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Using the Right to Information as an Anti-Corruption Tool

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Using the Right to Information as an Anti-Corruption Tool

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PREFACE

A crucial question for anti-corruption activists is whether the rash of new access to information laws – over 50 laws adopted since 1990 bringing the total to over 65 laws globally[1] – will serve as tools for obtaining information of use in fighting corruption. Or will these new transparency laws at least narrow the range of opportunities for the mismanagement and diversion of public funds by permitting public scrutiny of the budgets and administrative decision-making?

The question cannot yet be fully answered, but the lessons learned by Transparency International Chapters and other civil society organizations in South East Europe and around the globe provide helpful pointers as to how to ensure that the fine provisions of a new access to information law are translated from the pages of the statute books to meaningful information in the hands of members of the public.

It may seem self-evident that there needs to be a demand for information if a new access to information law is to function, but in a number of countries it has taken time to realize quite how crucial this is. In countries where the law is good on paper but has been introduced as part of a top-down government reform plan (Albania), international initiative (Bosnia[2]), or lobbying from a civil society elite (Peru) implementation has proved slow.

By contrast in counties such as Romania and Bulgaria, where broad-based coalitions pressed for access laws, the less-than-perfect statutes were then hungrily used by civil society, journalists, and members of the general public alike. Monitoring in Bulgaria and Romania show that over 50% of requests filed receive the information sought[3], which, for countries that relatively recently were closed and repressive communist systems and where maladministration and corruptions are still serious problems, is a very significant level of disclosure.

The lesson is that a culture of openness information needs to learned, and this only happens when public bodies receive large numbers or requests and are challenged when information is not released. This lesson has been taken to heart by groups in countries such as Serbia, Croatia, and Macedonia, who started testing and monitoring as soon as the new laws came into force.

Monitoring studies have confirmed another self-evident truth: it is easier to obtain more routine information than to get answers to complex or sensitive requests[4]. The strategy for anti-corruption activists aiming to erode the walls of government secrecy must be to file requests for non-controversial data in order gradually to build the edifice of transparent government.

Training of Public Officials

A common assumption when a request for information is not answered is that this results from deliberate secrecy by public officials. Such a conclusion is not surprising in countries that until recently were repressive dictatorships. Even in more developed democracies the paternalistic and secretive attitudes of public administrations give good cause to doubt the political will to openness.

As the reports in this publication show, however, a number of factors other than political will can block openness. These factors include lack of training of public officials when a new law comes into force (Bosnia), non-appointment of information officers (Croatia), and poor information management leading to problems responding within timeframes (Serbia). Traditional civil society strategies of condemning failures of government can have an impact on political attitudes but may not address these underlying problems.

An alternative strategy is to work with government departments to train information officers and help improve information management systems. TI Bosnia has conducted trainings for public officials as has the Access to Information Office (OACI) of the organization IPYS in Peru. OACI has also worked with public officials to carry out internal diagnostics of information flows and to make recommendations for improving information management, in order to be able to respond to requests within the seven days allocated under Peruvian law. These projects have had a positive impact, resulting in a quantitative increase in information made available.

As described in this publication, OACI provided technical assistance to the Ministry of Health while still litigating against it to challenge refusals to release information. The Ministry was made fully aware of this and actually welcomed the dual approach as being necessary to the reform process. Not all government bodies would be so receptive to such a strategy – the appropriate mix of collaboration and confrontation has to be selected on a case-by-case basis – but it is clear that a range of approaches are available to those working on implementing access to information laws.

Where to turn when information is denied?

The right to appeal an administrative decision is guaranteed in many counties; it is usually established in administrative law and reiterated in most access to information laws. The role of the courts has been key: from the phenomenal body of jurisprudence developed since the US FOIA was adopted in 1966, to the 140 plus cases brought in Bulgaria by the Access to Information Program since 2000 that have resulted in release of information subsequently passed to the prosecutor because it indicated government wrongdoing.

Suing the government is a controversial strategy for many

CSOs unused to engaging in lengthy battles on one particular case. As discussed in this publication, some groups prefer to bring in specialist litigators. Sometimes this necessitates resubmitting a request so that a new plaintiff can initiate legal action. This has been done in Peru by IPYS, one of the constituent members of Proética (the Peruvian TI chapter), who took up the court action when government ministers refused to disclose their assets declarations. Other groups with strong litigation experience, such as the Access to Information Programme in Bulgaria and the Romanian Helsinki Committee, have developed multi-faceted strategies, encouraging others to file more winnable access to information suits but taking the tougher cases themselves: if they win, they ensure that the jurisprudence is publicized; if they lose, they can react with a new strategy (media releases, new requests, more litigation) to minimize damage to the right to information.

A preferable option, where it exists, is to turn to Information Commissioners or Ombudsperson institutions. Information Commissioners provide a sort of "litigation light": less controversial than traditional law suits, the option is often faster, cheaper and easier (usually no lawyer is needed). Unfortunately, only about 25-30% of access to information laws worldwide establish such a body. Those that do, have proved to be worth their weight in gold. Hungary, whose 1992 law was the first in Eastern Europe, established a commissioner whose decisions do not have legally binding force but which are nevertheless often acted upon by government. More recently the Slovenian Information Commissioner has been active in ruling that information such as government contracts must be made public: in one case the disputed contract was between a local municipality and a housing management company that was run, as it happened, by the deputy mayor[5].

Calling on Higher Powers: the Role of International Organizations

Supra-national organizations have played an important role in promoting the adoption of access to information laws and in setting standards for what they should contain, notably through the Council of Europe Recommendation 2002(2) on Access to Official Documents, which provides a framework for the content of transparency laws.

The potential role of international organizations does not stop at adoption. The Council of Europe is converting the 2002 Recommendation into a binding treaty that will include a monitoring mechanism. In the Americas, access to information cases before the Inter-American Commission on Human Rights have resulted in strong support for the right to know, and in April 2006 the Inter-American Court heard a case which could result in the first ruling from an international tribunal affirming the fundamental right to government-held information[6].

Other international supervision mechanisms can be used to encourage full implementation of access laws. As outlined in this publication, the monitoring mechanisms of the United Nations Convention Against Corruption and the Council of Europe's GRECO (Group of States Against Corruption) mechanism provide such opportunities. Indeed, although the Inter-American Convention Against Corruption does not specifically mention the right to information, government transparency is nevertheless one of the elements reviewed by its monitoring mechanism (MESICIC) that has called on states to adopt laws where they do not exist (Argentina, Uruguay) or to improve implementation (Peru, Panama)[7].

Such mechanisms are limited but at least they do exist. The onus is on civil society to exploit the myriad of tools for ensuring that the access to information laws on the statute-books become living and functioning tools in the hands of those working against corruption and for human rights.

by Helen Darbishire, Executive Director, Access Info Europe

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[1] For more information on the content of these laws see, for example, www.freedominfo.org where the Global Survey by David Banisar of Privacy International is presented country-by-country along with additional links and data.

[2] The author of this article was one of a group of international and domestic experts convened by the OSCE to draft the Bosnian FOI law.

[3] See "Transparency and Silence: *A Survey of Access to Information Laws and Practices in Fourteen Countries"*, Justice Initiative (2006), www.justiceinitiative.org.

[4] See "Transparency and Silence" ibid.

[5] Slovenian Information Commissioner, Case No. 020-18/2004/3, date 28.10.2004, Applicant against the conduct and the decision of the Municipality of Radovljica.

[6] Case of *Claude Reyes et al vs. Chile*, court ruling expected by early 2007.

[7] A full set of the MESICIC reports can be found at http://www.oas.org/juridico/spanish/mec_ron1_inf.htm.

In the past 15 years, along with tremendous political change, most countries in Eastern Europe have adopted laws that recognize the right of citizens to access information held by the state, and have establish processes by which the right can be exercised. In many cases greater government openness was an expected reform within the framework of accession to the European Union and this combined with determined campaigns by civil society organizations resulted in the passage of the new access laws.

While democratic processes being restored, these laws are an attempt to bridge the imbalance between what the state knows and what citizens know, and provide an opportunity to break the culture of secrecy that has dominated civic life in the region. This culture of secrecy has favoured the growth of deeply-rooted corrupt practices and the newly recognized right to access public information has therefore had to face serious challenges.

In the next 15 years, the region will face many new challenges while corruption, unfortunately, will not disappear. The greater need to protect national security, the requirement to guarantee citizens´ privacy and to recognition of the right to access public information all seem to run in opposing directions. Striking the right balance is a task that lies in the hands of governments, parliaments, the courts, and civil society alike. The debate that these questions will open should help clarify how to adapt to present circumstances and at the same time guarantee the respect of this right into the future.

On the positive side, the 2003 United Nations Convention Against Corruption (UNCAC) entered into force in 2005 and its 140 signatories have committed to adopting access to information regimes, as well as to implementing other transparency measures in the conduct of state business. The Convention needs to be implemented and monitored to make sure it strikes a blow to corruption in all the areas it intends to, including the provisions on access to information, as those outlined in Article 10, for example.[1] Once again, it is crucial that civil society keeps this in the forefront of its advocacy work, as the implementation of UNCAC measures on access to information will surely provide a timely opportunity to bring to the table the much needed changes and revisions to existing laws, which have been documented through the early phase of implementation in countries in South Eastern Europe.

Greater outreach and awareness raising is needed to inform the public not only about their right to access public information, but on the ways in which they can make effective use of this right. This has a direct impact, for example, in gaining access to how the state distributes social benefits, or allocated funds for health and/or education services, or how contracts are awarded in local or national procurement processes, to name just a few of the areas where corruption risks are high and where greater access to information can have a definite impact on people's lives.

I. Introduction: Linking the Right to Information to Anti-Corruption work

Access to information acts are grounded in the recognition "that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those public authorities, and that this information is essential to the democratic process".[9] The purpose of these acts, also known as access to information laws, is to make a government more open and accountable to its people. In transitional democracies, laws that give effect to the right to information are part of the process of transforming a country from one with a closed and authoritarian government to one governed by and for the people.

The right of citizens to know what governments, international organizations and private corporations are doing, and how public resources are allocated, directly reflects anti-corruption concerns. Corruption flourishes in darkness and so any progress towards opening governments and intergovernmental organizations to public scrutiny is likely to advance anti-corruption efforts.

Civil society organizations in South East Europe have made significant progress in recent years in promoting the drafting and adoption of access to information laws. All countries in the region now have such laws on the statute-books. TI Chapters and other civil society organizations (CSOs) have followed up on these successful adoption campaigns with a range of activities to promote implementation, including training of public officials, awareness-raising among civil society, and monitoring the functioning of such laws though questionnaires and by filing requests to test levels of responsiveness. Problems identified through exercise of the right to file requests for information often point to weaknesses in the design of these new laws and to flaws that can reduce the prospects for full implementation. The emerging body of knowledge on how to promote and protect the right to information in the transitional societies of South East Europe is of great value to anti-corruption practitioners in other post-communist countries and beyond.

During a one-year period between June 2004 and May 2005, Transparency International monitored and tested the freedom of information acts in Bosnia and Herzegovina, Croatia, and Serbia. Together with the national chapters, the TI Secretariat worked to improve the legal framework on access to information, test implementation of the new transparency laws, provide assistance to information requesters, and prepare legal advice for those seeking to secure access. Support for these activities was given by the Open Society Institute.

On 14 November 2005, in coordination with the Global

Programme on Access to Information supported by the German Ministry for Development Cooperation, members of Transparency International convened in Berlin for a meeting on Freedom of Information and Anti-Corruption. During the meeting participants addressed how access to information related to and supported the anti-corruption work being undertaken by TI National Chapters and other CSOs. The meeting focused on the experiences of adoption and implementation of the access to information acts in Bosnia-Herzegovina, Croatia and Serbia, but also heard experiences from a range of other countries, including Peru. Another focus of the meeting was to review standards of disclosure at the supranational level, specifically at International Financial Institutions, such as the World Bank, the International Monetary Fund or regional development banks. There was also a discussion on how regional or global anti-corruption treaties such as the UN Convention Against Corruption can be used in promotion of access to information laws as preventive measures to combat corruption. This paper presents a summary of the ideas, views and critiques regarding the right of access to information captured during the Berlin meeting.

II. Campaigning for Freedom of Information acts: Lessons and Pitfalls of Design

The problems arising from the imperfections of the FOI acts in Bosnia-Herzegovina and Serbia point to some lessons that can be learned during the process of drafting access to information laws.

Bosnia and Herzegovina – The law is only a first step

Bosnia and Herzegovina and its constituent entities – the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina – adopted Freedom of Access to Information (FOAI) Acts during the years 2000-2001.[10] As is frequently the case in the country, the introduction of the laws was the initiative not of the local governments but of the international community, which organized the drafting process and pressed for adoption. The drafting group comprised domestic and international experts, resulting in a law which on paper seemed to be of high quality. Time has shown, however, that the drafting was only a first, easy, and yet still imperfect step towards promoting the transparency and accountability of public decision-making in Bosnia and Herzegovina's fragile democracy.

TI Bosnia and Herzegovina's analysis of Bosnia's access to information laws identified a significant problem of inconsistency with the respective entities' laws on administrative procedures. As a result, under the existing mechanisms there is no possibility for citizens to file a complaint or to sue a public institution in cases where it refuses to provide access to information but does not give the reasons or grounds for the refusal. This deficiency originates in a mistranslation of the FOI laws from the English language (many Bosnia and Herzegovina laws and regulations are written in English by the international experts) but knowing this does not exclude the very real legal consequences of the problematic provisions, i.e. the lack of a proper complaints mechanism. Although the access to information laws also provide recourse to appeal to Bosnia's Ombudsman institutions, these do not have the mandate to impose sanctions to the public bodies that have violated the right to information. In order to address this problem, TI Bosnia and Herzegovina drafted proposed amendments to the Bosnia and Herzegovina and Republica Srpska freedom of access to information acts and sent its suggestions to the respective parliaments in September 2005. The feedback from both institutions was positive, and the proposed amendments passed initial review in the relevant ministries and parliamentary commissions.

Another weakness of the access to information act in Bosnia and Herzegovina is that it does not cover the international community present in the country, which, through the Office of the High Representative in Bosnia and Herzegovina, has ultimate authority in Bosnia.[11] The 1995 Dayton Peace Agreement at Annex 10, Article II, mandates the High Representative (HR) to "facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation." The formulation, along with the entirety of Annex 10, gives the HR almost unlimited authority to intervene in all areas of Bosnia and Herzegovina public life. The power has been exercised by successive HRs to perform legislative, executive and judicial functions. In spite of this, Bosnia's FOAI act, which provide for a right to access information from all levels of domestic power, do not establish procedures for obtaining information from the Office of the High Representative. The degree of transparency of the OHR is therefore entirely dependent on its internal procedures and policies and is not accountable to the citizens of the country. This results in the much-criticized situation that, although the OHR's decisions are designed to accelerate the processes of reforms in Bosnia, they are often taken in non-transparent and undemocratic ways.

Serbia – Making the most of an imperfect law

Serbia's Law on Free Access to Information of Public Importance was adopted in November 2004 after a lengthy drafting process and the first Commissioner for Information of Public Importance was nominated one month later. As one of the last countries in the region to adopt such a law, Serbia was under a certain expectation from the international community to introduce transparency provisions. A number of CSOs, some forming a coalition that included grass roots organizations, were actively engaged in pressing for the law, supported by a donor community that recognized the im-

portance of a law on access to information in furthering democratic reforms in Serbia. Various domestic experts and international organisations such as the OSCE, Council of Europe, Article 19 and the Open Society Justice Initaitive were involved in the drafting process and made recommendations on improving the content and the structure of the law, with only limited success: a number of problematic provisions remain.

On the positive side, the Serbian law on Free Access to Information of Public Importance establishes the presumption that all information possessed by public institutions should be available for the public. The right to request information is guaranteed to everyone (including foreigners) and the requestor does not have to declare why he or she needs the information but rather the public institution has to provide strong and valid reasons for refusing to disclose information. Public institutions need to respond to access to information requests within 15 days except in cases where there is a threat to a person's life or freedom or for the protection of the public health or environment, in which case the request must be answered within 48 hours. These timeframes are in line with international averages, although journalists find that, given the nature of their job, 15 days is too long to wait for a response.

The Serbian Free Access to Information Law deals only with already existing information, which presents a big challenge as public institutions are neither obliged to collate information upon request, nor is a public official personally obliged to provide information known to him/her but not to the public institution. If for instance a file has been lost -- which is a serious offence under other regulations -- no obligation can be imposed to re-create the file on the basis of the Access to Information law. The positive side of this, however, is that the Access to Information law helps raise awareness of such maladministration.

A significant problem with the Serbian access regime is that protection of the right to information is only partially protected by the law because the Commissioner, who decides on appeals whenever the right is denied, has no power to rule on denials by the highest institutions of state (Government, Parliament, Supreme Court, Constitutional Court, and State Prosecutor). Furthermore, although the Commissioner's decisions are final, he does not possess any power to enforce them. Moreover, although the Access to Information Law establishes punitive provisions for misdemeanours, the Commissioner is not empowered to initiate misdemeanour proceedings.

Recommendations

Lessons from the adoption and implementation phase are relevant to countries on the point of adopting new access to information laws as well as to International Financial Institutions in the process of reforming their transparency policies:

Generate political will: As the Bosnian and Serbian case-studies show, access to information laws can be adopted with or without civil society involvement, and even with or without a full commitment to transparency by the national government. To achieve full implementation of these laws, however, there has to be sufficient political will. Ideas should be pitched to esteemed and well respected political figures. This can result in pilot programmes being implemented and administrative reforms with political support and backing. Politicians can themselves be part of the change in the culture of secrecy and improve their own credibility through their involvement with initiatives to promote and implement the right to access information.

Develop a culture of the right to information: A successful access to information law is one that works both on paper and in practice. To achieve this, part of the challenge for civil society organizations campaigning to promote the right to information is creation of a culture of the right to information. Such a transparency culture has two sides to it: the willingness of public officials to release information and the readiness of the public to file requests. The experiences of the three South East European countries studied in this report show ongoing problems caused by the lack of public awareness of the new access to information laws and of the right to request information from public bodies. Intensive legal education and freedom of information campaigns need to be undertaken to raise awareness amongst the population and stimulate filing of requests.

*Improve Government Efficiency and Information Managemen*t: An access to Information law is not only a tool to uncover corruption, it can also prevent it by highlighting poor administration regarding how public funds are spent. A new access to information regime can also help improve internal efficiency and information management in administrations unused to such levels of accountability, even from internal supervision organs. When a new Access to Information law has been adopted, and particularly during the subsequent 6 to 12 month implementation period, it is necessary to consider improvements to the current administrative infrastructure (including IT systems, web-portals, filing systems, records/archives resources and procedures) and internal information management systems.

Prepare adequately for implementation of a new law: The time between the adoption of an access law and when it enters into force should be utilized wisely; in particular this period (which is normally 6-12 months) provides ample time to train public servants and hold awareness-raising campaigns for the public, business associations, civil society organizations and journalists.

OPEN SOCIETY JUSTICE INITIATIVE: TEN PRINCIPLES ON THE RIGHT TO KNOW

The right of access to information is a fundamental human right crucial to the development of a democratic society. As of January 1st, 2006, 68 countries around the world had adopted access to information laws (up from only 12 countries which had such laws in 1990). The Justice Initiative works with partner organizations to promote implementation of these laws and to press for adoption of robust laws that entrench the Right to Know. To assist these efforts, the Justice Initiative has developed the following principles, in consultation with our partners, based on international law and standards and the comparative law and practice in these 68 countries. These principles represent evolving international standards on how governments should respect the Right to Know in law and practice.

1. Access to information is a right of everyone.
Anyone may request information, regardless of nationality or profession. There should be no citizenship requirements and no need to justify why the information is being sought.

2. Access is the rule – secrecy is the exception!
All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.

3. The right applies to all public bodies
The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

4. Making requests should be simple, speedy, and free.
Making a request should be simple. The only requirements should be to supply a name, address and description of the information sought. Requestors should be able to file requests in writing or orally. Information should be provided immediately or within a short timeframe. The cost should not be greater than the reproduction of documents.

5. Officials have a duty to assist requestors
Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.

6. Refusals must be justified.
Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy. These exceptions must be clearly and specifically defined by law. Any refusal must clearly state the reasons for withholding the information.

7. The public interest takes precedence over secrecy.
Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information.

8. Everyone has the right to appeal an adverse decision.
All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.

9. Public bodies should proactively publish core information.
Every public body should make readily available information about its functions and responsibilities, without need for a request. This information should be current, clear, and in plain language.

10. The right should be guaranteed by an independent body.
An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

MORE INFORMATION: For freedom of information resources go to: http://www.justiceinitiative.org/activities/foifoe/foi
To learn more about the Justice Initiative's freedom of information activities, please contact: Sandra Coliver, Senior Legal Officer, New York, scoliver@justiceinitiative.org, Darian Pavli, Legal Officer, New York, dpavli@justiceinitiative.org, Eszter Filippinyi, Budapest, filippinyi@osi.hu

Tips for the Design of Access to Information Laws

In addition to the standard elements of the right to information which must be contained in an access to information law [See Box with the Ten Principles on the Right to Know], the lessons of implementation in transitional democracies point to the necessity of additional provisions:

- *Anticipate administrative reforms*: Parties involved in drafting the law need to take into consideration the public administration's capacity for the new legislation, otherwise a law may be created that is excellent for citizens but leaves the administration incapable of providing proper services and with a considerably reduced capacity to deliver. A few provisions in the law which require, for example, standardizing the classification of internal documents and the proactive publication of certain classes of information such as budgets and annual reports, can greatly help in preparing the administration for answering the most common information requests.

- *Sanctions for secretive institutions*: Sanctions should penalize the institutions that have failed to respond to requests for information, along with the heads of these agencies, to avoid the possibility of individual, lower rank civil servants being penalized – the burden of responsibility should rest with those with the power to make change.

- *Retrospective action*: Any new access to information legislation and policies should include a clause that entitles requestors to obtain access to copies of information contained in official documents which originated before the adoption of the access to information law.

- *Specify which private bodies are covered*: Some freedom of information laws also oblige private entities to provide information, particularly where these private bodies receive public funds and/or perform a public function and/or hold information that is necessary for the defence of other rights, such as the right to education or health or participation in public life. To ensure clarity on which bodies are bound to respond to requests for information, they should either be named within the law or the law should specify the criteria to be applied when determining when a public body has an obligation to respond and which of the information it holds must be made public.

- *Fair fees*: Access to information regimes usually establish fees for obtaining copies of the information requested. International standards such as the Council of Europe Recommendation on Access to Official Documents[12] and many national laws establish that the fees charged may only be for the actual costs incurred by the public authority, such as the cost-price of photocopying the document requested. ATI laws should establish that information may be viewed free of charge; it is also the norm that where information is delivered electronically, such as by e-mail, it be free of charge. Where IFIs charge fees for providing information they should also adhere to these standards.

- *Proactive transparency*: It is increasingly common to find that access to information laws contain provisions requiring public bodies – and private bodies to the extent that they are covered by the law – to make certain types of information available proactively, such as by posting the information on websites and/or having printed reports available in the reception of the institution. Such proactive transparency can be a source of very important information for anti-corruption activists. For example, activities of the state with reference to public procurement can be made available automatically (on the Internet and in the national gazette or similar publication), which means that everyone has an equal opportunity to know about upcoming tenders and about contracts that have been awarded. Such measures are needed to overcome traditions of keeping business-related information secret, even where the so-called "business secrecy" relates to the spending of the tax-payers money as part of public-private partnerships and service contracts.

- *Independent oversight is essential*: Experience has shown that where Information Commissioners or Ombudspersons are responsible for the implementation of access to information laws, they can make a positive contribution to building a new culture of openness within government. Such officials should have independence of mandate and budget and those appointed to the post should have relevant experience and be selected by a public process, with an opportunity for civil society organizations to make submissions related to the qualifications of the candidates.

- *Oversight of oversight is also essential*: Bodies such as Information Commissioners and Ombudspersons do, however, need to be monitored in order to determine their effectiveness in promoting implementation. This is a role for civil society and the media; for example in Mexico the NGO LIMAC has analyzed the decisions of the Mexican Information Commission (IFAI) for trends in the interpretation of the transparency law and consistency of decision-making [6]

III. Implementation Strategies – Cooperation and Defence

i) Common Challenges & New Obstacles

Croatia – Monitoring and Reforms

According to the Report on the Right to Access Information for the year 2005, published by the Central State Office for Administration, the institution overseeing implementation of Croatia's 2003 FOI Law, enforcement of the law is at a satisfactory level. The basis for this conclusion is the fact that 70% of public institutions and governmental bodies have nominated a public official authorized to provide information and process the requests of applicants (an information officer), and have established and completed a catalogue of information.

Although TI Croatia welcomes these improvements, it has concerns about the remainder of the institutions apparently not willing to fulfil their legal obligations. The Central State Office for Administration also reported that in 2005 public and governmental bodies received 4499 requests for information. Of these, 4484 requests were satisfactorily resolved and 15 were not resolved. Of the resolved requests, 4292 requests were answered, 182 requests were refused, 3 rejected and 7 requests sent on to other authorities.

This data from the Central State Office for Administration does not match with the results of civil society monitoring of implementation of the law: during 2005, TI Croatia sent 50 requests for information each to the ministries, courts, counties and cities. The requests were submitted on 25 August 2005 and included the following questions:

1. The total number of solved court cases that were conducted based upon articles 348., 374., 343., 338., 337., 294., 351. and 295. of the Penal Code
2. Copies of all documents which show how much the body took in fees for provision of information in accordance with Article 19 of the Right to Access Information Act[7]
3. The total number of written or verbal requests for information in 2004 and 2005.
4. According to Article 18 of the Right of Access to Information Act, the institution is required to keep the official register of requests, procedures and decisions on exercise of the right of access to information, do you keep this journal?
5. Copy of the decision or similar document which demonstrates compliance with Article 20 of the Right of Access to Information Act, which requires proactive publication of information about the functioning and decision-making of all public bodies.
6. The total number of received appeals according to Article 17 of the Right of Access to Information Act (the provision governing appeals and administrative disputes).

The response rate averaged only at 50% for the 50 requests made in each of the mentioned areas (see Annex B).

According to the requirements established by the law, the Croatian government has the obligation to publish the list of the public and governmental bodies falling under the scope of the Right of Access to Information Act by 31 January of each year. On 9 February 2005, after numerous reminders sent by Croatian NGOs, the Croatian Government published the list. This year however, among the 195 institutions listed, Croatian Radio-Television (HRT) was not included, meaning that they no longer fall under the obligations of the Right of Access to Information Act. Considering the influence of Croatian Radio-Television and the fact it is the only television station for which Croatian citizens have to pay a subscription, its exclusion from the list seems inappropriate. Moreover, the decision to remove HRT from the list followed requests filed by TI Croatia requesting publication of election campaign expenses for party political broadcasts on Croatian Radio-Television for the May 2004 local elections. Equally of concern, other institutions notable by their absence from the 2005 list of subjects of the Access to Information law included the Croatian news Agency, the Croatian National Tourist Board, and the Croatian Academy of Sciences & Arts. To date the Croatian government has not provided explanations for the withdrawal of these institutions from the list.

Among the range of obstacles endangering full implementation of the Right of Access to Information Act provisions, TI Croatia highlights the Draft Law on Data Secrecy. The Office of the National Security Council initiated this draft, which the Croatian government then sent to the Parliament. Proposed measures include introduction of a specific procedure for determining application of the data protection exemption to disclosure of information and would have further regulated access to information from government bodies. If adopted, this Law would have placed broad limits on access to information and would therefore have conflicted with provisions of the Right of Access to Information Act. After numerous critiques by the NGO sector, the Draft was withdrawn from the Parliamentary procedure to be amended.

Since the adoption of the Right of Access to Information Act on 15 October 2003, TI-Croatia has identified numerous problems of inadequate implementation, some linked to the absence in the law of key elements such as clarifying when a refusal to grant information can be made in the name of public interest. TI-Croatia is concerned that, although steps forward have been made with implementation, the Government is not yet doing all that is necessary for effective implementation of the Right of Access to Information Act. Therefore, in addition to sending draft amendments to the Croatian Parliament, TI-Croatia is continuing with its media

campaigns to raise awareness of the need both for reform of the FOI law and for improved implementation.

Bosnia and Herzegovina – Testing and Education

The first and foremost requirement for compliance with an FOI law is political will, particularly as the Bosnia and Herzegovina FOAI acts do not include sanctions for non-disclosure of information. The second precondition is that citizens are aware of their rights. In case of Bosnia and Herzegovina, where the law was initiated by a third party, i.e. the international community, the task of educating all pillars of society about the importance of the law and its benefits was left to civil society organizations. Even today, five years after the law was adopted, it is often the case that public institutions, citizens and even the media have to be reminded that the public has a right to government-held information.

In order to monitor the implementation of the law, TI Bosnia and Herzegovina conducted three surveys, in the years 2003, 2004 and 2006. While the first two surveys targeted all public institutions which are subject to the Law, the last survey monitored only the openness of the judicial system. The findings of the first two surveys were very similar: around 60% of the public intuitions responded in accordance with the law. The third survey found that on average, 81.5% of the Republica Srpska courts and 75% of courts in the Federation of Bosnia and Herzegovina fully complied with the law, while an additional 15% of Bosnia and Herzegovina courts responded only after the legal deadline expired. As for the prosecutors' offices, 40% in both Republica Srpska and the Federation of Bosnia and Herzegovina responded within the legal deadline, while additional 20% in Republica Srpska and 50% in the Federation of Bosnia and Herzegovina responded after prescribed 15 days (see Annex A).

In order to increase the level of understanding of the law, TI Bosnia and Herzegovina and many other NGOs in the country have organized training sessions for information officers of all levels of government, as well as for business sector representatives, the media and NGOs. In addition, a number of media campaigns have been organized in order to raise awareness among citizens of the right to access the information. TI Bosnia and Herzegovina has also established a tradition of celebrating 28 September, International Right to Know Day, as a way of further sensitizing public officials and citizens. All these efforts have resulted in a slow but steady progress towards a more open government and actively engaged society.[8]

Recommendations

The experience of countries such as Croatia and Bosnia points to a wide range of initiatives that civil society groups can undertake when working to promote implementation of access to information regimes. To summarize, these include:

- *Train public officials:* although not the obvious role for CSOs, such trainings in numerous countries around the world have proved invaluable in enhancing the quality of implementation of access to information laws and have fostered a stronger relationship between government and civil society. In the long term, these trainings are a way to slowly reduce the culture of secrecy embedded in many areas of public administration;
- *Empower users of the law*: training for NGOs, media, lawyers and business persons can stimulate demand for information which in turn helps ensure that public authorities put in place the systems for responding. The business community is particularly relevant for anti-corruption activists: requests by businesses about government contracts can contribute to the creation of a more level playing field in the public procurement sector;
- *Monitor and Test the Law:* civil society can survey implementation in numerous ways including through filing test requests, through submission of questionnaires to government departments, through interviews with public officials and by conducting public opinion surveys. All of these methods can contribute to building a more accurate picture of how implementation is proceeding and lead to the formulation of recommendations, be they for amendments to the law or internal administrative reforms which will facilitate greater compliance with the duty to provide information to the public;
- *Evaluate Government Reports on Implementation*: government reports on implementation may put a positive spin on the success of the new law and gloss over difficulties such as reforming information management systems. NGO evaluations of these reports can help create a constructive dialogue on how implementation is really proceeding which can lead to appropriately targeted reform efforts;
- *Use advocacy to promote amendments*: it is common that after a period of implementation, it becomes clear which provisions of an access to information law need reforming. Civil society groups can make use of the same advocacy and campaigning techniques employed during adoption of the initial law to press for these reforms;
- *Monitor other related legislation*: an access to information law can very easily be undercut by a new state secrets law or other related legislation on matters such as commercial secrecy or data protection. Civil society groups need to monitor the whole body of laws that impinge on the right to information and to ensure that any changes to

these other laws are consistent with maximum enjoyment of the right to know;

- *Organize activities and media actions around Right to Know Day!* The Freedom of Information Advocates Network, which represents over 90 organizations worldwide, has nominated *28 September* of each year as International Right to Know Day. This day is an ideal platform to promote awareness amongst public officials and the general public of the right to ask for and to receive information[9].

ii) Appeals and Litigation – When, Who and How?

There comes a point when requestors are trying to access important information – information necessary for anti-corruption work for example – and the public authority refuses to release it or simply ignores the request for information. Apart from publicly condemning this lack of transparency in the media, civil society groups working to promote transparency and to fight against corruption also have the option of challenging the failure to release the information.

There are a number of ways to bring legal challenges against refusals and failures to disclose information. The first option, which is usually established by either administrative law and/or the freedom of information act is to launch an administrative appeal. Essentially, this means asking the body that rejected the request to review its own decision. Indeed, sometimes the very same person who made that initial decision (such as the head of the institution) will be the person who conducts the review. Although an administrative appeal can result in a reversal of a decision and release of the required information, experience has shown that this is relatively unusual. The next options then are to appeal either to an Information Commissioner or Ombudsperson or similar body, or to go to the courts. In some legal systems each step has to be taken successively; in others, an appeal can be made directly to the Information Commissioner or even directly to the courts.

The advantages of taking an appeal to the Commissioner or Ombudsperson are that the process is usually rapid, low-cost and does not require the services of a professional lawyer. On the other hand, the disadvantages, as noted elsewhere in this report, are that the Commissioner or Ombudsperson's decision may not be binding on the authority that failed or refused to release the information or to impose sanctions, such as is the case in Bosnia and Herzegovina. Another problem may be that the law does not establish an Information Commissioner (for example, Croatia) or that even where such an institution does exist, it had no oversight powers over the higher levels of government (for example Serbia).

Given such limitations, going to court to sue the public institution which has failed to comply with the access to information law may seem the most effective option. There are however some important considerations before undertaking such litigation. One important consideration for organizations that are engaged in working with government, for example by assisting with the implementation of access to information laws or establishing new mechanisms to root-out corruption, is that there may be a conflict of interest if the same body starts to sue the government. In such cases, it may be preferable to ask another organization to initiate the litigation. This will usually mean resubmitting the request for information, in order that the new agency may initiate the lawsuit. Given the relatively short timeframes for public institutions to respond that are established under many access to information laws (usually within the 10 to 20 working day range) resubmission of a request is not a particularly serious obstacle.

OACI: Office for Access to Information –Peru

The Office for Access to Public Information (OACI) is a technical-juridical organ of the Instituto Prensa y Sociedad [Press and Society Institute] (IPYS) in Peru. IPYS in turn is one of the founders of Proética, the Peruvian chapter of Transparency International, a consortium of organisations and individuals designed to promote transparency in the running of public affairs. OACI carries out the activities of Proética related to the promotion of the access to the information. OACI aims to reinforce the citizen's capacity to request information from the state, through appropriate use of the access to information norms. In addition, OACI advises any person who is asking for information from the state, and provides legal support during administrative and judicial appeals.

The work carried out by Peru´s OACI serves as a good example in showing how laws have been implemented with the right to information in mind. There is a consistent framework in Peru regarding Access to Information laws and it is viewed as a fundamental right. The constitution ensures that a law exists to guarantee this right (the 2002 Law on Transparency and Access to Public Information) and establishes procedures for bringing a case to court if this right is violated. There is also an inexpensive procedure in place where the interests of the plaintiffs and of the public bodies are considered by judges and these judges can decide whether information will be released. The constitutional court has made it clear that access to information is a precondition for the enforcement and acceptance of rights and thereby can compel a public institution to change their internal procedures to prevent similar cases from being brought to court in the future.

With OACI's help and specialized legal advice, citizens have taken different areas of the public administration to court. As a result, new jurisprudence was created, resulting not only

in the release of the information being sought, but also in changes in the previously secretive practices of public bodies. Such experience shows the public and other organizations that litigation is an effective way of achieving access to information.

Organizations that are trying to change the conduct of the public officials often consider that litigation and cooperation with public entities are not only different strategies, but contradictory. The work of OACI in Peru shows that these strategies can be complementary. Organizations that are concerned about conflicts of interest can collaborate with other CSOs that are ready to undertake litigation.

Civil society organizations involved in promotion of the right to information, whether or not they engage in litigation, should help public entities to familiarize themselves with the content and use access to information laws. The main objective is always to promote positive changes inside the public institutions. To achieve this, it is important to create partnerships between public institutions and civil society organizations. It is also important, however, that in such partnerships the public institutions are aware that there may be situations in the future where they commit serious faults that justify court action. Public institutions need to accept that denouncing serious faults and taking public bodies to court is the part of the role and duty of civil society organizations. This has been achieved in Peru, for example in OACI's work with the Ministry of Health: the Ministry signed a formal contract for technical assistance cooperation even while a lawsuit was in process for access to documents held by the Ministry; OACI made clear that the cooperation agreement would not result in it withdrawing the law suit and the Ministry accepted this.[10]

As a result of its work in the Health Sector, OACI produced a report, "Time for Change", on promoting and protecting access to information and reproductive and sexual health rights in Peru. Following a description of the problems and recommendations, a case study illustrates the impact of corruption in the delivery of health services. The project also published a guide on how to use the access to information law to request information related to health.[11]

ALACs – Advocacy and Legal Advice Centres: providing legal advice and encouraging citizen action

For Civil Society Organisations that don't plan to litigate themselves, but have as a strategic goal encouraging others to fight corruption and to promote transparency, an option is to provide advice on how to use access to information law and how to file requests for information, and guidance on options for appeals and litigation should requests go unanswered. One model for this is the independent Advocacy and Legal Advice Centres (ALACs) established under the auspices of Transparency International as grass roots organizations to facilitate the wider engagement of the population in the fight for transparency and accountability. There are currently 11 ALACs operating in 7 countries in Eastern Europe, the Balkans and the Caucasus, with more planned for Central Asia and for Africa.

The ALACs have four main components:

- *Toll-Free Hotline:* Victims of corruption receive initial advice about their rights and, where prima facie evidence of corruption exists, referral for further legal counseling;
- *Legal Advice*: Citizens are helped articulate, develop, file and pursue their complaints with the assistance of legal professionals employed by the centers[12];
- *Advocacy*: Based on the cases presented to the centers, advocacy is carried out to raise awareness about the sectors and institutions which are the subject of most complaints (e.g., press releases showing statistical breakdowns of complaints received) and in highlighting attention to specific institutional and legal vulnerabilities and providing recommendations;
- *Capacity Building:* Support is provided to state authorities to strengthen their capacity to process complaints.

The hotline and legal advice components are central to the whole approach. Crucial to the success of the ALACs is generating a sufficient volume of complaints to be able to identify patterns of problems (in Bosnia and Herzegovina, Romania and Macedonia, three ALACs received over 5000 complaints in their first year of operation). The ALACs are structured to retain the trust and confidence of citizens by following TI's policy of "not naming names." When a complaint has been received about corrupt activities the institution involved is notified and if there is sufficient evidence to form a case it is forwarded to the prosecutor's office. Cases exposed by the existing ALACs have ranged from petty to grand corruption, and have been received from all sectors of society in a variety of areas, particularly privatization (notably asset-stripping) and public procurement.

ALACs can support use of the right to information in order to bring corruption cases to light in a variety of ways, including:

- Advising members of the public on how to use the FOI law to gather information for ALAC cases;
- Use ALACs to assess whether R to I is working
- Giving legal assistance to individuals in preparing right to information cases;

Bosnia and Herzegovina: Access to Information Central to ALAC work

The Bosnia and Herzegovina access to information regime is one of the bases for the Advocacy and Legal Advice Centre project that TI Bosnia and Herzegovina has run since 2003. The project's focus is assisting citizens, victims or witnesses of corruption by addressing the relevant public institution responsible for solving concrete cases of corruption. The Bosnia and Herzegovina FOAI acts are used for collecting evidence in particular cases and to track the cases once they have been forwarded to the prosecutor or other responsible bodies. The ALAC project in Bosnia and Herzegovina has been very successful, resulting in 14 cases being forwarded to the prosecutor's office, 1 court sentence and approximately 200 dismissals of corrupt officials further to internal investigations that TI Bosnia and Herzegovina requested. One of the great ALAC successes was that it initiated the first law suit in Bosnia and Herzegovina against the public administration on the grounds of violation of the FOAI Act [See Case Study in Box].

Even the Purity of Art is Affected by Corruption

Corruption cannot and must not be thought of as a separate issue which occurs only in public areas such as political party financing or public contracting. On the contrary it can affect virtually all aspects of public life, even the purity of art.

In Sarajevo, the orchestra has been exposed to fraud and abuse of labour rights. The director and conductor of the orchestra, Emir Nuhanovic, has been misusing public funds for private gain for the past 3-4 years. As the orchestra is a public institution associated to the Canton Sarajevo Ministry of Culture and Sport, it receives an annual subsidy.

Nuhanovic engaged musicians from abroad. He transferred enormous amounts of money to them which he later split with them. He also signed contracts with sponsors and pilfered parts of the money for private gain. In addition, orchestra funds were wrongly used to establish a NGO that organised a music festival instead of making music.

Three musicians of the Sarajevo Orchestra found out about the acts of corruption. When they pointed publicly at the misuse of public funds over the course of the last 3-4 years they were dismissed by the Orchestra Director.

These victims of corruption contacted the Transparency International Advocacy and Legal Advice Centre (ALAC) in Bosnia and Herzegovina to seek legal advice on how to file an official complaint against the Director and how to best advocate for systemic change.

Legal professionals from the ALAC immediately identified the offences as acts of corruption and contacted the responsible institutions with the request to swiftly check the received evidence of corruption. ALAC further provided solid legal advice to the complainants and enabled them to put forward a lawsuit against the orchestra administration on the grounds of violation of the Freedom of Access to Information (FOAI) act. In addition, the ALAC helped complainants in protecting their labour rights.

To date, the case is not resolved and still under investigation. The Canton Ministry of Culture and Sport keeps on denying any responsibility for the misuse of public funds. Until now there has not been any reaction by a representative of a higher level of government.

Due to the public exposure of the case by the local media, the attention of the prosecuting authorities was caught and they became active in this case. It is considered a success that the Canton Prosecutor initiated criminal charges against the Director of the Orchestra. Furthermore, the Bosnia and Herzegovina State Ombudsman has adopted fifteen decisions against the orchestra leadership on the grounds of violation of the FOI law.

Although there is undoubtedly a long way ahead, the ALAC has empowered citizens to raise their voice against corruption. It is hoped that the revelation of the act of corruption will trigger systemic change to prevent future cases.

Open Society Institute – Monitoring, Implementation and Litigation Projects

The Open Society Institute supports access to information and anti-corruption work through a number of its national foundations and through two central programs: the Justice Initiative and the Human Rights and Governance Grants Program. The Justice Initiative is an operational programme based in New York, Budapest and Abuja that promotes the adoption of laws and focuses on implementation. The Justice Initiative's monitoring methodology to test respect for the right to information was applied in a 14–country survey in 2004 that revealed high levels of mute refusals, even in countries with access to information laws. Another serious problem identified was discrimination against requestors from minority or excluded groups.

Technical assistance is a key part of the OSI JI FOI programme: a diagnostic tool has been developed to evaluate the flow of information within government departments and to make recommendations on how to improve information management and decision-making in order that requests can be answered within the timeframes established by law. The Justice Initaitive supports national litigation to challenge refusals and to clarify ambiguities in access laws, as well as international litigation (Inter-American and European courts of human rights). The Justice Initiative is engaged in the Council of Europe's drafting of a binding treaty on access to official documents.

The Human Rights and Governance Grants Program (HRGGP), based in Budapest, works exclusively in Central and Eastern Europe and Central Asia funding projects on human rights and government accountability. HRGG's Accountability Initiative introduced in 2005 supports NGOs that increase the accountability and transparency of state bodies as a means to stem corruption and enhance government responsiveness to the public interest. To increase the ability of civil society groups and the general public to scrutinize public institutions and make governance more transparent, the initiative supports groups working to ensure public access to information through monitoring, advocacy, and litigation.

Recommendations

- Refusal or failures by public bodies to disclose information need to be challenged by administrative appeals, appeals to Information Commissioners and Ombudspersons, and, in key cases, by going to court to litigate against the offending institution;
- Litigation can help to develop specific interpretations of the law, which is important where the law is poorly drafted or ambiguous;
- Anti-Corruption organizations can enter into strategic alliances with access to information groups to define litigation priorities and to bring in specialist lawyers on sensitive or complex cases;
- Good jurisprudence in areas such as access to assets declarations or public procurement contracts can increase the probability that such information will be released under access to information laws in the future, thus facilitating access to key documents needed for anti-corruption research.

IV. Access to information in an international context.

(i) Promoting the Transparency of International Financial Institutions

One significant source of corruption and diversion of funds is in projects carried out by national governments or other agencies with funding from international financial institutions (IFIs), an area of public spending which has traditionally been shrouded in secrecy. IFIs are multilateral organizations operating based on formal agreements between national governments – in effect they are banks in which Member States are shareholders – using public money to undertake or support investments and development projects in other countries. Examples include the World Bank (WB), the International Monetary Fund (IMF), the European Investment Bank and regional development banks. The key objectives of IFIs include establishing a framework for economic cooperation, preventing the reproduction of bad economic policies, underwriting reconstruction costs in the EU, poverty reduction, economic and social development and promoting expansion and growth of world trade. The main activities of the IFIs in addressing these issues are lending, investing, grants, trust funds, knowledge sharing, working with governments and private companies and financial assistance. IFIs have also been active in promoting the adoption of access to information laws and have the potential to play a significant role in supporting and monitoring and implementation.

Despite the wide-reaching and large-scale work carried out by IFIs, there are a number of major critiques levelled against these institutions, questioning their effectiveness and efficiency and the success of their programmes. These critiques include:

- Development bank operations are high cost for low effectiveness;
- IFI short-term crisis management is costly, slow to respond and sometimes inappropriate or ineffective;
- IFI intervention is intrusive upon national sovereignty;
- Differing political agendas can lead to disputes as to which strategies are most effective and not always result in the appropriate programs.

It is widely believed that greater transparency and accountability would help overcome these problems. Paradoxically, however, while IFIs such as the World Bank have been active in encouraging the adoption of access to information laws, these institutions have also met with much criticism for failing to live up to the same transparency standards themselves. Although many IFIs have disclosure policies, these tend to be limited to a small percentage of the information that they hold. Access to other information held by IFIs is notoriously difficult, with information requests often meeting the following obstacles:

- No reply from the institution
- A response that they don't have the authority to provide information
- Provision of inadequate information
- Claim that privacy laws mean that the information cannot be provided

Global Transparency Initiative Transparency Charter

Charter Principles

Principle 1: The Right of Access
The right to access information held by IFIs is a fundamental human right which applies regardless of the source of the information (who produced the document), and whether the information relates to a public or private actor.

Principle 2: The Right to Request Information
Everyone has the right to request and to receive information from IFIs, subject only to the limited regime of exceptions, and the procedures for processing such requests should be simple, rapid and free or low-cost.

Principle 3: Routine Disclosure
IFIs should routinely disclose a wide range of information about their structure, policies and procedures, decision-making processes, and country and project work in a timely fashion, and in a language and via a medium that ensures that interested stakeholders can effectively access it.

Principle 4: Limited Exceptions
The regime of exceptions should be based on the principle that access to information may be refused only where the IFI can demonstrate that disclosure would cause serious harm to one of a set of clearly and narrowly defined interests listed in the policy and that the harm to this interest outweighs the public interest in disclosure.

Principle 5: Access to Meetings
A presumption should be established giving a right of access to key IFI meetings and information about what transpired in these meetings should be disseminated.

Principle 6: Whistleblower Protection
Whistleblowers – individuals who in good faith disclose concerns about wrongdoing, corruption or other malpractices – should expressly be protected from any sanction, reprisal, or professional or personal detriment, as a result of having ade that disclosure.

Principle 7: Appeals
Anyone who believes that an IFI has failed to respect its access to information policy, including through a refusal to provide information in response to a request, should have the right to have the matter reviewed by an independent and authoritative body.

Principle 8: Promotion of Freedom of Information
IFIs should devote adequate resources and energy to ensuring effective implementation of the access to information policy, and to building a culture of openness.

Principle 9: Regular Review
Access to information policies should be subject to regular review to take into account changes in the nature of information held, and to incorporate increasingly progressive disclosure rules.

- Applying an exemption of business secrecy
- Asserting the "non-existence" of information because decisions have been taken in closed or informal sessions and so cannot be 'traced' because any information generated is not part of the official papers of the organization. There is a need to place more pressure on public officials as it is still difficult to get information that is deemed "classified" by the state.

In addition, attempts to access IFI information using domestic FOI laws are often frustrated by the governments claiming that they cannot release the information because the documents "belong" to the IFIs, whereas the IFIs claim that ownership of the documents rests with the national governments. The never-ending loop of referrals can result in a bizarre game of cat and mouse without information ever being released.

In order to address the inaccessibility of IFI documents, a network of civil society organizations from the IFI-reform and the access to information community came together in 2003 to form the Global Transparency Initiative (GTI)[13]. The GTI has the goal of promoting openness of IFIs by pushing for the adoption of new freedom of information standards. The GTI's projects have included transparency audits, coordinated filing of requests for information, a systematic mapping of 1a IFIs disclosure standards[14], and advocacy concerning ongoing IFI disclosure policy reviews. The principles of IFI transparency have been incorporated into a Charter on IFI Transparency, launched in September 2006 and open for endorsement by civil society organizations.

Recommendations

To increase the transparency of IFIs, which in turn will release information of relevance for anti-corruption advocates, the following actions can be taken by civil society organizations, including the GTI members and TI chapters:

- Participate in the consultation process when a particular financial institution is revising its disclosure policy;
- Request information from IFIs and conduct systematic monitoring;
- Use domestic FOI laws to access IFI information and where necessary litigate to access this information;
- Use IFI internal appeals mechanisms to challenge lack of transparency, especially in projects where participation of local communities should be taking/have taken place;
- Generate case studies on IFI projects by using domestic access to information laws and IFI disclosure policies;
- Sign up to the Charter, support its dissemination, call for IFIs to adopt it and to and advance their transparency standards;
- Identify allies within IFIs in order to build support for new transparency initiatives from within the organizations and hence to lend legitimacy to the GTI charter;
- Identify stakeholders, such as donor governments and the recipients of funding, who can play a positive role and use a "carrot and stick" approach to levering greater transparency.

There is still a great need to map who is producing the information and who is managing that information. CSOs can play an important role here by carrying out mapping exercises and also by filing requests for information from a number of bodies (local, national and international) at the same time. The findings of such studies are likely to highlight the depth of mismanagement and lack of coordination within IFIs and between them and national governments: this is analogous to the need to improve information management that is often found at the national level.

As access to information groups increasingly engage in promoting transparency not only at the local level but also at the international level, links can be made with other projects such as One World Trust UK's creative Global Accountability Project which unpacks accountability into four dimensions: transparency, participation, evaluation and complaint and response mechanisms. The Global Accountability Index evaluates international organizations, international NGOs, and trans-national corporations according to these indicators.[15]

In addition, to ensure that information is available under national FOI acts, governments need to be provided with more information by IFIs. Inter-governmental agencies (including IFIs and the EU) should ensure that information about international projects is provided to all relevant governments (both donor and recipient governments). Provisions should be included in development contracts regarding the information that will be provided to national governments.

(ii) Using the UN Anti-Corruption Convention

A number of regional and international mechanisms have been established to monitor and support initiatives to combat corruption. Recognizing that transparency is a vital tool in the fight against corruption, many of these mechanisms include requirements that national governments take all necessary measures to promote access to information. A key treaty in this respect is the United Nations Convention Against Corruption (UNCAC)[16], which contains a number of references to access to information and points to specific steps that governments must take to promote transparency.[17]

The UNCAC is a global treaty with approximately 140 signatories to date and 61 ratifications deposited. The convention entered into force on 14 December 2005. The level of ratifications is still low, and G8 countries are not doing well in

setting an example by ratifying the convention. This conveys a negative message to other countries as the G8 states are a driver of the process. Furthermore, a number of governments are not aware that they have to deposit their ratification in order to be bound by the treaty and to fall under the monitoring mechanism.

Governments adopt the convention through the ratification process where an existing law is examined in order to calculate its conformity with the convention. The convention is very broad, which can make it a challenge to implement. There is a need, therefore, to identify priority areas and focus on them for examining the conformity of the convention. Governments and civil society groups need to look at measures and application, and not to focus exclusively on legislation. They need to advocate for the increased use of a shadow reporting system to produce country studies or alternative reports. Technical assistance is vital for monitoring as well as the idea of a fund and/or coordination for bilateral assistance. It will be important to discuss the division of labour amongst the various groups and organizations involved (e.g. GRECO, EU) and realizing that it will be an evolutionary approach. GRECO should be persuaded to conduct monitoring, and within the General Assembly, leave security matters to regional agencies.

The potential of UNCAC is three-fold:

- It provides a global framework for combating corruption by establishing worldwide standards that bind countries at all levels of economic and democratic development;
- It encapsulates the measures necessary to prevent corruption, including access to information, and promotion of transparency in private finance, public procurement and national anti-corruption agencies;
- It sets legal standards for the criminalization of corrupt acts.

There are a number of challenges that civil society groups including TI and other anti-corruption organizations face in promoting UNCAC ratification, implementation and effective monitoring such as:

- Raising awareness, interest and understanding of UNCAC;
- Keeping UNCAC a priority within governments;
- Ensuring an effective monitoring system is put in place; and
- Promoting consistent interpretation of convention provisions.

TI is collaborating with other organizations (UNODC, UNDP, NGOs, independent foundations and think tanks) to promote a strong monitoring programme, something that is essential for UNCAC to be effective. The UNCAC monitoring mechanism should be coupled with technical assistance to ensure developing countries have the capacity to implement UNCAC and to avert concerns about the fairness of the process. Duplication of monitoring also needs to be avoided, so the UNCAC monitoring will have to be harmonized and run in cooperation with other anti-corruption monitoring programmes. Monitoring parameters should be long term, permitting states to start gradually and build towards them according to their capacity. Any technical support provided will require adequate and dependable funding and must be conducted transparently with non-governmental stakeholders.

The convention contains provisions regarding Access to Information (Article 19 – Public Procurement and Article 13 – the Participation of Civil Society). However, these provisions are general and non-mandatory. Civil society can potentially play a significant role in the UNCAC implementation and monitoring process, providing support at the national level and also inputting support and technical assistance and following the monitoring process with shadow reports and evaluations. In order to do this, the monitoring process itself will have to be transparent and permit civil society participation.

Current proposals for Monitoring Programmes include:

- Self evaluation by governments;
- Review of responses by Secretariat with civil society inputs;
- Report to Conference of States Parties;
- Detailed reviews of key issues;
- Short term programs that promote ratification and adoption of UNCAC monitoring programmes and long term ones that see the participation of international NGOs such as the TI Secretariat in UNCAC monitoring and the promotion of technical expertise, and engagement of domestic NGOs, such as TI Chapters, working on national implementation.

Recommendations

There are a number of steps that FOI advocates can take to ensure that access to information is a priority subject for the future UNCAC monitoring process:

- o developing indicators that propose useful interpretations of UNCAC's rather general access to information provisions;
- o collaborating with the UNODC in their preventative measures and clarifying the interpretation of certain provisions in the convention;
- o compiling shadow reports that focus on transparency issues and submitting these to the monitoring process.

Conclusion

It is clear, even from this short survey, that in recent years there have been great strides forward in establishing a close link between the use of access to information laws and other work to combat corruption. There remains much that can be done by civil society to promote greater government transparency of national governments and supra-national organizations. New access to information laws need to be adopted, existing laws need to be better implemented and more work has to be done to secure recognition of the right of access to information as a fundamental human right and to create a culture for the right to information, both within government and within society. Organizations working in the areas of both access to information and anti-corruption can forge strategic partnerships among themselves, with other CSOs, with public officials and with inter-governmental bodies to push for greater transparency in the areas where it is most needed to root out corruption. A full range of activities is needed, including technical assistance in the drafting and implementation of access to information laws, monitoring compliance with these laws, continuing of advocacy and awareness-raising campaigns, filing appeals and engaging in litigation to defend the right to information. All these activities will promote recognition of access to information as a fundamental human right and will also strengthen its value as a tool in the fight against corruption.

Further information on TI's work on access to information:
www.transparency.org/global_priorities/access_information

Anti-Corruption Handbook, section on access to information:
www.transparency.org/policy_research/ach/strategies_policies/access_to_information_discussion

[1] UNCAC requires at Article 10(a) that states adopted "procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public".

[2] Article 1 of the FOI Acts in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska.

[3] Official Gazette of Bosnia and Herzegovina, No 28/2000; Official Gazette of Republika Srpska, No 20/2001; Official Gazette of Federation of Bosnia and Herzegovina, No 32/2001.

[4] The position of High Representative was created under the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement) of 14 December 1995 to oversee implementation of the civilian aspects of the Peace Agreement.

[5] For more information, see: https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2002)2&Sector=secCM&Language=lanEnglish

[6] For more information, see www.limac.org.mx

[7] Article 19 of Croatia's 2003 Act on the Right of Access to Information states: "The body of public authority has the right to reimbursement by the beneficiary of material expenditure in relation to the supply and service of the information requested."

[8] On average, most of the public institutions receive between 5 and 15 requests for information per year, with the exemption of the local (municipal) organs which receive a somewhat higher number of requests.

[9] More information about Right to Know Day and membership of the Freedom of Information Advocates Network can be found at www.foiadvocates.net

[10] For more information, see: www.ipys.org/oaci

[11] This project was carried out by OACI in conjunction with Article 19, a London based NGO promoting freedom and access to information. The text in English can be downloaded from A19s website: www.article19.org/pdfs/publications/peru-time-for-change.pdf
For Spanish documents and the work on OACI and health in Peru, using the access to information law: www.ipys.org/ac-publicaciones.shtml

[12] It is important to emphasize that TI does not represent clients or 'take on' their cases. Rather, it provides legal advice and support so that citizens can make their own complaints, although in many cases TI does actively monitor the progress of complaints.

[13] For more information, see: www.ifitransparency.org

[14] This Resource systematically documents access to information at ten IFIs, including the World Bank and International Monetary Fund, in an effort to identify best practice, develop a comprehensive vision for much needed transparency reforms, and help interested organizations and individuals access relevant information. The data in the Resource deconstructs IFI operations into thirteen broad categories (governing bodies, policies and strategies, the lending cycle, etc.) which in turn are further broken down into almost 250 indicators of transparency. Comparing ten IFIs across 250 transparency indicators has produced the most comprehensive baseline analysis of access to information at the IFIs ever assembled.
The IFI Transparency Resource not only contains comprehensive data on the transparency of IFI operations and projects, but also provides users with a library of related resources, including: IFI disclosure policies, civil society reports, useful websites, and more. See the full database in www.ifitransparencyresource.org

[15] For more information and for the upcoming Global Accountability Index 2006, see One World Trust's website www.oneworldtrust.org .

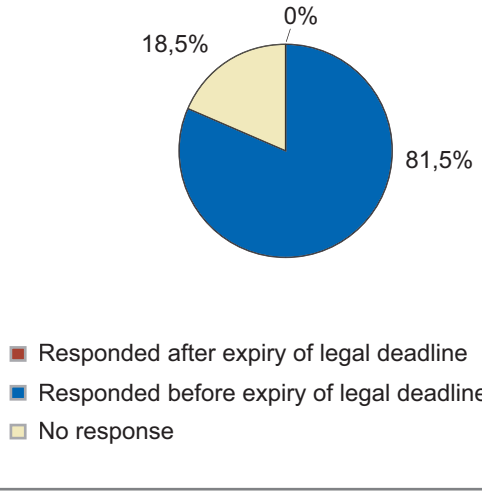
[16] For more information see reference document by the UNODC: Compendium of International Legal Instruments on Corruption.

[17] In Article 10, the Convention states that countries should take measures including: a. Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; b. Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and c. Publishing information, which may include periodic reports on the risks of corruption in its public administration.

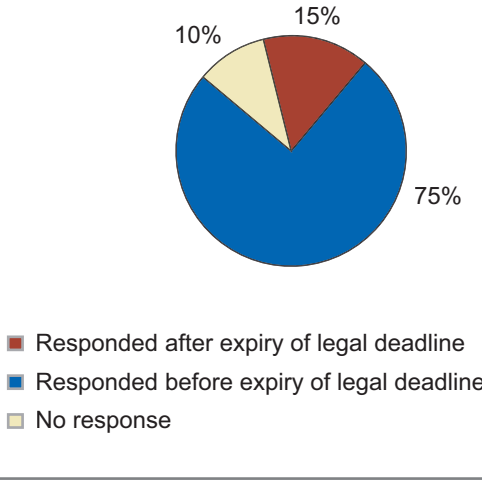
Results of Access to Information Requests

Annex A,
Bosnia and Herzegovina

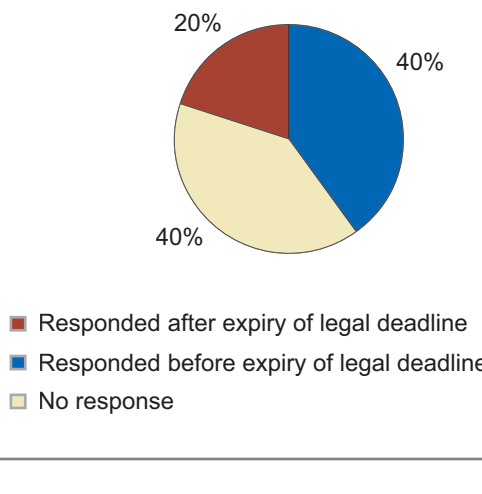
Republika Srpska (RS) Courts

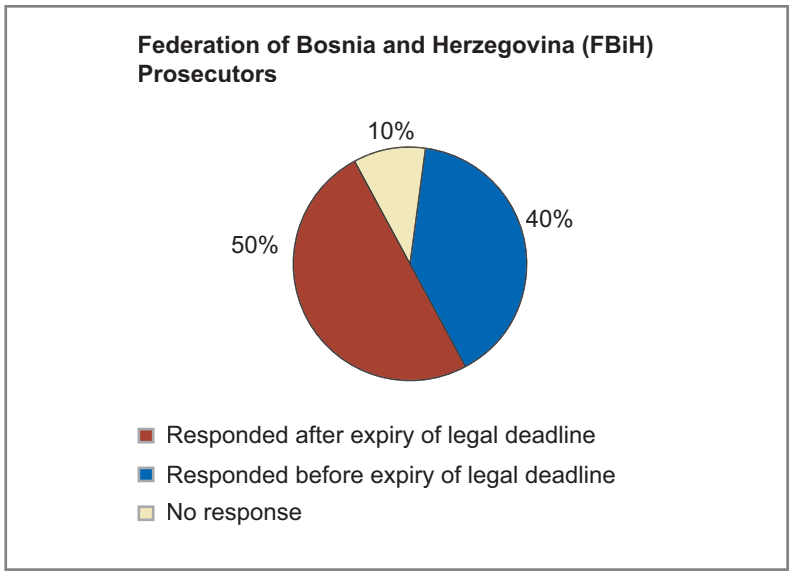


Federation of Bosnia and Herzegovina (FBiH) Courts

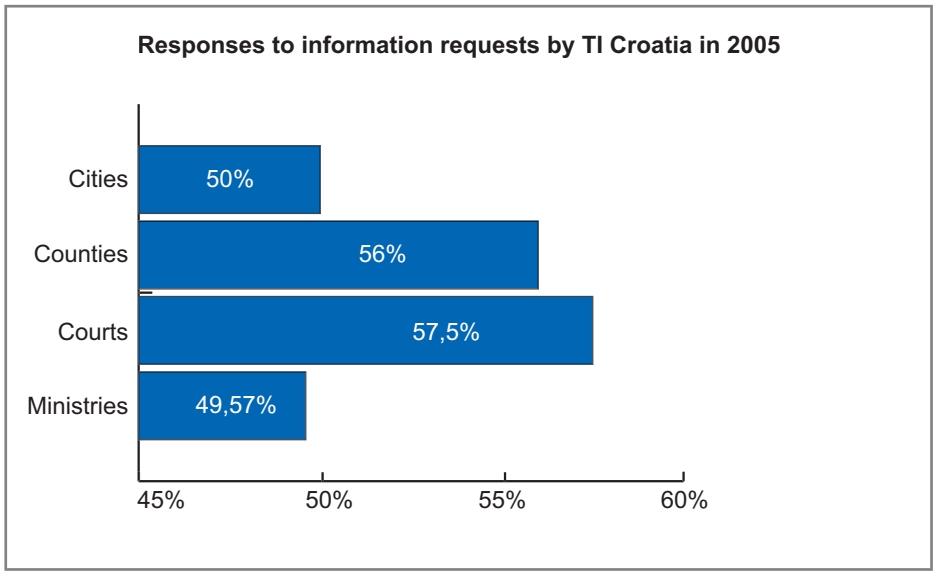


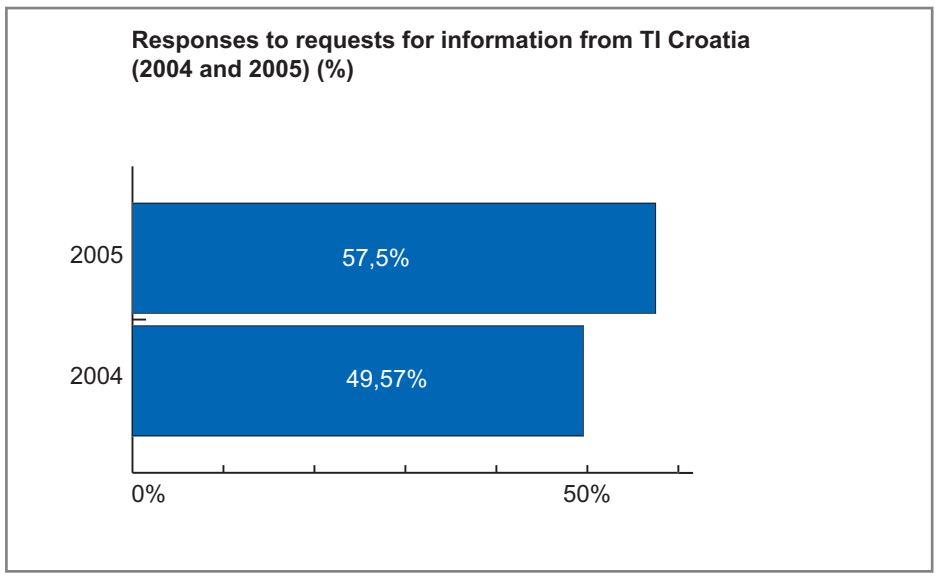
Republika Srpska (RS) Prosecutors





Annex B,
Croatia





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