
Briefing Note

**UNPACKING INDICATOR 16.10.2
ENHANCING PUBLIC ACCESS TO INFORMATION
THROUGH
AGENDA 2030 FOR SUSTAINABLE DEVELOPMENT**



Executive summary

This Briefing Note seeks to unpack Indicator 16.10.2, as part of a systematic effort to establish how monitoring and reporting on this indicator can advance progress towards the attainment of the UN Sustainable Development Goals (SDGs). It does so by placing the indicator within the larger picture of Target 16.10, with its emphasis on the dual national and international context of implementation of public access to information and fundamental freedoms. Based on this, it gives an operational definition of the indicator, highlighting how the existence of national constitutional, statutory and/or policy guarantees for public access to information needs to reflect international agreements while showing evidence of effective domestic implementation mechanisms. Furthermore, the Note proposes key data partnerships that could be drawn upon in reporting progress on Indicator 16.10.2. These partnerships can also assist in raising public awareness of the role of information access in attaining the SDGs as a whole.

Introduction

As the world entered 2015, when the Millennium Development Goals (MDGs) were to complete their 15-year cycle, the United Nations Member States were faced with the challenge to articulate clear goals and targets for post-2015 Sustainable Development Goals (SDGs). To aid them in this effort, the Rio+20 outcome document, *The future we want*,¹ had already provided

¹ United Nations. 2012. *Rio+20 United Nations Conference on Sustainable Development Outcome of the Conference: The future we want*. [0]. Available: http://www.uncsd2012.org/content/documents/774futurewewant_english.pdf. Accessed on 16 March 2015.

for the establishment of an Open Working Group (OWG) on SDGs. Comprising 30 representatives, the OWG proposed a series of 17 goals and 169 associated targets published in their outcome document.² In September 2015, the 193-Member UN General Assembly formally adopted what became known as the 2030 Agenda for Sustainable Development.

The process leading up to the goals was marked by give-and-take among the Member States. This was not an easy task, given the way paragraph 247 of the Rio+20 outcome document specified the manner in which the task of elaborating such goals should be approached. It stated that the SDGs needed to be action-oriented, concise, easy to communicate, limited in number, aspirational, global in nature and universally applicable to all countries, while taking into account different national realities, capacities and levels of development and respecting national policies and priorities.

Following the adoption of the goals, an Inter-Agency Expert Group on SDGs (IAEG-SDGs) developed a global framework of indicators which, at the time of writing in July 2016, had been adopted not only by the UN Statistical Commission (UNSC) but also by the Coordination and Management Committee of the UN Economic and Social Council (ECOSOC). The next step would involve the UN General Assembly adopting the framework of indicators.

Of particular concern to UNESCO is **Goal 16** and its associated **Target 10** and **Indicator 16.10.2**. Against this background, this note seeks to clarify the conceptual, methodological and operational aspects of Indicator 16.10.2. Specifically, it:

- Analyses the key features of Target 16.10;
- Operationalizes Indicator 16.10.2 in light of the totality of Target 16.10, including highlighting key implications for implementation; and
- Proposes possible data partnerships and modalities to facilitate UNESCO's role as a custodian agency responsible for global reporting to the UN on Indicator 16.10.2.

² United Nations Department of Economic and Social Affairs: Sustainable Development Knowledge Platform. 2014. *Open Working Group proposal for Sustainable Development Goals*. [0]. Available: <https://sustainabledevelopment.un.org/focussdgs.html>. Accessed on 16 March 2015.

Target 16.10 in perspective

Goal 16 aims to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” For its part, Target 16.10 aims to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

Conceptually, the aspect of “public access to information” refers to “the presence of a robust system through which information is made available to citizens and others.”³ Such a system represents a combination of intellectual, physical, and social elements that affect the availability of information to individuals.⁴ In other words, in discussing the issue of public access to information, it is important to recognise that any measurement of its practical outworking needs to take into account how legal rights to information and to press freedom operate, how individuals perceive the quality of information in the public domain, the nature of the communicative infrastructure in place to facilitate access, and how that information is ultimately utilised by individuals as members of a particular polity.

These elements of public access to information are often reflected, to varying degrees, in Freedom of Information (FOI) laws and/or policies. The emergence of FOI legislation was a response to increasing dissatisfaction with the secrecy surrounding government policy development and decision making. These laws establish a “right-to-know” legal process by which requests may be made for government-held information (and sometimes with wider scope), to be received freely or at minimal cost, barring standard exceptions. Under FOI regimes, governments are typically bound by a duty to publish and promote openness. In many countries there are constitutional guarantees for the right of access to information, but these are usually unused if specific support legislation does not exist.

In general, most freedom of information laws exclude the private sector from their jurisdiction. This limitation has serious implications because the private sector performs many functions which were previously the domain of the public sector. As a result, information that was previously public is now within the private sector, and many FOI laws are insufficiently crafted to

³Oltman, Shannon, M. 2009. *Information Access*. [0]. Available: http://bpm.ils.indiana.edu/scholarship/oltmann_paper.pdf. Accessed on 7 June 2016.

⁴Ibid: 6.

compel private contractors to disclose public-interest information.⁵ In some countries, there are quasi-public institutions or parastatals, whose information holdings represent a legitimate public interest, especially with regard to effective environmental sustainability. As UNESCO's Finlandia Declaration argues, "the right to information encompasses access to information held by or on behalf of public authorities, or which public authorities are entitled to access by law, as well as access to information that is held by private bodies in respect of the exercise of public functions."⁶

This realisation has led to efforts, sometimes facilitated by the private sector itself, to open up the corporate sector to greater public scrutiny by way of providing access to privately-held information. This may well be a result of several trends, not least the fact that some private companies are now embracing what is referred to as the Triple Bottom Line (TBL) -- a three-dimensional performance strategy that incorporates social, environmental and economic reporting as a marker of good corporate governance.⁷ As part of this, companies publicly disclose environmental information that may include, for example, greenhouse gas emissions, use of post-consumer and industrial recycled material, water consumption, amount of waste to landfill, etc.⁸ Examples include the establishment of the Task Force on Climate-related Financial Disclosures, albeit principally aimed at providing "access to high quality financial information [which] will allow market participants and policymakers to understand and better manage ... risks ..."⁹

In other cases, the private sector's efforts to disclose information is in response to the inevitable intrusion of investigative journalism, most recently exemplified by the Panama Papers – a global investigation into the sprawling, secretive industry of offshore that the world's rich and powerful use to hide assets and skirt rules by setting up front companies in far-flung jurisdictions. The

⁵ See, for example, *Freedom of information laws by country*. [0]. Available:

https://en.wikipedia.org/wiki/Freedom_of_information_laws_by_country. Accessed on 7 June 2016.

⁶ See, for example, *Finlandia Declaration: World Press Freedom Day, 3 May 2016: Access to Information and Fundamental Freedoms - This Is Your Right!*. 2016. [0]. Available:

https://en.unesco.org/sites/default/files/finlandia_declaration_3_may_2016.pdf. Accessed on 30 June 2016.

⁷ Andrew Savitz. 2006. *The Triple Bottom Line*. San Francisco: Jossey-Bass.

⁸ Slaper, Timothy F. and Tanya J. Hall. 2011. *The Triple Bottom Line: What Is It and How Does It Work?* [0]. Available: <http://www.ibrc.indiana.edu/ibr/2011/spring/pdfs/article2.pdf>. Accessed on 7 June 2016.

⁹ Financial Stability Board (FSB). 2015. *Press release: FSB to establish Task Force on Climate-related Financial Disclosures*. [0]. Available: <https://www.fsb-tcfd.org/wp-content/uploads/2016/01/12-4-2015-Climate-change-task-force-press-release.pdf>.

Accessed on 7 June 2016.

investigation unearthed a trove of more than 11 million leaked files, helping to expose a cast of characters who use offshore companies to facilitate bribery, arms deals, tax evasion, financial fraud and drug trafficking.¹⁰

Furthermore, as part of a wider movement of corporate transparency, there is now an emphasis on reporting by internet and technology companies in which governments and individuals can request for information from a private company. The upshot of such reporting is that individuals can infer information about the government itself, particularly in terms of its overall attitude towards disclosing certain types of information. Such clearinghouses as the Ranking Digital Rights' Corporate Accountability Index¹¹ and Access Now's Transparency Reporting Index are evidence of this corporate transparency movement.¹²

Therefore, it can be argued that Target 16.10 may also include information access to the private sector, especially where information holdings of a public nature are concerned. This interpretation has some intergovernmental resonance. In a resolution adopted on freedom of expression and the right to information, the Inter-Parliamentary Union (IPU) encouraged “the development of freedom of information beyond State actors to encompass significant private-sector companies and bodies.”¹³ This is particularly reinforced when it comes to special information that is essential for civic engagement, such as that relating to climate change and human rights.

As Mendel's survey of FOI laws suggests, for example, there has been increasing recognition that access to information on the environment is key to sustainable development and effective public participation in environmental governance. The issue was first substantively addressed by Principle 10 of the 1992 Rio Declaration on Environment and Development, which highlighted that “environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access

¹⁰ International Consortium of Investigative Journalists (ICIJ). 2016. *The Panama Papers: An Introduction*. [0]. Available: <https://panamapapers.icij.org/video/>. Accessed on 15 June 2015.

¹¹ See, for example, Ranking Digital Rights. Corporate Accountability Index. [0]. Available: <https://rankingdigitalrights.org/index2015/>. Accessed on 17 June 2016.

¹² See, for example, Access Now. *Transparency Reporting Index*. [0]. Available: <https://www.accessnow.org/transparency-reporting-index/>. Accessed on 17 June 2015.

¹³ Inter-Parliamentary Union (IPU). 2009. *Freedom of Expression and the Right to Information (Resolution adopted by consensus by the 120th IPU Assembly, Addis Ababa, 10 April 2009)*. [0]. Available: http://www.right2info.org/resources/publications/ngo-statements/ngo-statements_ipu-declaration. Accessed on 10 June 2016.

to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes".¹⁴

Equally important is special public access to information on human rights, finding a clear articulation in the 1998 UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders).¹⁵

The advantage of treating public access to information as a matter of human rights reinforces the aspect of protecting fundamental freedoms, which concerns the second part of Target 16.10. Target 16.10, as a whole, has a dual purpose, namely (i) ensuring public access to information, and (ii) protecting fundamental freedoms.

In this regard, a key connective tissue between ensuring public access to information and protecting fundamental freedoms is the existence of free, independent and pluralistic media, which can foster vibrant investigative journalism to hold the UN Member States accountable for their commitments under the 2030 Agenda for Sustainable Development. It is important to emphasise the possible role of independent journalism in generating well-researched information that could be used by the people to hold their governments accountable on SDGs and by governments to assess their policy responses to SDGs. Therefore, in addition to environmental protection and human rights, free, independent and pluralistic media can, under situations of robust FOI regimes, help unlock access to different other classes of information, including:

- **Institutional information** (e.g. internal regulations, etc.).
- **Organizational information.**
- **Operational information** (e.g. strategy and plans, policies, activities, procedures, reports, and evaluations).
- **Decisions and acts.**

¹⁴ Mendel, Toby. 2003. *Freedom of Information: A Comparative Legal Survey*. [0]. Available: http://portal.unesco.org/ci/en/file_download.php/fa422efc11c9f9b15f9374a5eac31c7efreedom_info_laws.pdf. Accessed on 7 June 2016.

¹⁵ Ibid: 15.

- **Public services information** (e.g. descriptions of services offered to the public, guidance, booklets and leaflets, etc.).
- **Budget information** (e.g. audit reports, salaries of public officials, government revenues, procurement and natural resource concessions, etc.).
- **Open meetings information** (e.g. which meetings are open, procedures for attending them, etc.).
- **Decision-making and public participation.**
- **Subsidies information** (e.g. information on the beneficiaries of subsidies, the objectives, amounts, etc.).
- **Public procurement information** (e.g. public procurement processes, criteria, outcomes, etc.).
- **Lists, registers, databases** (e.g. information on the lists, registers, and databases held by the public body, online/offline, and how accessible they are, etc.).
- **Information about information held.**
- **Publications information.**
- **Information about the right to information** (e.g. how to request information, including contact information for the responsible person in each public body).¹⁶

Beyond this conceptual framing of public access in terms of FOI, Target 16.10 also includes a reference to the *national* and *international* contexts of implementation. By invoking the phrase “in accordance with national legislation and international agreements”, Target 16.10 leaves no doubt as to how its implementation ought to be measured and monitored. The reference to “national legislation” responds to the principle of “common but differentiated responsibilities”.¹⁷ Here, it is important to highlight the aspect of “international agreements” as well. This means that implementing this target should not only reflect national jurisdiction but also international jurisprudence, such as instruments dealing with the right to seek, receive and impart information in the Universal Declaration of Human Rights and the International Covenant on Civil and

¹⁶ Darbshire, Helen. 2010. *Working Paper - Proactive Transparency: The future of the right to information? A review of standards, challenges, and opportunities*. [O]. Available: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire_Proactive_Transparency.pdf. Accessed on 16 June 2016.

¹⁷ See, for example, the Centre for International Sustainable Development Law (CISDL) Legal Brief. 2002. *The Principle of Common but Differentiated Responsibilities: Origins and Scope*. [O]. Available: http://cisdl.org/public/docs/news/brief_common.pdf. Accessed on 6 June 2016.

Political Rights (see below). That is why the SDGs indicator framework as a whole is seen as global and universally applicable.

To illustrate the above point, in terms of national legislation, there is evidence, as UNESCO's report on *World Trends in Freedom of Expression and Media Development* reminds us, of a "predominant trend towards the adoption of freedom of and/or access to information laws (FOI)" over the last decade, with a vast majority of countries around the world having constitutional guarantees for freedom of expression. In terms of the extent to which the implementation of such legislation reflects international agreements, however, it is still regrettable that the media and journalists, including their online and citizen journalist counterparts, are facing growing legal constraints in many parts of the world, which include defamation, slander, insult and other laws which do not meet "international standards for legitimate limitations on freedom of expression".¹⁸

What must be underscored, then, is that national legislation, under this target, must be consistent with international agreements. There is a plethora of precedents internationally that can serve as part of measuring and monitoring this congruence between national legislation and international agreements. For example, the right to freedom of expression, which includes FOI, is not only recognized as a basic human right in the Universal Declaration of Human Rights (1948),¹⁹ but also in the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1950),²⁰ the American Convention on Human Rights (1969)²¹ and the African Charter on Human and Peoples' Rights (1981).²² More specifically, in the European context, reference may be made to the Council of Europe Convention on Access to Official Documents, adopted on 18 June 2009. In the Americas, the Organization of American States' Inter-American Juridical Committee developed a set of Principles on the Right of Access to Information in 2008.²³ As such, questions of FOI lend themselves to universal political

¹⁸ UNESCO. 2014. *World trends in freedom of expression and media development*. Paris: UNESCO Publishing.

¹⁹ United Nations. 1948. *Universal Declaration of Human Rights*. [0]. Available: <http://www.un.org/en/documents/udhr/>. Accessed on 16 March 2015.

²⁰ European Court of Human Rights/Council of Europe. 1984. *European Convention on Human Rights*. [0]. Available: http://www.echr.coe.int/Documents/Convention_ENG.pdf. Accessed on 16 March 2015.

²¹ Organization of American States. 1969. *American Convention on Human Rights*. [0]. Available: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Accessed on 16 March 2015.

²² African Union (AU). 1986. *African Charter on Human and Peoples' Rights*. [0]. Available: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf. Accessed on 16 March 2015.

²³ Darbshire, Helen. 2010. *Working Paper - Proactive Transparency: The future of the right to information? A review of standards, challenges, and opportunities*. [0]. Available: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire_Proactive_Transparency.pdf. Accessed on 16 June 2016.

recognition and application within a larger framework of freedom of expression²⁴ and open government.

Open government refers to a situation whereby a government exhibits:

“... high levels of transparency and mechanisms for public scrutiny and oversight in place, with an emphasis on government accountability. Transparency is considered the traditional hallmark of an open government, meaning that the public should have access to government-held information and be informed of government proceedings. In recent years, however, the definition of open government has expanded to include expectations for increased citizen participation [and] collaboration in government proceedings through the use of modern, open technologies.”²⁵

Furthermore, the particular relevance of the right to freedom of expression, and its associated rights to press freedom as well as access to information and sustainable development, has been underlined in many reports, including in the UN Secretary General's synthesis report²⁶, and this argument continues to merit being underlined.

Towards an operational definition of Indicator 16.10.2

Against this background, how can Indicator 16.10.2 be measured and monitored?

As noted above, conceptualization of public access to information is increasingly associated with the right of access to information.²⁷ As such, Indicator 16.10.2 is framed as follows:

“Number of countries that adopt and implement constitutional, statutory and/or policy

²⁴ See, for example, Inter-Parliamentary Union (IPU). 2009. *Freedom of Expression and the Right to Information (Resolution adopted by consensus by the 120th IPU Assembly, Addis Ababa, 10 April 2009)*. [0]. Available: http://www.right2info.org/resources/publications/ngo-statements/ngo-statements_ipu-declaration. Accessed on 10 June 2016.

²⁵ *What is open government?* [0]. Available: <https://opensource.com/resources/open-government>. Accessed on 30 June 2016.

²⁶ United Nations. 2014. *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet: Synthesis report of the Secretary-General on the post-2015 sustainable development agenda*. [0]. Available: http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E. Accessed on 16 March 2015.

²⁷ See, for example, Open Society Justice Initiative. 2006. *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries*. [0]. Available: https://www.opensocietyfoundations.org/sites/default/files/transparency_20060928.pdf. Accessed on 9 June 2016.

guarantees for public access to information”.²⁸ As elaborated in the metadata for Indicator 16.10.2 shared with the UN Statistical Division (UNSD), the indicator seeks to establish the state of public access to information in terms of three key variables:

- 1) whether a country (or at the global level, the number of countries) has constitutional, statutory and/or policy guarantees for public access to information. An example here would be the number of countries with Freedom of Information – FOI/right to information – laws, over time. An important issue to recognise, as the World Justice Project advises, is that FOI laws vary enormously around the world, such that it is logistically complicated to formulate one question that applies to all countries. Therefore, proving the existence of such guarantees may encompass a wide range of possibilities, from a very precise Freedom of Information Act (FOIA), to a general government transparency law or policy guideline, to a multi-purpose “right to petition” statute or regulation, or to a very general statement in the country’s Constitution.²⁹
- 2) the extent to which such national guarantees reflect international human rights standards and/or agreements (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc.); and
- 3) the implementation mechanisms in place for such guarantees, including the following features:
 - a) Government efforts to publicly promote the right to information;
 - b) Citizens’ awareness of their legal right to seek and receive information and their ability to utilize it effectively;
 - c) The capacity of public institutions to provide information upon request by the public; and
 - d) Independent redress mechanism.

²⁸ See, for example, <http://unstats.un.org/sdgs/files/ga-briefing-28-Jan-2016/PGA-Briefing--Status-of-IAEG-SDGs-work-on-global-SDG-indicators-28-Jan-2016.pdf>. Accessed on 6 April 2016.

²⁹ World Justice Project. 2015. *Open government and freedom of information: advancing the global conversation*. [0]. Available: http://worldjusticeproject.org/sites/default/files/open_government_and_freedom_of_information_botero-ponce_may_2015.pdf. Accessed on 14 June 2016.

In practice, this means that governmental guarantees for public access to information may be assessed in terms of:

- Proactive disclosure provisions in laws that establish a legal duty to disclose
- Mechanisms for citizens, firms, and others to request information that has not been proactively disclosed but that is relevant to their interests
- Narrowly-tailored guidelines on exemptions to disclosure, and
- Institutional structures that support disclosure, such as information commissioners, oversight mechanisms, and complaints mechanisms. In some national cases, there is also information on the sources and numbers of requests and the response time taken to process these requests.
- Number and success rate of appeals.

In this regard, the following FOI assessment framework may be offered to capture the above aspects of Indicator 16.10.2:³⁰

³⁰ This framework is synthesized from UNESCO. 2008. Media Development Indicators: A framework for assessing media development. [0]. Available: <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf>. Accessed on 9 June 2016. Pages 17-20.

Table 1: **Measuring Indicator 16.10.2**

Indicator series: Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information			
Key variable	Performance sub-indicator	Means of verification	Possible data source(s)
1. Does a country have constitutional, statutory and/or policy guarantees for public access to information?	National law or constitutional guarantee on the right to information	Any law or policy on right to information that accords with international human rights standards	<ul style="list-style-type: none"> • Qualitative expert assessments (World Justice Open Government Index, launched in 2015 and covering 102 countries);³¹ • Administrative records (e.g. number of requests for information; number of requests process in the last 12 months; number of women who submit such requests, etc.) • Surveys (e.g. UNESCO World Trends and MDI reports; Open Society Foundation's series of surveys on 'access to information laws and practices'; the World Values Survey [www.worldvaluessurvey.org]; IPU data on access-to-information legislation and constitutional guarantees of access to information; World Values Survey on trust of news media]; Universal
2. Do those constitutional, statutory and/or policy guarantees reflect known international human rights standards and/or agreements (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc.)?	Country has signed and ratified relevant treaty obligations, with no significant exemptions, and these are reflected, to the extent possible, in domestic FOI legislation/policy	Reports from credible agencies/experts/researchers about right to information guarantees and the extent to which they reflect international human rights standards/agreements	
3. What implementation mechanisms are in place to ensure that such guarantees work optimally?	Public is aware of and exercises right to seek and receive official information	Policies of public bodies concerning release of information (which ensure readily, freely available public access to information, including online)	
	Public bodies release information both pro-actively and on demand	Evidence of state commitment to open government e.g. publication and dissemination of laws, court decisions, parliamentary proceedings, spending programmes (vis-à-vis SDG and other developmental undertakings/commitments)	

³¹ See, for example, World Justice Project. 2015. *Open government and freedom of information: advancing the global conversation*. [0]. Available: http://worldjusticeproject.org/sites/default/files/open_government_and_freedom_of_information_botero-ponce_may_2015.pdf. Accessed on 14 June 2016. An important note here is that this index presents scores and rankings for 102 countries on four dimensions of open government: publicized laws and government data, right to information, civic participation, and complaint mechanisms.

	<p>Effective and efficient appeals mechanism via independent administrative body e.g. information commissioner or ombudsman</p>	<p>Statistical information about public requests for official information and their fulfilment or rejection</p>	<p>Periodic Review [UPR] reports, etc.)</p> <ul style="list-style-type: none"> • UN or relevant regional bodies that carry details of each treaty, including countries that have signed, ratified or registered any exemptions to their obligations, together with the treaty bodies' general comments on implementation. • Various international and regional rapporteurs on freedom of expression issue country-specific reports. • For data on national laws and constitutional guarantees, sources include: national libraries, law commissions, official records of parliament and government records.
	<p>Any restriction on grounds of protection of personal privacy is narrowly defined so as to exclude information in which there is no justifiable public interest.</p>	<p>Statistical information/assessments about appeals or complaints over information requests that have been refused, including reasons for such refusal</p>	

It needs to be underscored that, while this framework does not cover every aspect of public access to information as such, it serves an executive or practical function, which will allow UNESCO to compile measurable data for input into the UN Secretary-General's SDG Progress Report, among other potential UN outputs. Furthermore, to varying degrees, it lives up to the key principles underpinning the right to know, which can be summarised as follows:

- Freedom of information legislation should be guided by the principle of maximum disclosure.
- Public bodies, defined as broadly as possible, should be under an obligation to publish key information, taking care, for example, to ensure that basic laws and information on legal rights are publicly available, presented in plain language, and are made accessible in all languages used by significant segments of the population. This also includes the quality and accessibility of information published by the government in print or online (i.e. active transparency), and whether administrative regulations, drafts of legislation, administrative decisions, and high court decisions are made accessible to the public in a timely manner.
- Public bodies must actively promote open government, through a process of public education which attempts to dismantle the culture of official secrecy.
- Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests. One example of a three-part test includes such features as: (i) the information must relate to a legitimate aim listed in the law; (ii) disclosure must threaten to cause substantial harm to that aim; and (iii) the harm to the aim must be greater than the public interest in having the information.
- Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.
- Individuals should not be deterred from making requests for information by excessive costs
- Meetings of public bodies should be open to the public.
- Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed, against the background of international agreements or standards (for example, access to public-interest information held by private actors).

- Individuals who release information on wrongdoing – whistleblowers – must be protected.^{32 33}

Implications for implementation

As can be seen from the list of possible data sources listed above, data may potentially be readily available for two variables relating to this indicator, namely:

- whether a country has constitutional, statutory and/or policy guarantees for public access to information; and
- the extent to which such national guarantees reflect international human rights standards and/or agreements.

Arguably, desk research may demonstrate whether a particular country has adopted or enacted constitutional, legal and/or policy guarantees for public access to information. So also can desk research disclose the extent to which such guarantees mirror international agreements on public access to information, at least on paper.

Nevertheless, in themselves, these aspects may not help us to monitor *effective implementation* of such guarantees. The third aspect – the implementation mechanisms in place – attempts to go beyond the existence of national guarantees. This component, although there is patchy anecdotal evidence of it in different survey reports and expert analyses³⁴ – requires much more time and methodological rigor. Through its assessments of national media landscapes, based on the Media Development Indicators (MDIs), UNESCO attempts to unpack how the right to freedom of information is guaranteed in law and in practice, with over 20 countries covered by 2016. The goal of such assessments is to influence national media policy formulation, implementation and evaluation.

³² Article 19. 1999. *The Public's Right to Know Principles on Freedom of Information Legislation*. [0]. Available: http://www.ipu.org/splz-e/sfe/foi_ps.pdf. Accessed on 10 June 2016.

³³ World Justice Project (WJP). 2015. WJP Open Government Index™ 2015. [0]. Available: <http://worldjusticeproject.org/open-government-index/>. Accessed on 14 June 2016.

³⁴ See, for example, See, for example, Open Society Justice Initiative. 2006. *Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries*. [0]. Available: https://www.opensocietyfoundations.org/sites/default/files/transparency_20060928.pdf. Accessed on 9 June 2016.

For its part, the World Bank had initiated a project to develop what it called “a core set of indicators on Right to Information Drivers of Effectiveness – the RIDE Indicators – to help countries assess the implementation of access to information laws, enabling them to compare their data with that from other agencies, including the World Bank, Human Rights Commissions or Information Commissioners, judicial records, civil society statistics and academic research. These drivers of implementation effectiveness include (i) enabling conditions, (ii) demand for information; (iii) institutional capacity, and (iv) oversight.³⁵

The conceptual operationalization in **Table 1** above has elements from both the UNESCO and World Bank approaches.

Other agencies are also involved in some aspects of FOI work, including the Inter-Parliamentary Union (IPU), which holds the World e-Parliament Conference as a biennial forum that addresses, from both the policy and technical perspectives, how ICTs can help improve representation, law-making and oversight and increase parliament’s openness, accessibility, accountability and effectiveness.³⁶ Other agencies are listed in **Table 2** below.

Possible data partnerships for reporting on Indicator 16.10.2

In light of the above, the following data partnerships could be considered for reporting on the indicator:

³⁵ Lemieux, Victoria L. 2015. *Public access to information is critical to promoting peaceful and inclusive societies*. [0] Available: <http://blogs.worldbank.org/governance/public-access-information-critical-promoting-peaceful-and-inclusive-societies>. Accessed on 10 June 2016. For a more detailed analysis, see Lemieux, VL & Trapnell, SE. 2016. *Public access to information for development: a guide to the effective implementation of right to information laws*. Washington, DC.: World Bank Group.

³⁶ See, for example, <http://digitalwatch.giplatform.org/actors/international-parliamentary-union>. Accessed on 10 June 2016.

Table 2: Possible data partnerships for Indicator 16.10.2

Partner	Existing data holding(s)	Possible contribution to Indicator 16.10.2 reporting
World Bank	RIDE Indicators initiative	Support research by national statistical offices, academics, media development NGOs, etc., whose research outputs could be enlisted for SDG reporting purposes.
International Federation of Library Associations and Institutions (IFLA)	Libraries provide an avenue to achieve ubiquitous public access to the Internet and to ensure that people have the skills they need to access information through technology and runs the IFLA/FAIFE World Report Series, which looks at the state of the world in terms of freedom of access to information, freedom of expression and related issues. More importantly, the report makes an attempt to disaggregate data in terms of women's literacy and freedom of access to information, the disabled and freedom of access to information as well as senior citizens and freedom of access to information. ³⁷	Some of the country data from the IFLA/FAIFE World Report could be used for reporting purposes under Indicator 16.10.2, especially looking at the role of public libraries in promoting access to information and how that data is disaggregated across different categories (gender, age, disability, etc.). Answers – or the lack thereof – to such FOI questions may also help to unlock the processes of FOI law implementation.
Inter-Parliamentary Union (IPU)	IPU has adopted progressive FOI resolutions and has a <u>PARLINE (Parliaments online) database</u> on individual parliaments on a range of different activities (Global Parliamentary Report) [http://www.ipu.org/gpr-e/video/index.htm]	Possible advocacy for FOI laws, including making available data on national FOI legislation and expert assessments on how effective it is in responding to the imperative for openness, accessibility and accountability to the citizenry, including investigative journalists. Their database could also be an entry-point into desk research on national legislation on FOI.
Open Government Partnership (OGP)	The OGP has an Independent Reporting Mechanism (IRM), whereby stakeholders can track OGP progress in participating	Reporting under Indicator 16.10.2 could draw upon OGP's assessment in relation to three OGP values, namely: (i) Access to information; (ii) Civic participation; and (iii) Public

³⁷ See, for example, the IFLA World Report 2010 (edited by Theo JD Bothma). [0]. Available: <http://db.ifla-world-report.org/files/IFLA-WR-2010-Analysis-and-Conclusions.pdf>. Accessed on 10 June 2016.

	<p>countries. The IRM produces biannual independent progress reports for each country participating in OGP, assessing governments on their commitments to OGP values.</p>	<p>accountability. More specific government commitments under this may include:</p> <ul style="list-style-type: none"> • Proactive or reactive releases of information; • Strengthening the right to information, including providing open access to information (not privileged or internal only to government). • Government efforts to mobilize citizens to engage in public debate, to provide input, and to make contributions that lead to more responsive, innovative and effective governance, including supporting open decision making to all interested members of the public as a way of informing overall decision making; • Rules, regulations, and mechanisms call upon government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments. As part of open government, such commitments have an “open” element, meaning that they are not purely internal systems of accountability without a public face.³⁸
<p>CIVICUS</p>	<p>CIVICUS publishes an annual report, titled the State of Civil Society Report, highlighting the conditions civil society works in around the world. The report draws from a series of inputs contributed by members of the CIVICUS alliance, including thematic inputs from civil society leaders and experts, a survey of national level civil society networks that are members of CIVICUS’ Affinity Group of National Associations (AGNA), and</p>	<p>This report, though without direct reference to FOI issues, could be useful for drawing inferences as to how countries are affording civic space for deliberation on their policies, etc.</p>

³⁸ See, for example, OGP. 2015. *What are Independent Progress Reports?* [0]. Available: <http://www.opengovpartnership.org/irm/irm-reports>. Accessed on 13 June 2016.

	interviews with people close to the key civil society stories of the day. ³⁹	
World Justice Project ⁴⁰	On March 26th 2015, the World Justice Project launched the WJP Open Government Index, an effort aimed at measuring the openness of governments from the perspective of the average citizen. The Index presents scores and rankings for 102 countries on four dimensions of open government: (i) publicized laws and government data, (ii) right to information, (iii) civic participation, and (iv) complaint mechanisms. These scores are based on more than 70 variables derived from interviews with more than 100,000 respondents from the general public in addition to in-country expert respondents gathered as part of the data collection process of the WJP Rule of Law Index. ⁴¹	For Indicator 16.10.2 reporting purposes, findings from the WJP surveys could be useful, especially in terms of disaggregated data as it relates to the following FOI variables: <ul style="list-style-type: none"> • Awareness: (e.g. Worldwide, less than half (40%) of survey respondents know of any laws supporting their right to access government-held information). • Socio-economic status: (e.g. In 80% of countries low-income respondents are less aware than high-income households of their right to information. In 68% of countries low-income respondents are less likely to request information from the government.) • Open government and gender: (e.g. In 76% of countries women are as likely as men to request information from a government agency. However, in half of all countries surveyed, women tend to be less aware than men of laws supporting their right to access government-held information).⁴²
World Wide Web Foundation	The foundation publishes the Open Data Barometer, which attempts to demonstrate how open data — data which is freely available and shareable online, without charge — can dramatically reduce the time and money citizens need	For Indicator 16.10.2, the Barometer findings can be useful to the extent that they help us to understand how governments (92 were covered in the third edition of the report) are delivering in terms of the following three variables as part of a larger FOI regime:

³⁹ CIVICUS. 2015. *State of Civil Society Report*. [0]. Available: <http://civicus.org/index.php/en/media-centre-129/reports-and-publications/socs2015>. Accessed on 13 June 2016.

⁴⁰ The World Justice Project® (WJP) is an independent, multidisciplinary organization working to advance the rule of law around the world. Founded by William H. Neukom in 2006 as a presidential initiative of the American Bar Association (ABA), and with the initial support of 21 other strategic partners, the World Justice Project transitioned into an independent 501(c)(3) non-profit organization in 2009. Its offices are located in Washington, DC, and Seattle, WA, USA. More information is available at: <http://worldjusticeproject.org/who-we-are>.

⁴¹ World Justice Project. 2015. *Open government and freedom of information: advancing the global conversation*. [0]. Available: http://worldjusticeproject.org/sites/default/files/open_government_and_freedom_of_information_botero-ponce_may_2015.pdf. Accessed on 14 June 2016.

⁴²World Justice Project (WJP). 2015. *WJP Open Government Index™ 2015*. [0]. Available: <http://worldjusticeproject.org/open-government-index/>. Accessed on 14 June 2016.

	to invest to understand what government is doing and to hold it to account. At the same time, because open data is made available in bulk and in formats that simple computer programmes can analyse, comparing and combining data from different sources becomes faster and easier, even across national boundaries. ⁴³	<ul style="list-style-type: none"> • Readiness: How prepared are governments for open data initiatives? What policies are in place? • Implementation: Are governments putting their commitments into practice? • Impact: Is open government data being used in ways that bring practical benefit?⁴⁴
Access Now	Access Now issues a Transparency Reporting Index report, which provides a platform for technology companies to disclose threats to user privacy and free expression. Such reports educate the public about company policies and safeguards against government abuses, and contribute to an understanding of the scope and scale of online surveillance, network disruptions, content removal, and a host of other practices impacting our fundamental rights. At the time of writing, 61 companies had released transparency reports, covering at least 90 countries.	For reporting under Indicator 16.10.2, TRI reports may be used to infer the classes of information that governments are likely to deny public access to, and the reasons advanced for such denials. Furthermore, the possibility exists that such companies may be encouraged to disclose more information which relates to their own accountability for questions of environmental protection, individuals' human rights, etc.
International Consortium of Investigative Journalists (ICIJ) ⁴⁵	Launched in 1997 as a project of the Center for Public Integrity, ICIJ is a global network of more than 190 investigative journalists in more than 65 countries who collaborate on in-depth investigative stories, with the focus of its investigations being cross-border crime, corruption, and the accountability of power.	Investigative reports, recently exemplified by the Panama Papers, can shed light on the rate of implementation of governmental, intergovernmental and corporate guarantees for public access to information.

⁴³ Web Foundation. 2015. *Open Data Barometer*. [0]. Available: <http://opendatabarometer.org/doc/3rdEdition/ODB-3rdEdition-GlobalReport.pdf>. Accessed on 14 June 2016.

⁴⁴ Ibid: 7.

⁴⁵ More information is available at: <https://www.icij.org/about>. Accessed on 30 June 2016.

The Carter Center	<p>The Carter Center's Global Access to Information (ATI) Program works in partnership with governments, civil society, and international and regional bodies to improve governance and transform lives through a meaningful right of access to information.</p> <p>The Global ATI Program developed the <u>Implementation Assessment Tool</u> to assess the extent to which public agencies are prepared to respond to requests and how well they are doing at providing information. Among other things, the tool assesses leadership, rules, procedures, resources, and training to help governments identify concrete, fixable problems that prevent citizens from accessing information to which they have a right. This new tool, which offers a benchmark of good practice, was piloted in 11 countries and is now ready for use anywhere.⁴⁶</p>	The UNESCO report could draw upon the Carter Center's ATI Implementation Assessment Tool, particularly by using data from the centre's country reports based on this assessment tool (Liberia, Uganda, Nigeria, Bangladesh, etc.)
Article 19	Article 19 has been a principal source for GFMD on the adoption of FOI laws by UN member states throughout these past two years of advocacy and negotiations on what is now SDG16.10, and has been an important contributor to UNESCO's research and deliberations on the issue as well.	Article 19 could thus be included among the nongovernmental data sources cited for this indicator, particularly given its work in tallying countries with FOI statutes - 103 of the 193 UN member states, plus another five which have administrative decrees or similar access-to-information guidelines and systems.

⁴⁶The Carter Center. *Implementation Assessment Tool*. [0]. Available: <https://www.cartercenter.org/peace/ati/iat/index.html>. Accessed on 31 August 2016.

Annexes

1) Work Plan

Activity	Months: 2017											
	January	February	March	April	May	June	July	August	September	October	November	December
Data partners' respective data projects underway	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
UNESCO collates data from its partners and other sources, including internal ones (e.g. <i>World Trends</i> report, etc.)				XXXX								
UNESCO generates a draft report, framed in terms of the UN SDG Progress Report						XXXX						
Report is circulated among data partners for review							XXXX	XXXX				
UNESCO prepares storyline and data for UN SDG Progress Report, and any other UN reports									XXXX			
UNESCO repurposes report for use on 28 September, during International Day for Universal Access to Information (IDUAI) and for other publicity on SDGs									XXXX	XXXX	XXXX	XXXX

2) Sample Reporting on Goal 16 Targets/Indicators for the UN SG SDG Progress Report

Storyline Guidelines for UN system
Global SDG Progress Reports
Prepared by UNSD

Content & Format of the 2016 Reports

- Secretary-General's report (parliamentary document informing HLPF)
 - ✓ Length: 12,000 words/approx. 24 pages – Maximum 1 page per goal (500 words)
 - ✓ Statistical Annex on Tier I and some Tier II indicators
- Glossy report (for wider dissemination)
 - ✓ Length: approx. 52 pages – approx. 2-3 pages per goal including charts/photos
 - ✓ Mainly charts/infographics and brief key messages
 - ✓ Overview and data story (4 pages each)
 - ✓ Notes and other information (4 pages)

Storyline Input by Agencies

The storyline will be used for both reports:

- One page of text per Goal or about 500 words, or shorter if providing storyline per target, presenting analysis of trends derived from the available data.
- 5-6 Charts per Goal (or 1 or 2 charts per target) with key messages for the glossy report

Part I: Ensuring that no one is left behind

The storyline should contain the following:

- *Describe inequality issues in specific population groups and/or in population groups that are at particular disadvantage, based on disaggregated data for one or more indicators contained in the global indicator framework.*
- *A brief summary highlighting the cross-cutting nature of the specific issues covered from the perspective of addressing inequality.*
- *Highlight the implications of the principle of leaving no one behind for implementation and monitoring strategies across different SDGs.*

Part II: Measuring Progress towards SDGs: latest trends

One page of text per Goal or about 500 words, or shorter if providing storyline per target, presenting analysis of trends derived from the available data.

The storyline for each goal should contain the following:

- *An initial summary of the global and regional trends for selected, representative indicators for which data are available.*
- *5-6 charts/graphs per goal with key messages (or 1 or 2 charts if providing by target)*
- *To the extent possible and based on those indicators where data already exist, present the situation of specific groups of the population.*

Part III: Note on the methodology

The note on the methodology should address the following elements:

- *Describe the approach for the baseline for the indicators.*

- Describe the compilation of the indicators and standardization.
- Describe the status of data (availability, coverage and level of disaggregation)
- Highlight some of the gaps in the current availability of data and regional disparities.
- Provide highlights of possible steps by national and international statistical systems to meet SDG data needs.

Regional Groupings

Example of regional data submission for the Annex of the SDG Progress Report:

Indicator 16.10.2 Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

	2000	2005	2010	2015 (or latest year [2013])
World	--	--	--	--
Developing regions	--	--	--	53
Northern Africa	--	--	--	1
Sub-Saharan Africa	--	--	--	11
Latin America and the Caribbean	--	--	--	19
Eastern Asia	--	--	--	3
Southern Asia	--	--	--	6
South-Eastern Asia	--	--	--	3
Western Asia	--	--	--	3
Oceania	--	--	--	1
Caucasus and Central Asia	--	--	--	6
Developed regions	--	--	--	43
Least developed countries	--	--	--	11
Landlocked developing countries	--	--	--	14
Small island developing States	--	--	--	9

**Sample of Storyline for Goal 16: Promote peaceful
and inclusive societies for sustainable
development, provide access to justice for all and
build effective, accountable and inclusive
institutions at all levels**

Peace, justice, and effective, accountable and inclusive institutions, are at the core of sustainable development. A number of regions have enjoyed increased and sustained levels of peace and security in recent decades. But many countries still face protracted armed conflict and violence, and far too many people struggle under weak institutions and lack of access to justice, information and other fundamental freedoms.

At the global level, the number of victims of intentional homicide remained relatively stable from 2008 to 2014, with an estimated rate between 4.6 and 6.8 victims per 100,000 people in 2014. Yet during that period, the homicide rate in developing countries was twice that of developed countries, and increased in the least developed countries. Despite lack of harmonized data, there are also clear signs of increases of armed conflict-related fatalities and injuries in many countries, causing unprecedented population displacements and huge humanitarian needs.

Various forms of violence against children are pervasive, including discipline that relies on physical punishment and psychological aggression. In all but 7 of 73 countries and areas with available survey data from 2005–2015, more than half of children between the ages of 1 and 14 were subjected to some form of psychological aggression and/or physical punishment at home. In Northern Africa, the figure stood at more than 90 per cent.

Increasingly, children are victims of human trafficking. The proportions of girls and boys involved in human trafficking cases detected by authorities at the global level have more than doubled between 2004 and 2014, reaching 20 per cent and 7 per cent, respectively, of total cases detected.

Sexual violence is one of the most unsettling of children's rights violations. Underreporting and the lack of comparable data remain stubborn obstacles to understanding the full extent of this pernicious problem. Survey data from 31 low- and middle-income countries suggest that the proportion of women aged 18 to 29 years who experienced sexual violence for the first time before age 18 varies widely, ranging from zero to 16 per cent. Comparable data on the experiences of men are only available for five countries, and figures are lower than those reported among women in the same countries.

Developments with respect to the rule of law and access to justice present a mixed picture. Globally, the proportion of people held in detention without sentencing decreased slightly – from 32 per cent of total detainees in 2003–2005 to 30 per cent in 2012–2015; however, the figure for developing regions has consistently been more than two times that of developed regions. In Southern Asia, for instance, more than two out of three prisoners remained unsentenced in 2012–2014, despite some progress over the last 10 years.

Similarly, only one quarter to one half of robbery victims reported the crime to the police in 27 countries with available data. This suggests a significant gap in citizens' access to and trust in authorities. Although official data on bribery prevalence are limited, figures from 19 countries indicate that it may reach as high as 50 per cent, a level that significantly undermines trust in state institutions.

Registering children with local authorities at birth is a first step in securing recognition before the law, safeguarding individual rights and access to justice, and becoming eligible to receive basic services such as education and health care. Despite recent progress, the births of nearly one in four children under age 5 worldwide have not been recorded. In sub-Saharan Africa, over half (54 per cent) of children have not been registered by their fifth birthday. Globally, children living in urban areas are around one and a half times more likely to be registered than their rural counterparts. Similarly, in most regions, birth registration rates tend to be highest among the richest 20 per cent of the population.

Efforts are under way to make national and international institutions more effective, inclusive and transparent. Over the past 10 years, nearly two thirds of 144 countries with available data were able to plan their national budgets effectively (since final expenses remained within 10 per cent of original budgets). At the international level, however, developing countries only account for 50 per cent of voting rights in the African Development Bank, 37 per cent in the International Monetary Fund and 38 per cent in the World Bank.

A free press is closely linked to access to information and the protection of human rights, but the trend here is discouraging. The number of journalists killed increased from 65 in 2010 to 114 in 2015, despite the fact that 90 States had adopted freedom of and/or access to information laws by 2013.⁴⁷

The proportion of countries with national human rights institutions has doubled over the last 15 years, reaching 54.3 per cent by the end of 2015. The share of such institutions that are compliant with the Paris Principles adopted by the General Assembly (A-Status) to strengthen their independence and mandate was highest in developed regions (46 per cent) and Latin America and the Caribbean (41 per cent).

⁴⁷ This excerpt is taken from *Progress towards the Sustainable Development Goals: Report of the Secretary-General* [0] Available: http://www.un.org/ga/search/view_doc.asp?symbol=E/2016/75&Lang=E. Accessed on 8 July 2016.