

Free Press Unlimited input to the UN Special Rapporteur on Freedom of Expression for her report to HRC47

Free Press Unlimited welcomes this opportunity to provide inputs to the report by the UN Special Rapporteur on Freedom of Expression to the Human Rights Council on good practices for establishing national normative frameworks that foster access to information held by public entities. This topic is close to Free Press Unlimited's mission statement: "People deserve to know". People need public access to information to be well-informed, critical and resilient. It is crucial to empower citizens to shape their own development. Attracting attention to good practices to encourage UN Member States to fulfil their responsibility to deliver the right to information, is a much-needed initiative at this time.

Transparency and proactive sharing of public information creates trust between citizens and their government. Openness and transparency of government systems are, however, globally under pressure. On top of existing challenges, the COVID-19 pandemic has in too many instances led to the introduction of further legal restrictions to the right to information. Unfortunately, even before the pandemic, governments struggled to fulfil the right to information for a variety of reasons. Ranging from a pervasive culture of secrecy, to a lack of political will, scarce resources or insufficient public demand caused by a lack of awareness among citizens of their right to access information held by public authorities. This in turn made it even less likely that this information is used to hold public authorities to account.

Multi-stakeholder roundtables for VNR reporting on SDG 16.10.2

Firstly, we believe that a good practice in sparking progress towards creating access to information is to provide a platform for information gathering, analysis and exchange on a national level between national stakeholders. A way of achieving such dialogue is to organize multi-stakeholder roundtables to encourage VNR reporting on SDG 16.10.2, as was done two years ago. With the support from UNESCO, Free Press Unlimited, Deutsche Welle Akademie (DW-A) and Global Forum for Media Development organized a series of five consultative multi-stakeholder meetings in Serbia, Mongolia, Pakistan, South-Africa and Indonesia. The meetings were guided by a specific focus on achieving national progress on SDG 16.10.2 and subsequently providing inputs to the Voluntary National Reviews at the United Nations High Level Political Forum in July 2019. The consultative meetings gathered representatives from government, UNESCO, CSOs, news media and academia. Prior to the meetings, national research was conducted with the help of a methodology prepared by the Freedom of Information Advocates Network (FOIA-net).

There are several points to take away from this good practice. Firstly, the inclusive approach of such meetings can enable dialogue between all stakeholders at the policymaking level, which in many cases was a first-time event. Such information exchange is a vital first step in achieving the implementation of the right to information at a national level. Secondly, collective follow-up can lead to increased attention for access to information at the international political level. At the meeting in Indonesia, a national working group was established to ensure adequate follow-up. The group's efforts and following meeting with the Indonesian VNR focal points resulted in the inclusion of data on the implementation of the right to information in

the Indonesian VNR and the country's main messages during the HLPF 2019. A similarly effective follow-up appeared at the conclusion of the multi-stakeholder meeting in South Africa, where a summary of recommendations was collectively drafted and sent to the national VNR focal point. This included recommendations regarding the proactive disclosure of information from public authorities, the need for education and training of the public and journalists about ATI (legislation), the necessity to build relations with and in between CSOs on ATI, and the call to allocate more resources to the implementation of ATI-laws and their accessibility.

Institutionalized means of protection for information from dissenting voices

Independent information commissioner/ombudsperson

Besides fostering information sharing between national stakeholders, there are various institutionalized means to protect information for the public good. A positive practice is the official installment of a national independent information commissioner or information ombudsperson. Such an independent national oversight body has in many countries proven effective to enforce the practical implementation of access to information laws. Information oversight bodies can help governments in the transition to openness and transparency, which comes with digital challenges and requires training of public officials, may introduce systematic changes and the need for cultural changes within the administration. Importantly, independent information oversight bodies also have an important role in mediating when the right to access to information of a citizen or journalist is violated. Finally, an institutionalized information organ can proactively signal bottlenecks, bring out reports regarding public information sharing, and evaluate a state's compliance with transparency.

Whistleblower protection

Another important aspect of ensuring public access to information that should be institutionalized, is providing assurances for people who disclose information for the public good. Robust national Whistleblower protection would be a way to achieve this, but unfortunately there are not many States who have legislation providing such protection. In this regard we can mention the potential positive influence of the European Union Directive on Whistleblower Protection. This directive, although far from comprehensive, holds various legal protection measures for whistleblowers who report breaches of EU law protecting them from retaliation and creating opportunities to report via external channels when it is not to be expected that internal reporting will succeed.

As there is no legal protection for whistleblowers in the Netherlands either, Free Press Unlimited launched the Publeaks platform which enables whistleblowers to contact journalists privately and anonymously in 2013. Publeaks improves security for journalists and their sources and supports investigative journalism to hold governments and businesses to account. This has led to hundreds of publications uncovering malpractices, which would have otherwise most likely never been uncovered.

Law on Open Government (Wet Open Overheid, NL)

Finally, lessons can be learnt from countries that have improved their laws concerning the openness and accessibility of public information. After a long trend of poor information sharing by the Dutch government, which eventually led to a scandal that caused the Cabinet to resign in January 2021, recently the Dutch Parliament

adopted a promising new 'Law on Open Government'. This law, if passed by the Senate, is expected to remove obstructions to access public information and to bring more transparency regarding policies and actions conducted by national governmental bodies.

The obligation to provide public information is enshrined in the law. And, importantly, the bill provides for a central collection point for all available public information. This means that governmental bodies are obliged to proactively publish information at an easily accessible central collection point. In addition, an "advisory board on public access and information management", a kind of council that can mediate if journalists have been denied their right to public information, will be installed. The Dutch practice demonstrates how to improve public information standards and install alternative information bodies to work towards full access to public information.