them is always a good chance to find allies that will also support the creation of such a review body in your country.

### **What are the civil society standards on the independent review mechanism?**

A review mechanism in charge of protecting the right of access to information has to be independent and has to have a proper mandate to be able to fulfil its function. These are the powers and characteristics that this figure should have:

- » That the right of access to information is overseen by an independent body which reviews compliance, may undertake ex officio investigations, receives and rules on complaints from the public, is empowered to order appropriate action to ensure compliance, imposing sanctions where appropriate.
- » The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).
- » Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).
- » The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.
- » The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.
- » There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.
- » The independent oversight body has the necessary mandate and power to perform its functions, including reviewing classified documents and inspect the premises of public bodies.
- » The decisions of the independent oversight body are binding.
- » In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.
- » Appeals to the oversight body (where applicable, or to the judiciary if no such body exists) are free of charge and do not require legal assistance.
- » The grounds for appeal to the oversight body (where applicable, or to the judiciary if no such body exists) are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).
- » Clear procedures, including timelines, are in place for dealing with external appeals (oversight/judicial).
- » The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)

## Check list for the Transparency Standard

Right of Access:

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Constitutional Provisions	Score Range
1. The legal framework (constitution/statutory law/jurisprudence) recognises a fundamental right of access to information.	0-2
2. The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	0-2
3. The legal framework contains a statement of principles calling for a broad interpretation of the RTI law and emphasising the benefits of the right to information.	0-2
Scope	Score Range
4. Everyone (including non-citizens and legal entities) has the right to file requests for information.	0-2
5. The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	0-2
6. Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	0-4
7. The right of access applies to the executive branch with no bodies excluded.	0-8
8. The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	0-4
9. The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	0-4
10. The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	0-2
11. The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	0-2
12. The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	0-2
Requesting Procedures	Score Range
13. Requesters are not required to provide reasons for their requests.	0-2
14. Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	0-2
15. There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	0-2
16. Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	0-2
17. Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	0-2
18. Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days.	0-2

19.	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	0-2
20.	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	0-2
21.	Public authorities are required to respond to requests as soon as possible.	0-2
22.	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	0-2
23.	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	0-2
24.	It is free to file requests.	0-2
25.	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	0-2
26.	There are fee waivers for impecunious requesters.	0-2
27.	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.	0-2
<b>Exceptions and Refusals</b>		<b>Score Range</b>
28.	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	0-4
29.	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	0-10
30.	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	0-4
31.	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	0-4
32.	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	0-2
33.	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	0-2

34.	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	0-2
35.	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	0-2
<b>Appeals</b>		<b>Score Range</b>
36.	Where it is mandatory to lodge an internal appeal (e.g. to a higher authority within the public authority that first refused access or otherwise failed to comply with the law) before proceeding to an external appeal, this must be simple, free of charge and completed within clear timelines (20 working days or less).	0-2
37.	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission).	0-2
38.	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	0-2
39.	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	0-2
40.	There prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	0-2
41.	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	0-2
42.	The decisions of the independent oversight body are binding.	0-2
43.	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	0-2
44.	Requesters have a right to lodge a judicial appeal in addition to an appeal to an independent oversight body (i.e. a second external appeal).	0-2
45.	Appeals (internal and both forms of external) are free of charge and do not require legal assistance.	0-2
46.	The grounds for an external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.)	0-4
47.	Clear procedures, including timelines, are in place for dealing with external appeals.	0-2
48.	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	0-2
49.	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management).	0-2
<b>Sanctions and Protections</b>		<b>Score Range</b>
50.	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	0-2
51.	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	0-2
52.	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	0-2
53.	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	0-2

<b>Implementation and Promotion</b>		<b>Score Range</b>
54.	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	0-2
55.	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	0-2
56.	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	0-2
57.	A system is in place whereby minimum standards regarding the management of records are set and applied.	0-2
58.	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	0-2
59.	Training programmes for officials are required to be put in place.	0-2
60.	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	0-2
61.	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	0-2

# Participation Standards

## 1. Openness

**Standard:** That there exist opportunities to participate in decision making which are widely promoted, including via the internet, mailing lists, public announcements and the media, encouraging everyone and particularly key stakeholders to engage.

### What is it?

Openness means that opportunities exist for the public, and in particular for key stakeholders affected by a particular decision, to participate in a meaningful way in the decision-making process.

Openness means engaging an optimum number of individuals, civil society organisations and key stakeholders early in a decision-making process.

Openness means making publicising opportunities for participation through various and diverse channels such as, but not limited to, traditional media, the internet, mailing lists, and community notice boards.

### Why is it important?

The OECD recognises that openness of participative processes:

- » Establishes greater trust in government.
- » Ensures better outcomes at less cost.
- » Raises compliance levels.
- » Ensures equity of access to public policy making
- » Fosters innovation and new economic activity
- » Enhances effectiveness

Being genuinely open to incorporating participative processes into the decision-making process demonstrates that governments see them as more than just the 'right thing to do'. Openness of participative process, and openness around them, is an acknowledgement by governments that they have intrinsic value as part of the decision-making process.

Openness provides a wider variety of opinion into participative processes, bringing nuanced recommendations that may not have occurred to experts. Openness of public participation helps to foster a wider variety of opinion into debate that enables decisions to be made that are more effective and closer to the needs of citizens.

### How can it be effective?

Openness can be made effective through clear communication and use of multiple channels so as to ensure the widest possible reach to those able and wanting to engage in debate and decision-making on the issues that affect them. Using new technologies or online resources such as mailing lists, mobile apps or social media helps reach a broader public, but should not

be a substitute for use of established forms of communication such as the print media, television, radio or public announcements which can each help to involve a wide variety of participants.

In order to ensure openness, governments should take a proactive approach with participation guaranteed through clear legislation, implementation and/or policy which ensure opportunities for anyone to participate.

### **What is the role of civil society?**

Openness of public participation ensures that the decision making process is not captured by private interests, in particular those represented by professional lobby groups.

Civil society often has deeper, more varied and broader networks than governments, which can be tapped into in order to communicate an opportunity for participation.

Incorporating civil society into a participative process adds value to decision-making by providing expertise and knowledge in or around an area of policy that represents the interests of citizens, rather than business, meaning government decisions can be closer to the needs and wants of the public.

Civil society can help governments become aware of when opportunities for participation are necessary and encourage governments to engage. Civil society can act as a balance against other groups which have the resources and contacts to influence decision-making more so than in the interests of the public.

### **What are the civil society standards?**

- » Laws and policies, including the creation of guides, codes or plans for public officials, guaranteeing citizens' right to participation in decision-making. (OECD)
- » Commitments and leadership from governments at all levels (local, regional and national) to open and inclusive policy making (OECD)
- » Governments should widen the scope and number of policy areas that should use participative processes.
- » Participative processes should aim to engage the optimum number and variety of participants.
- » Participation should not be restricted to certain interested groups; anyone, if they wish to, should be able to participate in a participative process without discrimination because of race, gender, sexual orientation, disability etc.
- » A range of media should be used in order to promote and engage participants in a participative process, including the internet, mailing lists, public announcements and traditional media.
- » There should be independent oversight of participative processes guaranteed by law. (OECD)

- » Oversight should assess the quality and diversity of participation and identify ways to improve participation and transparency in the decision-making process

## 2. Clear and Reasonable Timelines

**Standard:** That participative processes are structured so as to ensure sufficient time to allow interested stakeholders to learn about the consultation, to review the materials, and to prepare quality and considered input.

### What is it?

Clear and reasonable timelines for interested stakeholders, civil society, and others enable them to learn about the participative process, to review the materials, as well as to prepare and submit qualitative and considered input.

Clear and reasonable timelines should also apply to public bodies, which should give themselves enough time to be able to prepare, process the information gathered, make effective use of it and provide feedback as part of the decision-making process. Participative processes from start to finish should not be rushed.

### Why is it important?

Different topics and types of participation have different needs and require different processes, meaning that a one-size-fits-all timeline for participation will not always work.

Having a reasonable timeline that is clear to potential participants is important in providing people with the time to prepare for a participative process. Clear and reasonable timelines allow participants the time to consider the information and prepare input which benefits the overall quality of opinion gathered.

Governments also need to set themselves clear and reasonable timelines in order to have effectively prepared and be ready to implement a participatory process that will be of value for decision-makers. Reasonable timelines enable the preparation of qualitative feedback and evaluation helping participants to understand how their input was considered before the decision was made.

### How can it be effective?

The point at which public participation is incorporated into a decision-making process has an impact upon its effectiveness. The OECD states that,

*"Public engagement should be undertaken as early in the policy process as possible to allow a greater range of solutions and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective."* (OECD working group pg. 6)

Clear and reasonable timelines can be made more effective depending on the timing of when participation takes place. Participative processes need to be held at appropriate times of year (i.e. not during elections and avoiding popular holiday periods, public holidays or religious festivals) and the day (i.e. considering avoiding meetings during regular working hours which would limit numbers of participants).

### **What is the role of civil society?**

Everyone needs time to consider information provided and submit informed and relevant opinions. Civil society can appropriately prepare input and communicate with wider networks if governments incorporate clear and reasonable timelines into participative processes that allow for this to happen.

Since civil society plays an important role in channelling the views of society to government, a clear and reasonable timeline for participation would allow civil society to amplify the pool of potential participants.

Civil society also acts as an oversight body and watchdog highlighting and stressing to governments the importance to remain committed to timely and unrushed participative processes.

### **What are the civil society standards?**

- » Participative processes are well prepared by government before being launched.
- » Governments should publicise using appropriate media and in good time, the start of a participation process
- » Governments give themselves enough time for receiving input, considering it and giving feedback before making a decision.
- » Governments should give reasons as to why they have chosen a certain period of time or specific length for participation.
- » A participative process needs to be long enough for citizens and civil society to be able to consider and review the information and make their contributions.
- » Participative processes must be held at appropriate times of the year and day.
- » Civil society should be given the possibility to give their own feedback on the appropriateness of the timeframe and this should be considered by any final evaluation.
- » Oversight of participative processes should give opinion on the appropriateness of the timeframe and consider complaints.
- » Governments should provide feedback on whether they think the timeframe was sufficient in gaining the optimum amount of input from the participative process and respond to complaints or recommendations for improvement.

### 3. Clear and Comprehensive Information

**Standard:** That the background materials available to public officials involved in a decision-making process is made available; that key data and analysis should be presented in a form which is accessible and comprehensible to the public.

#### **What is it?**

Clear and comprehensive information means that the same documents and information available and used by public officials should be transparent and available for citizens from the beginning to the end of a participative process.

Key data and analyses should be presented in an accessible and comprehensible form. Data and information should also be accurate and relevant.

#### **Why is it important?**

The OSCE outlines access and clarity of information as a guiding principle for public participative processes that allows participants, “to participate in a meaningful way”. Clear and comprehensive information enables participants to consider the topic more informatively before producing opinions and submitting input.

Clear and comprehensive information on the process itself also reduces the likelihood of disappointment or misunderstanding over the level of impact that participation has on decision-making. The burden upon participants to understand the issue and their role in the process is reduced when clear, comprehensive, and objective where possible, information is presented.

#### **How can it be effective?**

Participation can be made effective with the proactive dissemination of documents and key information that are easy to understand, concise, self contained and free of jargon. Open governments should be proactively releasing information and data in a clear and comprehensive manner that enables participants to access the process, producing more informative and therefore valuable opinions for decision-makers.

New technologies can also enhance the clarity of otherwise complex information or data. When clearly presented, information can be better understood; reducing the burden on citizens to understand potentially complex issues and enabling more to take part in participative processes with their views and opinions.

Proactive publication of clear and comprehensive information also helps to enable participation by reducing the burden for citizens and civil society to access information on the topic and learn about the process.

#### **What is the role of civil society?**

The role of civil society in demanding clear and comprehensive information is two-fold; firstly to enable them to access the information in order to understand the process and participate, and secondly, to ensure that the information is correct and understandable to others.

Citizens and civil society need access to clear and comprehensive information in order to be able to make relevant input into a participative process. They can provide oversight, highlighting information that is missing or should be considered, as well as presenting the information to wider society using new technologies or in different formats to encourage wider participation.

### **What are the civil society standards?**

- » The same documents available to governments should be made proactively available to citizens and civil society.
- » Information and documents should be clear, presentable, free of jargon and in open and searchable formats.
- » Information and documents should be quickly and easily accessible (and conscious of the timeframe of the decision-making process), especially for those who may be affected by a decision.
- » Documents and information should be presented in a variety of ways, paying particular attention to the potential participants that will want to get involved (such as youth, linguistic minorities, the elderly, disabled etc).

## **4. Active collaboration**

**Standard:** That public bodies are proactive in their interactions with the public, establishing multiple channels to gather information (for example, online consultations, public hearings, focus groups), hence ensuring that all relevant stakeholders have the opportunity to engage, and that the debate around an issue can evolve and mature over time.

### **What is it?**

Active collaboration means that citizens, civil society and governments participate and work together in a participative process. Governments need to proactively approach and engage participants and support civil society in order to increase their capacity to participate.

Effective channels to gather information and engage the public should be established to enable an open, varied, public and developed debate before a decision is made.

### **Why is it important?**

Active collaboration between governments, civil society and key stakeholders helps balance the decision making process that means decisions are closer to the needs of citizens. Active collaboration of governments with citizens, civil society and other stakeholders is an effective way to establish open, varied and developed public debates, rather than closed and unbalanced influence upon decision-making.

As a result, active collaboration empowers all sides in the decision-making process, which means the decision is made in the spirit of common ownership. Consequently, governments will find active collaboration helps them make decisions that are more in-tune with public and civil society expectations, reducing controversial or questionable outcomes and challenges to those decisions.

It is important that active collaboration actively helps to level the playing field between more well-resourced groups who can influence decision-making, and those, such as within civil society who have fewer resources. The OECD recognises that creating and supporting an active citizenry is an important element to collaborative and participatory processes.

### **How can it be effective?**

Active collaboration can be made more effective when civil society is given the capacity to collaborate and participate at the same levels as more well-resourced groups. This can involve the provision of an enabling environment or background support for civil society, proactively ensuring information and documents are made available as well as ensuring that everyone has equal access to decision-makers. The IAIA states that, "The public should be supported in their will to participate [...] Capacity- building, facilitation and assistance should also be provided particularly for groups who don't have the capacity to participate, and in regions where there is no culture of PP [public participation], or where local culture may inhibit PP." (p2)

The NGO Code adds to the argument that to make active collaboration effective, governments need to enable and proactively support the participation of civil society.

Involve (81) argue that if governments provide information, support capacity-building, raise education and skills, increase awareness and encourage participation, it enables the kinds of "stronger and more cohesive communities" that can make effective contributions to actively collaborative participation. When governments are receptive and willing to engage and make sure civil society is able to engage effectively, they can more effectively realise the objectives of active collaboration as part of public participation.

### **What is the role of civil society?**

Civil society is already active in demanding more participation in the decision making process. This demand is limited by the receptiveness of governments to participation and their desire to get civil society involved. Civil society serves as a key interlocutor between governments and citizens with the enthusiasm, expertise and connections that can make active collaboration more effective, rather through a narrow set of interested groups.

Active collaboration also helps to develop the necessary communication channels between civil society and governments that can help improve participative processes, policy making and foster a constructive climate based on trust, collaboration and effective decision making.

### **What are the civil society standards?**

- » Government needs to proactively approach key stakeholders and the public to engage in participation processes

- » Governments should support civil society to help develop their capacity to participate
  - ✓ Through education and skills programs
  - ✓ Through laws and policy such as access to information
  - ✓ Through encouraging an environment to participate
- » Through capacity-building measures targeted at those least able to participate.
- » Governments should aim to engage in dialogue with civil society during the participative process, and not only passively receive information for consideration

## 5. Appropriate and Clear Procedures

**Standard:** That the rules on how to engage in the consultation are made clear in advance, along with the timeframes and how comments should be submitted to the public authority as well as the locations and dates of any public hearings and how to attend.

### What is it?

The rules and regulations on engaging in participative mechanisms should be made clear and public, along with timeframes and how comments should be submitted to the public authority. Locations, times and dates of public hearings or events should be clearly promoted as well as how to attend.

The procedures and kinds of opportunities for public engagement need to be appropriate depending on the objectives of the process, the target stakeholders to engage and the kind of information or input being sought.

### Why is it important?

Clear and appropriate procedures are important for an effective participative process both for citizens and for governments.

The OECD recognises that clarity involves defining and making public from the outset, objectives, limitations, responsibilities and information around participative processes and procedures. Making procedures clearer facilitates understanding about how they work and citizens' role within the whole process. This reduces confusion and disappointment over expectations because the procedure (its objectives and limitations etc), are clearly set out to citizens.

Having clear procedures reduces the burden for citizens to understand how they can be involved in a decision-making process. Removing these barriers means that there is a higher chance that more citizens will get involved. A clear procedure is not necessarily a simple one, but if it is well explained, in appropriate and understandable language, then citizens can become more informed and less reluctant to be involved. Having more participants, helps to make a

participative process more valuable in terms of the time taken to organise and execute, and in actually gathering information to make a decision.

Appropriate procedures enable participative processes to meet the requirements of citizens and governments. Appropriate procedures are relevant procedures that enable participation to be effective, which enhances the information gathered. Governments also must ensure procedures are appropriate by being flexible in the kinds of procedures to implement in order to gather appropriate information for the decision-making process.

### **How can it be effective?**

The UK government (p10 UK code of practice on Public consultation) recognises that by identifying early on the interested parties, and tailoring procedures that are made appropriate and are clearly explained to them, increases the effectiveness of participative processes. By proactively disseminating clear and concise documents as well as key information that is free of jargon helps to increase the effectiveness of public participation as it reduces the burden for participants to understand the process and issues.

Proactive communication of these appropriate and clear procedures is crucial in facilitating “mutual understanding and avoids potential time lags, disappointment or other difficulties in cooperation” according to the Austrian government Pg 9 OEBS. By clearly communicating the procedures, participants can be made aware about when, where, how they are able, and how long they have to participate, making it easier for everyone to understand the process and their role within it.

Being flexible in the methods allowed for participation (online, written, oral etc) can help to increase participation. These methods should be clearly explained, with resources focused on methods that are more appropriate for target participants. For example, oral participation organised at schools may be more appropriate for children, an open online participation for working adults, and more traditional written or town hall methods of participation for older citizens.

It is in the context of organising these appropriate methods that a dedicated contact person should also be established to help streamline participative input and make collecting the information more effective. It also provides the participative procedure with a contact for participants to communicate with and receive help from. (Pg 10 OEBS Austria)

Effectiveness can also stretch beyond the process itself. A well organised, clear and appropriate procedure for public participation can create long term value for decision-makers because the smooth running of the process encourages participants to take part again in the future.

### **What are the civil society standards?**

- » The rules and regulations governing participative processes must be clearly available for the public and proactively communicated.
- » Citizens and civil society are made aware of upcoming participative processes in good time to enable them to prepare.

- » Participative processes should be planned to target the specific area of information sought and the key stakeholders that will be affected.
- » Locations, times and dates of public hearings or events should be clearly promoted as well as how to attend.
- » Objectives, limitations, expectations and responsibilities of participants and organisers during the participative process should be clear, jargon-free and available to the public.
- » Participative processes are tailored to the requirements of participants and information to be gathered.
- » There is a dedicated contact person for each participative process who can be contacted by participants.
- » Participation procedures are reviewed at regular intervals to make sure that improvements are being made and they are being properly implemented.

## 6. Empowerment

**Standard:** That any comments received during participatory processes must be carefully reviewed and the perspectives incorporated into the documentation on the final decision. A detailed justification must be provided as to why and how the public's opinions have (not) been taken into account.

### What is it?

Citizens need to feel like they have a stake in the decision-making process. At the start of any consultative process, public bodies should make clear the extent to which the public has the chance to influence the process. The range goes from a survey which is testing public opinion to a full-scale referendum with binding results.

Participation should embrace pluralism of opinion from a variety of stakeholders (from large lobby groups to marginalised minorities), taking these views into account.

Any comments received must be carefully reviewed and citizens must be informed about how their input was considered with justifications into the decision made.

### Why is it important?

It is important for citizens to feel empowered in a participative process in order to encourage their involvement and commitment. When citizens are considering participating, if they know that their opinion will be taken into account before a decision is made, they will be more likely to want to participate. Knowing that their opinion is taken into account and that it is valued by decision makers empowers citizens, increasing their confidence to take part and participate as equal participants along with other more resource-rich actors. When citizens are empowered, consideration of their opinions means that decision makers can more accurately make decisions

that are closer to their needs. This makes policy decisions less controversial or divisive because key stakeholders have been incorporated into the process.

By valuing participants' opinions and taking them into account, governments can make decisions that better reflect, or have at least considered, the needs and expectations of citizens. In this way, and with good explanations, citizens will know they have been empowered in the decision making process. Governments will also be able to better implement decisions made, as the public will have helped in coming to the decision, rather than having it imposed upon them without consultation.

### **How can it be made effective?**

Citizens can be made to feel empowered through an effective reporting mechanism at the end of a decision making process that outlines how opinions were taken into account when a decision was made. If citizens know that their opinion has been considered and included in an evaluation or report, then they can understand the process through which a decision is made, or even support the final decision even if it is not in line with their original opinion. If citizens know that their opinions are considered and could make a difference, then they are encouraged to continue participating in other participative processes.

When public participation is open to all it helps empower those who previously felt they did not have the power or resources to influence decision-making processes. For resource-poor participants, having the opportunity to have your voice heard when in any other circumstance it is not, is a source of empowerment as your opinion is taken into account along with those who are resource-rich.

Empowerment means that opinions of stakeholders, whatever their background or level of influence or power, is considered by decision-makers. If participants know that their opinion is to be considered along with the opinions of established lobby groups or big business, then the sense of empowerment grows.

### **What are the civil society demands?**

- Citizens' opinions gathered by public consultations are taken into account and considered before a decision is made.
- Citizens can understand their participative role in the decision making process and the level of influence they may have.
- The consideration of citizens' opinions is explained and reasons given why they were incorporated into a final decision, or not.
- Decision makers acknowledge receipt of input made by participants.
- Citizens should be able to make recommendations on improving the participative process.

## 7. Transparency and Accountability

**Standard:** That sufficient information is made available to participate in a meaningful way in an participatory process and that the process is made accountable through reports and feedback on the contributions received. There should be transparency on who participated with written submissions or in public hearings, along with the main comments submitted, and the written reasoning explaining how the comments received were taken into consideration should all be made available in a place which is easy for any member of the public to find.

### What is it?

Reports and evaluations on feedback, participants, public hearings, submissions etc should be made public and easily accessible.

In order to maintain accountability, transparency, and consent and trust of the public, decisions taken need to be publically justified and their outcomes made public.

### Why is it important?

Participative processes in decision-making can be better trusted when the process itself is carried out in a transparent and accountable manner and where decision makers are both transparent in the decision made and the way it was made, as well as accountable for it.

It is important for the decisions to be justified through explaining and making publically available reports and evaluations of the participative process, the information collected, and the reasons for which a certain decision was made. That way, citizens are able to understand why certain decisions are made and also to reduce the possibility for misinformation and rumour after a decision is taken.

Transparency and accountability around participative process also help to discourage corrupt practices around decision-making as these will be highlighted by comparing the reports and evaluations of participation with the outcome of the decision made. It is more likely therefore that decisions will be made that are more in line with the views of the participative process, or at least have taken this into account when making a decision.

### How can it be made effective?

Transparency and accountability are best made effective when they are part of the operating culture of public administration and policy, rather than rules that must be followed. A spirit of transparency and accountability when incorporating participation into decision making processes help to make these more effective rather than following the letter of the law.

Transparency and accountability are made effective mechanisms when the reporting, evaluations and feedback that is required of decision makers, is made using high levels of detail in order to help explain every aspect and consideration before having made a decision. If information is left vague or un-detailed, suspicions will arise as to why more information is not publically available, and whether the decision made was done properly.

Within the spirit of transparency and accountability, effectiveness can be enhanced through proactive publication of reports, documents and information, rather than waiting to be asked for the information. This information should also be clearly presented and available in a variety of formats, including electronically.

### **What are the civil society demands?**

- » Information, documents and data on the preparation, implementation and evaluation of participation processes are made publically available.
- » All reports and evaluations on public consultations are made publically available.
- » Detailed reasons and justifications are given and made publically available as to why a certain decision was taken, including other options that were available or discussed but not approved.
- » All the information, data and documents gathered in public consultations should be made publically available.

# Accountability Standards

An accountable government is one which makes itself answerable to the public, observing standards of behaviour and integrity required by that public, and both explaining and taking responsibility for its decisions and actions.

Accountability mechanisms therefore include the rules, regulations and mechanisms in place that govern the behaviour of elected and public officials in their exercise of public power and the spending of public funds. Such rules will require that public officials (elected politicians and civil servants) act with integrity, carrying out their public functions in the interests of the public good, and not any personal or private interests.

Specific and detailed measures are required to reduce corruption risks, to identify and prevent potential conflicts of interest, and to guard against illicit enrichment. These will include a regulatory and practice framework which ensures that public officials are not engaged in decisions where their judgment might be affected by their private interests (for example because of previous or potential future employment or personal connections). Controls of the income of public officials should include transparency of income and detailed declarations of assets.

Accountability mechanisms will also require that public bodies and elected officials give account for their actions, providing reasoned and evidence-based justifications for policy and program decisions, and will establish means by which public officials assume responsibility for the consequences of their decisions. To this end, that sufficient information must be provided to permit ongoing public scrutiny of the actions of public bodies.

In a modern democratic state the mechanisms which ensure accountability and integrity and which guard against conflicts of interest and corruption are multiple and interwoven. They range from codes of ethics and good administrative behaviour, to provisions of the criminal code and sanctions which may include prison sentences for breach of the rules.

For accountability mechanisms to be effective, they have to be enforced by institutions which guarantee compliance. Hence it is necessary that there exist independent bodies which oversee the exercise of public power; these can range from Ombudsman institutions to supervision of public services and public spending (audit offices) to oversight by the legislative and judicial branches.

Transparency is an essential part of any accountability and integrity system: rules must be in place requiring that there is good record keeping of the administration of public power and the spending of public funds and that the actions and decisions of public officials are reasoned and justified with full information made available to the public.

Complementary mechanisms to protect public officials who reveal wrongdoing must also be established, in particular, there must be protection for whistleblowers as well as mechanisms which react to disclosures of wrongdoing when these are reported to oversight bodies or made public.

In these Open Government Standards, we have developed the standards for information which should be collected and disclosed in each of the following areas, as well as corresponding legal mechanisms:

- » Code of Conduct
- » Assets disclosure
- » Conflict of interest prevention mechanism
- » Transparency of lobbying
- » Whistleblower protections
- » Procurement

In addition, we note the need for **independent enforcement mechanisms** which should have specific competences and powers for each of the accountability mechanisms.

The Open Government Standards make particular reference United Nations Convention against Corruption<sup>1</sup> as well as the standards developed by other inter-governmental organizations (such as the OECD<sup>2</sup>) which recommend the legal frameworks and mechanisms needed to reduce corrupt practice in public service.

## 1. Codes of Conduct: Clear standards of behaviour

**Standard:** That there exist norms and standards of behaviour in public life, such as a code of conduct. This should be enforced by institutions guaranteeing the accountability and responsibility of elected and unelected public officials for their actions and decisions, ensuring that they avoid engagement in decisions or judgments affected by their private interests. Public officials should also be required by codes of good administrative behaviour to keep a true and complete record of their actions, setting down a record of all decision-making and legislative processes, and capturing all inputs into such processes, which should records of meetings with lobbyists and interest group representatives.

**What is it?** Public officials, elected or unelected, should carry out their work and duties according to a code of conduct that encourages good (administrative) behaviour. The code of conduct itself should be simple, clear and place emphasis on key values. A code of conduct exists to prevent decisions or judgements taking place that may not be in the best interests of the public, but that have been influenced by private interests. In order to guarantee the professionalism of public officials, a code needs to have an independent body to enforce it.

**Why is it important?** Citizens expect public servants to serve the public interest with impartiality, legality, integrity and transparency on a daily basis. Core values guide the judgement of public servants about on how to perform their tasks in daily operations. Clear standards of behaviour help to institutionalise a culture of professionalism of public administrations and officials. Codes of conduct also provide public officials with the basic expectations and guidance that avoids corruption, malpractice and conflicts of interest in daily operations as well as in decision making.

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<sup>1</sup> UNDOC (2004) UNCAC [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>2</sup> OECD (2011) <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

**How can it be effective?** Codes of conduct can be made effective by combining aspirational values with more detailed standards on how to put them into practice. In addition to the general standards applicable to all public servants, codes of conduct can be made more effective by making supplementary codes for specific positions, in particular public office holders and senior civil servants, as well as professions working in sensitive areas, such as law enforcement, judiciary and national defence; the financially sensitive sectors (e.g. tax and custom administrations) and the professions with a tradition of self-regulation (doctors, medical personnel, lawyers).

**What is the role of civil society?** Civil society can help to make sure that codes of conduct are adhered to by raising the alarm when they are not and by taking cases of malpractice to the relevant ombudsman or independent enforcement body. It is also the role of civil society to highlight positive practices and encourage these further throughout public officialdom.

**What are the standards?** There are a number of codes of conduct that serve as good examples of Codes of Conduct, Administrative Behaviour, or Ethics.

The key features of such a code should include requirements that:

- » Public officials should act in accordance with the law and ethical standards;
- » Public officials should serve the public interest and not be act in manner motivated by political allegiances or private interests;
- » Public officials should strive to conduct their work as effectively and efficiently as possible in the public interest;
- » Public official shall be act with honesty and integrity, and with courtesy towards members of the public;
- » Discretionary powers should be exercised with utmost impartiality taking into account relevant information to reach the best possible decision in the public interest;
- » Gifts and interests should be declared according to the systems in place;
- » Improper offers, be they monetary or of another nature, should both be rejected and reported to superiors and/or appropriate anti-corruption mechanisms;
- » A public official should never use his or her position for private gain nor for favours or gain of kin or others known to them;
- » A public official should keep an accurate and detailed written record of their actions;
- » A public official should ensure the transparency of all their actions, with the exception of the limits permitted by national and international standards on the right of access to information taking into account the public interest in knowing the information.

### **Further reading**

Council of Europe Model Code of Conduct for Public Officials

[http://www.coe.int/t/dghl/monitoring/greco/documents/Rec%282000%2910\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec%282000%2910_EN.pdf)

EU Code of Good Administrative Behaviour

[http://ec.europa.eu/transparency/civil\\_society/code/index\\_en.htm](http://ec.europa.eu/transparency/civil_society/code/index_en.htm)

UK Civil Service Code

<http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

## 2. Conflict of Interest Prevention Mechanisms

**Standard:** That potential conflicts of interest in decision making are avoided through a clear regulatory and practice framework which ensures that public officials are not engaged in decisions where their judgment might be affected by their private interests.

**What is it?** Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. Private interests could include any advantage to the public official or to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business, employment, or political relations.

Particular measures must be put in place to avoid the concerns that the “revolving door phenomenon” does not result in public officials having a particular interest while in office because of previous or potential future employment. The OECD has also stated that while all public officials have legitimate interests which arise out of their capacity as private citizens, a conflict of interest “involves a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities”.

Codes of conduct can never suffice to replace legal mechanisms which are designed to prevent potential conflicts of interests, by requiring that interests be disclosed and by setting in place mechanisms to prevent public officials from taking part in any decision-making process where there may be an actual or perceived conflict of interest.

**Why it is important?** Public decisions must be taken in the greater public interest after an impartial weighing of the evidence available to the public officials at the time at which the decision is taken. Every effort should be made to exclude a public official's private interests from the decision-making process. Similarly, the influence of lobby groups should not weigh unduly on a decision-making process. The standard mechanisms for preventing such conflicts are designed to create a level playing field and ensure both impartiality in taking decisions and accountability after the decisions have been taken.

Putting in place measures which guard against the possible negative influences of the revolving door phenomenon is essential prevent “regulatory capture”, where officials are overly sympathetic to the industry they must regulate because they used to work in that industry.

**How can it be effective?** Conflict of interest is effective when it prevents conflicts from arising rather than imposing sanctioning after the fact. The Organisation for Economic Cooperation and Development’s (OECD) 2007 definition states that: “Conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his or their own professional or official capacity in some way for personal or corporate benefit.” Conflict of interest mechanisms must be preventative.

**What is the role of civil society?** Monitoring of conflict of interests is one of the most important areas of civil society engagement in anti-corruption work, precisely because of the insidious effects which conflicts of interest have on decision-making. Civil society can track, evaluate, and raise concerns about potential conflicts of interests. Often CSOs and investigative

journalists are able to expose interests which have not been declared and which oversight bodies have no way of knowing.

### **The Open Government Standards on preventing conflict of interest:**

#### **1. Declaration of interests:**

- » Public officials who occupy a position in which personal or private interests might impact upon official duties must be required by law to declare those interests. Such declarations shall include carrying out activities, whether paid or unpaid, or accepting positions or functions outside his or her public service employment, which would have a bearing on their public role. Public official should declare membership of, or association with, organisations that could detract from proper performance of the duties as a public official.
- » Declarations of interest must be made on taking up a post, and at regular intervals thereafter and whenever there are any changes to the nature or degree of those interests.
- » Declarations of interest must be made proactively available to the public, in an open machine-readable format, and must be regularly updated.

#### **2. Prohibition of incompatible outside interests:**

- » The legal framework must prohibit public office holders from having any external interests which would result in a probable (possible) conflict of interest with their current post and decision-making responsibilities.
- » Public officials should be prohibited from engaging in any activities, either paid or unpaid, which would be incompatible with or would detract from the performance of duties as a public official.
- » Public officials may be permitted to belong to political parties but should ensure that political involvement does not impair the confidence of the public and the actual ability to perform impartially the duties as a public official.

#### **3. Revolving Door Mechanisms**

- » Conflict of interest declarations shall be specifically designed to identify and guard against the 'revolving door' phenomenon and hence to prevent abuse of office by those who may use their influence while in office to shape a policy or to ingratiate themselves with companies which might later hire them.
- » Public officials shall be prohibited from engagement in decisions where their judgment would be or might possibly be swayed because of their previous involvement in a particular sector.
- » Limitations shall be placed on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure. (UNCAC).

- » A mandatory “cooling off” period of two years shall be imposed which prohibits employment in economic activities which are directly related to areas where the public officials was previously in a decision-making position or where they hold privileged information which would be of unfair benefit to that business.
- » Measures taken to prevent conflicts of interest under revolving door mechanisms must be made proactively available to the public, in an open machine-readable format, and must be regularly updated.

### 3. Assets Disclosure

**Standard:** An effective and transparent assets disclosure regime creates as a framework under which illicit enrichment during public service can be prevented.

**What is it?** An assets declaration is the disclosure of the income and assets of elected officials and public servants.

**Why it is important?** An effective and enforced assets-declaration regime is an important tool for accountability and anti-corruption during public service. Disclosing this information helps to highlight and prevent illicit enrichment through corruption, bribery and financial irregularity whilst in public service.<sup>3</sup>

Public disclosure of assets by public figures can provide confidence in leadership by showing they have nothing to hide. The OECD highlights the prevention of illicit enrichment and conflicts of interest as well as to increase public confidence as reasoning behind assets disclosure regimes.<sup>4</sup>

**How can it be effective?** Measures to disclose assets and make them public in itself without thorough analysis and auditing is not sufficient to ensure that illicit enrichment is discouraged. Around the world there are a variety of systems in place that provide oversight to effectively prevent and sanction illicit enrichment.<sup>5</sup> The body charged with such enforcement of an assets disclosure regime must be an independent agency, both to ensure that it acts with probity and also to establish trust in the mechanism.

The oversight body also must have the power to oblige the filing of assets disclosures by public officials with the ability to analyse and audit them as well as impose sanctions for non-compliance or irregularity especially where a culture of disclosure is not present<sup>6</sup>. There should also be a legal framework in order to investigate cases of corruption and illicit enrichment with the ability to impose criminal sanctions.

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<sup>3</sup> Global Integrity, T/AI (2011) Opening Government

<sup>4</sup> OECD (2011) pg.12 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

<sup>5</sup> StAR initiative (2012) pg. 27  
<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

<sup>6</sup> OECD (2011) pg.16 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

Even with an oversight body, transparency is essential to the effectiveness of an assets disclosure regime: members of the public in particular civil society organisations and journalists must be able to access and review the detailed assets disclosures, comparing and contrasting them with other information, and raising the alert should the information appear to be incorrect.

**What is the role of civil society?** The publication of assets disclosures increases trust in the mechanism by enabling citizens and civil society to monitor the effectiveness of the system to hold those in power accountable.

Reports by StAR as well as Global Integrity and T/AI state that public access to assets disclosures can influence and improve policy on the assets disclosure mechanism whilst civil society can play an important role in monitoring and reporting on it<sup>7</sup>.

Without publication of assets declarations, citizens and civil society are unable to hold those in power accountable over potential illicit accumulations of wealth or irregular decision-making whilst in power.

### *What are the civil society standards on assets disclosure?*

- » A transparent assets disclosure regime is guaranteed by law, with independent enforcement mechanism, and both administrative and criminal sanctions for a range of breaches of the legal requirements.
- » Assets disclosure is made by elected and non-elected officials and institutions at the national, regional and local level with (significant influence over) decision-making power such as, but not limited to; Head(s) of State, Members of Government, Delegates of the Legislature, Judges and Magistrates, Civil Servants, Advisors, Heads of Organisations/Companies using public funds.
- » Assets disclosure should include declarations relating to spouses, and children of officials. Disclosures relating to assets held in conjunction with other family members could be required. In any case, the oversight body should be empowered to require disclosure of information about other family members should this be necessary as part of an investigation.
- » Filing of assets declarations is mandatory at regular intervals which should include: upon taking office, annually thereafter, upon a change in assets, upon leaving office and three years after leaving office.<sup>8</sup>

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<sup>7</sup> StAR Initiative (2012) Pg.93/94

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

Global Integrity, T/AI (2011) Opening Government

<sup>8</sup> StAR Initiative (2012) Table A.2 pg. 99

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

- » Assets disclosures as well as audits, analyses and reports thereof by the independent enforcement body are published timely (or automatically) and are electronic, centralized and searchable.
- » Assets disclosures as well as audits, analyses and reports thereof are freely accessible in open and reusable formats.
- » Data to be included in assets disclosure should include:

Income from:	Assets	Gifts	Liabilities
<ul style="list-style-type: none"> <li>• Public employment</li> <li>• Private employment, including ownership of businesses</li> <li>• One-off income from consultancies, boards of directors, honoraria for conference, writing, etc.</li> <li>• Returns on Investments and Property</li> <li>• Gambling</li> <li>• Any other sources (to be specified)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence</li> <li>• Other property (second/holiday homes)</li> <li>• Land</li> <li>• (Financial) investments</li> <li>• Bank accounts/Cash</li> <li>• (Life) insurance policies</li> <li>• Business assets (companies owned, farms, rental properties, patents, copyrights, etc)</li> <li>• Vehicles</li> <li>• Jewellery</li> <li>• Art</li> <li>• Other movable or immobile assets</li> </ul>	<ul style="list-style-type: none"> <li>• Gifts received in a public capacity</li> <li>• Gifts received in the form of hospitality, holidays, etc.</li> </ul> <p>[possible lower limit of a few Euros/dollars]</p>	<ul style="list-style-type: none"> <li>• Debts/Loans</li> <li>• Obligations</li> <li>• Credits</li> <li>• Mortgages</li> <li>• Guarantees</li> </ul>

**Note: Personal data protection:** by taking up public office, public officials surrender some of their personal data protection rights in the public interest. At the same time, it is acceptable to withhold some information such as bank account numbers from public disclosure even if these are required to be included in the assets declaration; the name and location of the bank should be sufficient.

#### 4. Transparency and Regulation of Lobbying

**Standard:** That lobbying is subject to regulatory controls accompanied by sufficient transparency to ensure that the public has oversight of the influence of private or group interests in public decision making.

**What is it?** Lobbying is an action by which interest groups – representing either private or public interests – try to persuade decision makers and legislators to adopt policies and laws which are in line with the particular interest they are representing. Lobbying is not per se something problematic: the interest groups often represent legitimate sectors of the society and put their views forward, for example, representing small-scale organic farmers or associations of parents of schoolchildren. There are however concerns that big businesses are better resourced to engage in lobbying and hence will have more possibility to press for their interests to be taken into account. To address this, there needs to be regulation which controls the lobbying process and ensures that it is transparent.

**Why it is important?** Lobbying regulation and transparency is essential to permit the public to monitor the decision-making process and to ensure that decisions were taken way which is in line with the greater public interest and to ensure that all relevant considerations fed into that decision in a balanced way. Lobbying transparency is part of the process or ensuring a level playing field and preventing conflicts of interest in key decision-making moments.

**How can it be effective?** To be effective lobbying regulation has to be comprehensive and mandatory. The experience across Europe and in the United States shows that voluntary regulation does not work and there is a clear tendency to shift towards mandatory regulation.

**What is the role of civil society?** Even with a mandatory register of lobbying, it is a challenge for oversight bodies to verify the information disclosed. The role of civil society is to carry out monitoring of the lobbying process, and to identify where there are discrepancies between the information declared and the behaviour of lobbyists, looking in particular at whether more is being spent on lobbying than is declared, in terms of events, human resources, etc.

#### **Open government standards on lobbying regulation:**

- » A mandatory register of lobbyists should be created. It should adopt a wide definition of a lobbyist as “anyone who arranges and facilitates contact with officials on behalf of a specific interest group in order to influence the decision-making or policy-making process”.
- » Registration should be mandatory for: trade unions, think tanks, large as well as small charities, pressure groups, companies, public affairs agencies, law firms and in-house lobbyists. Further recommended that registration should take place once two-way communication has been established with a public official.
- » Registration and reporting should apply to contact with the executive (administrative) and legislative branches of power and to private bodies performing public functions or exercising public authority.
- » Information contained in the register must be accessible to the public, easy to compare, machine-readable and presented in an open format.
- » The register should be update regularly, with the organisations in it required to verify their data at least quarterly.
- » The details to be captured in the register should include:
  - the organisation lobbying,

- the name of individual lobbyist(s),
  - information on any public office held by the lobbyist in the past five years,
  - the public body being lobbied,
  - the name of public official with whom contact has been made, a summary of what is being lobbied on (whether legislation, regulation or policy or government contract or grant),
  - the amount of money spent on lobbying (a good faith estimate).
  - what the money is being spent on gifts, dinners, events etc. and where that money comes from.
  - whether individual lobbyists have a personal relationship (friend or family) with a public official.
- » Public officials should be required to refuse to meet unregistered lobbyists. This does not, of course, prevent them from meeting with members of the public – indeed, both civil servants and in particular members of parliament should be open to communications and contact with members of the public, and in the case of parliamentarians they should develop strong relationships with their constituents.
- » All meetings on any decision-making or legislative matter or other matters of public policy should be declared and made public. This can be easily and effectively achieved through publication of agendas of public officials, and through the publication of records of meetings. In order to comply with standards of personal data protection established by the European Court of Justice, written permission must be secured at the start of all meetings for publication of the names of those present. Whilst there can be exceptions to this (parliamentarians meeting with constituents), public officials must be required to refuse to continue meetings with registered lobbyists who do not agree to have their names and professional affiliations and the details of the meeting made public.
- » An independent body should manage the register – given the transparency dimension, in many countries the ideal body would be the Information Commissioner (or equivalent Commission).
- » This independent body should be given the means and the power to fulfill the following functions:
- Regularly and systematically checked, including scanning for missing information and checking declarations that report low lobbying expenditure. They should have the power to request supporting documents and formal legal declarations from the interest group.
  - To sanction those that violate the requirements of the register.
  - To make recommendations as to how to strengthen the legal framework and/or improve the practice so that the register is more effective.

**NB:** See Annex II for a Check List of questions about lobbying regulation

## 5. Whistleblower mechanisms and protections

**Standard:** That there are channels by which public officials can reveal corruption, wrongdoing, mismanagement or waste within government and that there are protections in place for those who raise the alert, whether they do so internally or by going public with the revelations. There should also be sanctions for failing to report wrongdoing.

**What is it?** A whistleblower is somebody who raises the alert about wrongdoing. There are essentially two ways in which they can do this: reporting concerns to superiors or an independent body (an oversight body or a prosecutor) or by making the information public, for example releasing by passing it to the media or to a non-governmental organisation. Mechanisms should be established whereby whistleblowers can raise the alert without fear of reprisals; there should also be a legal framework which protects those who disclose to the public information which reveals wrongdoing. Such a mechanism is complementary to access to information laws in that it permits the disclosure of information which is in the public interest but which has not been made public by other means.

**Why it is important?** In all areas of activity of public bodies and the spending of public funds there is a risk of wrongdoing (corruption, mismanagement, waste, etc) and some areas such as public procurement there are particularly high risks for which specific safeguards must be put in place. If public officials believe that others are acting in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with codes of good administrative behaviour they should be able to raise the alarm without fear of reprisals or sanctions.

The European Court of Human Rights has issued a number of rulings in which it protects the rights of whistleblowers (key cases include *Guja v. Moldova* [GC], no. [14277/04](#), and *Heinisch v. Germany*) no. [28274/08](#)), as part of the protected right to freedom of expression; the Court has also upheld the rights of journalists who publish such information, again under the Article 10 freedom of expression protections.

**How can it be effective?** A well functioning transparency regime (legal mechanisms which guarantee protection of the right of access to information and strong proactive disclosure in practice) should greatly reduce the need for whistleblowers to leak documents to the media or NGOs. Nevertheless, there will be attempts to circumvent transparency measures, particularly in areas of high corruption risks, and in these cases, ensuring whistleblower protection is necessary as an anti-corruption mechanism.

For the internal reporting mechanisms to be effective, they must result in genuine and transparent investigations into the concerns raised by the whistleblower. With adequate and effective internal accountability mechanism, it should not be necessary for a whistleblower to leak information to the public.

For the protections for public blowing of the whistle to be effective, the authorities should ensure that whistleblowers are indeed protected from reprisals for exposing wrongdoing. If this is not the case, then the consequences faced by a few whistleblowers will have a chilling effect and discourage others from coming forward with their revelations. This in turn will have damage society as a whole because it will reduce exposure of corruption, thereby perpetuating the negative effects of corruption (decisions taken for private gain, waste of tax-payers funds, etc.) Hence an effective response mechanism by public authorities to the allegations and concerns raised by whistleblowers and appropriate treatment of those persons is essential.

**What is the role of civil society?** Representatives of civil society organisations and journalists are among those to whom information is leaked. In addition to having the role of exposing wrongdoing by public officials, CSOs and the media have a responsibility towards the whistleblower to ensure that they do not suffer unduly as a result of the revelations made. In some cases this may mean refusing to reveal the name of the whistleblower even when requested to do so by a court. There is jurisprudence from the European Court of Human Rights to support such a position in many cases (save those, for example, where lives may be at risk should the source of the information not be obtained, which is very rarely the case).

#### **What are the Open Government Standards on Whistleblowing?:**

- » The legal framework should establish mechanisms by which a public official can report any concerns about unethical or illegal behaviour to the competent authorities (either internally or to an oversight body).
- » The legal framework should ensure both that there are mechanisms by which such complaints will be investigated, and that no prejudice will be caused to the public official who in good faith reports any evidence, allegation or suspicion of unlawful or criminal activity.
- » The legal framework should establish an oversight body to which a whistleblower can turn to raise concerns and/or seek protection should there be no response or an unfavourable response from the public body for which he/she works.
- » Complementary legislation must protect the right of journalists (widely read to include citizen journalists and bloggers) as well as civil society organisation representatives from having to testify as to their sources where this would reveal a whistleblower who has chosen to remain anonymous.

## **6. Procurement Transparency**

**Standard:** That there is full transparency of the public procurement process with the goal of reducing the opportunities for corruption and ensuring effective spending of public funds, as well as creating a level playing field of business opportunities.

**Why it is important?** A significant proportion of public expenditure takes place through public procurement: tax-payers funds are spent to buy products and services from private suppliers. If this is done without transparency then the risk of corruption is much greater as it is much harder to ensure that public funds are not being distributed so as to benefit those close to the public officials involved. Even without corruption concerns, it is hard to ensure that the public sectors is securing best value for money in the products and services which it contracts if there is no transparency.

For businesses seeking to do business with public bodies, it is essential that they can be ensured of a level playing field and that the effort which goes into preparing a bid in a public procurement process will have a fair chance; this is something which is particularly important

when it comes to foreign investment as foreign companies may be reluctant to seek to do business in a country where there is not an equality of arms when competing for government contracts.

**How can it be effective?** Experience from around the world has shown that the most effective public procurement anti-corruption mechanism is transparency: by ensuring transparency of the entire public procurement process, not only is the public able to scrutinise the

A corollary benefit of transparency is that it can **reduce the cost of public procurement**: when different public bodies are able to see how much other public bodies are paying for the same services and products, they are in a better position to negotiate reasonable prices with suppliers. There are a range of examples of this, from purchase of medicines in Argentina and the UK to purchase of office supplies in Slovakia.

Concerns are often raised about **commercial secrets** in relation to public procurement transparency. Whilst this is a legitimate and understandable concern, there are decisions from various information commissioners around Europe which make clear that given the importance of the public procurement process, and the public interest in ensuring that public funds are well spent, there is an overriding interest in full transparency. Such transparency includes publishing information about the bids received.

Public procurement transparency does not only extend to the tender process, but should apply to the **full cycle of public procurement activity**. It should start well before it, with the decision-making which leads to the opening of such as process, and should continue beyond it with transparency of the evaluation of the carrying out of the public procurement contract. This is particularly important when it comes to public works contracts, as it is often the case that such projects run over budget (requiring contract amendments and spending of additional public funds), or are not completed on time (with consequences for the public which was supposed to benefit from the particularly project). The evaluation of compliance and any sanctions imposed on the contracted companies should also be part of the package of materials which is made transparency in order to guarantee accountability of the public procurement process.

**What is the role of civil society?** Civil society has the role of promoting full transparency of public procurement in law and practice. Monitoring of the information made available by anti-corruption watchdog NGOs and by investigative journalists is essential to ensuring that the transparency is effective as an integrity promotion mechanism.

#### What are the standards:

The legal framework around public procurement will stipulate when the spending of public funds has to be done through a tender process, and will specify what procedures must be followed, where announcements must be made, what the timeframes are, the mechanisms and criteria for evaluating and taking decisions on bids, etc.

In addition to these mechanisms, there must be robust transparency requirements, which it is recommended be put into effect through a public procurement portal which contains all the relevant information in a regularly updated, open format.

The data to be made public should include:

- » **Procurement Process data:** for each of the public procurement process:
  1. Copies of the invitations to tender / tender announcement.
  2. Details of publication of the invitations to tender including the dates, with information on amount of time between publication and closure of bidding.
  3. Data on the number of bidding companies, their names and value of each offer.
  4. Criteria: the tender approval decision procedures, the list of criteria (costs, quality) and the weighting given to these criteria.
  5. Evaluation report (scoring) of the tender decision committee or minutes of the meeting.
  6. Background Checks: additional documentation (if created) which contains any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other public body had previously imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc).
  7. Potential Conflict of Interest: documentation (if in existence) with details of checks made for potential conflicts of interest between the bidders and/or winning bidder and the public body.
- » **List of all contracts**, organised and searchable by public body and by supplier (Slovenia is best practice here), tagged by the name of the contractors, the value of the contract, and a summary of the nature of the goods/services to be provided.
- » **Copies of contracts:** the actual contract in a complete and downloadable format. Best practice (Slovakia) is that contracts are not valid until they have been published on line.
- » **Reporting:** Information about the reporting obligations of the Contractor to the Public Institution. All copies of reports submitted.
- » **Inspections & Evaluations Procedures:** Documents which set out the mechanisms for evaluating compliance with the terms and timeframes of contracts, including whether random checks are made or if it is systematic for all contracts.
- » **Findings of evaluation mechanisms:** Details of any inspections or evaluations of the particular contract; copies of reports of these inspections / evaluations, with specific data on any problems identified related to non-compliance.
- » **List of all sanctions** - financial, administrative, etc. - imposed on contractors for failing to comply with the terms of contracts, including on grounds of deliver timeframes, non-delivery of services/goods, substandard quality of services/goods, etc.
- » **Complaints & Appeal Mechanisms:** Information about where other suppliers (competitors) and members of the public can raise concerns about any public procurement process, how these complaints and appeal mechanisms work; the number of complaints received, and details of all outcomes and settlements.

## 7. Independent Enforcement Bodies:

**Standard:** That there exist independent bodies which oversee the exercise of public power; these can range from Ombudsman institutions to supervision of public services and public spending (audit offices) to oversight by the legislative and judicial branches.

**What is it?** Accountability mechanisms require oversight by independent bodies which are able to verify and force compliance.

**Why it is important?** Promoting integrity, rooting out conflict of interest, preventing and exposing corruption, and controlling lobbying are essential to the functioning of a democratic society in which decisions are taken in the public interest. A series of checks and balances has to be set in place to achieve this (as detailed in these standards) and to be enforced by independent bodies with the authority to require compliance and sanction breaches of the rules.

**How can it be effective?** There are three keys to the effective work of independent enforcement or oversight bodies. The first is that they are established in a way which gives them genuine independence from the executive power. This means that the oversight body should not be linked to any particular ministry and it should have its resources approved by parliament. (For the judiciary a separate set of standards clearly applies, which are well established for guaranteeing independence of the judiciary).

The second key criterion is that the independent enforcement bodies have sufficient resources to carry out its work. The financial resources (approved by the parliament) should be sufficient to equip it with the staff and material resources necessary to process complaints and conduct investigations in a thorough and timely manner.

The third key is that the independent enforcement bodies have the powers to carry out their work. This must include powers of inspection (for example, being able to visit a public or private body and require access to documents), the powers to initiate ex officio investigations (as well as acting on complaints), and the powers to sanction public office holders for breaches of the rules.

**What is the role of civil society?** Representatives of civil society can contribute to the work of independent oversight bodies by sharing information, taking complaints and reporting on the outcomes of their monitoring. Civil society should also monitor the processes by which the oversight bodies are established (in particular verifying that nomination processes are open and fair) and should evaluate the work of the oversight bodies, where necessary making recommendations for improvements in mandate, powers, resources, or practices.

### **Open Government Standards on Independent Enforcement:**

All bodies which oversee compliance with accountability mechanisms should meet the following standards:

- » Independent from executive power with resources allocated by parliament
- » Senior figures nominated and appointed through transparent, participatory processes
- » Well resourced (measured by sufficient resources to conduct their mandated functions in a timely manner)

- » Powers of investigation, including powers to conduct on-site inspections;
- » Powers to impose sanctions (disciplinary, administrative, and fines) for breaches of rules;
- » Mandate to promote compliance through training of public officials and educational materials aimed at the public.

### Annex I: Checklist table for Assets Declarations

Is there a transparent assets disclosure regime guaranteed by law?		Assets declarations made by:							
		Head of State	Members of Executive	Members of the Legislature	Judges and Magistrates	Civil Servants with decision-making powers	Advisors	Heads of Organisations or Companies operating with public funds	Spouses, Children of officials (other family)
<b>The enforcement body...</b>	Is independent?								
	Can demand ad hoc assets disclosures?								
	Makes regular (annual) reports/audits of assets disclosure analysis?								
	Can investigate assets disclosures?								
	Can impose sanctions?								
<b>Are assets disclosures made ...</b>	Upon taking office?								
	Annually during office?								
	Upon a change in assets?								
	Upon leaving office?								
	Within 3 years of leaving office?								
<b>Are assets disclosures, audits, investigations, reports thereof published...</b>	In an automatic (or timely) fashion?								
	In an electronic format?								
	In a centralised system?								
	In an easily searchable format?								
	And downloadable in open and reusable format(s)?								
<b>Does the data required by an assets disclosure include</b>	<b>Income from:</b>	Public employment?							
		Private employment, including ownership of businesses?							
		One-off income from consultancies, boards of directors, honoraria for conference, writing, etc?							
		Returns on Investments and Property?							
		Gambling?							
		Any other sources (to be specified)?							
	<b>A</b>	Primary residence?							

		Other property (second/holiday homes)?																		
		Land?																		
		(Financial) investments?																		
		Bank accounts/Cash?																		
		(Life) insurance policies?																		
		Business assets (companies owned, farms, rental properties, patents, copyrights, etc)?																		
		Vehicles?																		
		Jewellery?																		
		Art?																		
		Other movable or immobile assets?																		
	<b>Gifts</b>		Gifts received in a public capacity?																	
			Gifts received in the form of hospitality, holidays, etc. ?																	
			[possible lower limit of a few Euros/dollars]?																	
	<b>Liabilities</b>		Debts/Loans?																	
			Obligations?																	
			Credits?																	
			Mortgages?																	
			Guarantees?																	

## Annex II: Check list on Lobbying Transparency

Check List Questions on Lobbying Transparency	
<b>Registration regulations</b>	Who has to register? Is it mandatory or voluntary? Is there a Code of Conduct for lobbyists? Is there ethics regulation for public officials?
<b>Targets of lobbyists defined</b>	Members of the legislature and staff? Executive and staff? Agency heads and public servants/officers ? Courts? Central banks?
<b>Spending disclosure</b>	Annual income? Payments from clients? Budget for each lobby project? - what bandwidths? e.g. 10,000€
<b>Electronic Filing</b>	System for online registration? Is information checked at registration?
<b>Public Access</b>	List of lobbyists and their spending disclosures available, detailed and updated frequently online?
<b>Enforcement</b>	Are there mandatory reviews and audits? Is there independent monitoring?

	Are the sanctions for non-compliance?
<b>'Revolving door' provision</b>	Is there a cooling-off period before former legislators can register as lobbyists?
<b>Participation in expert groups</b>	Are there any rules about lobbyists' participation in expert groups?
<b>Information</b>	Up to date What type of information: - names of individual lobbyists? - names of clients? - legislation or decisions lobbied on? - politicians contacted? - budget? - methods of lobbying?
<b>Presentation</b>	Searchable Reusable Downloadable Comparable

***Annex III: Public Procurement Transparency Check List:***

Category	Classes	Information which must be collected & made public
General Contract Information	List of contracts	List of all contracts held by the Public Institution with external suppliers of goods, services, including the name of the contractors and the value of the contract and a summary of the nature of the goods/services to be provided.
	Evaluation mechanism	Documents which set out the mechanisms for evaluating compliance with the terms and timeframes of contracts, including whether random checks are made or if it is systematic for all contracts. Reports summarizing the findings of these evaluation mechanisms, in particular reports on any problems identified related to non-compliance.
	Sanctions	List of all sanctions - financial, administrative, etc. - imposed on contractors for failing to comply with the terms of contracts, including on grounds of deliver timeframes, non-delivery of services/goods, substandard quality of services/goods, etc.
Specific Contract Info	Contract	Copies of all contracts between a public body and external contractors

Public Procurement / Tender Process	public bidding guidelines details of publication of tender	For each of the public procurement process: 1. Copies of the invitations to tender / tender announcement. 2. Details of publication of the invitations to tender including the dates, with information on amount of time between publication and closure of bidding. 3. Data on the number of bidding companies, their names and value of each offer. 4. Criteria: the tender approval decision procedures, the list of criteria (costs, quality) and the weighting given to these criteria. 5. Evaluation report (scoring) of the tender decision committee or minutes of the meeting. 6. Background Checks: additional documentation (if created) which contains any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other public body had previously imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc). 7. Potential Conflict of Interest: documentation (if in existence) with details of checks made for potential conflicts of interest between the bidders and/or winning bidder and the public body.
Compliance with Contract Terms	Reporting	Information about the reporting obligations of the Contractor to the Public Institution All copies of reports submitted.
	Evaluation	Details of any inspections or evaluations of the particular contract Copies of the reports related to these inspections/evaluations.
	Sanctions report from Public body	Details of any sanctions - financial, administrative, etc. - imposed on this particular contractor related to the terms of the contract.

**Further Reading:**

Institutional declaration of assets UK:

<http://www.official-documents.gov.uk/document/cm70/7022/7022.pdf>

UNDOC (2004) UNCAC

[http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

OECD (2011) <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

Global Integrity, T/AI (2011) Opening Government

OECD (2011) pg.12 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

StAR initiative (2012) pg. 27

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

OECD (2011) pg.16 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

### Lobbying

Lobbying Disclosure Act of 1995:

<http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12224>

<http://lobbyingdisclosure.house.gov/lda.html>

Honest Leadership and Open Government Act of 2007:

<http://www.govtrack.us/data/us/bills.text/110/s/s1.pdf>

<http://www.alter-eu.org/>

<http://www.lobbyingtransparency.org/>

<http://www.chiff.com/society/lobby.htm>

### Whistleblowers

- US, Whistleblower protection Act  
[http://en.wikipedia.org/wiki/Whistleblower\\_Protection\\_Act](http://en.wikipedia.org/wiki/Whistleblower_Protection_Act)
- UNCAC: Article 8, 4, and Article 33
- Inter-American Convention Against Corruption:

*Article 3, 8:* Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.

- Transparency intl

[http://archive.transparency.org/global\\_priorities/other\\_thematic\\_issues/towards\\_greater\\_protection\\_of\\_whistleblowers/the\\_need\\_for\\_whistleblower\\_protection](http://archive.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/the_need_for_whistleblower_protection)

- OCDE

<http://www.oecd.org/cleangovbiz/>

- Otros:

[http://www.anstageslicht.de/DokZ\\_files/GS/AT\\_GS\\_20110525\\_5.pdf](http://www.anstageslicht.de/DokZ_files/GS/AT_GS_20110525_5.pdf)

- Romania, Whistleblower Protection Act (Law 571) in 2004:  
<http://www.drasmuszodis.lt/userfiles/Romanian%20whistleblower%27s%20law.pdf>

Independent enforcement bodies:

[http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2939&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2939&context=faculty_scholarship)

other: <http://www.oecd.org/mena/governance/38403668.pdf>

<http://www.oecd.org/gov/regulatory-policy/39954493.pdf>

[http://www.rff.org/Documents/Events/090622\\_Risk\\_Regulation/090622\\_Wiener.pdf](http://www.rff.org/Documents/Events/090622_Risk_Regulation/090622_Wiener.pdf)