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Transparency as a Key Priority for the
UN General Assembly Special Session on Corruption

Access Info Europe welcomes the holding of the UN General Assembly Special Session against corruption (UNGASS, 26 to 28 April 2021). In this contribution to the preparation for the political declaration to be produced by the UNGASS, Access Info sets out the ways in which the right of access to information should be included into the declaration so that it delivers a practical contribution to combatting corruption.

1. Context

Since the UNCAC entered into force on 14 December 2005, the right of access to information has been consolidated in various ways. First, international human rights tribunals such as the Inter-American Court of Human Rights (September 2006) and the European Court of Human Rights (April 2009 onwards) have recognised the right of access to information, placing particular emphasis on the link to freedom of expression and where the objective of seeing information is to expose wrongdoing and corruption.

In July 2011, the UN Human Rights Committee confirmed that the right of access to information is an inherent part of freedom of expression (UNHRC General Comment No. 34) and underscored that this right has two dimensions, imposing on States the obligation both to respond to requests (with limited exceptions) and to publish proactively information of public interest.

The Sustainable Develop Goals recognise the importance of transparent institutions (Target 16.6) and require States to adopt access to information laws (Indicator 16.10.2) as part of actions to promote peaceful and inclusive societies, to provide access to justice for all, and to build effective, accountable and inclusive institutions.

The value of transparency in the fight against corruption is also reflected in the commitments of many of the countries which are members of the Open Government Partnership (established 2011). In recent years it has become clearly established that the right of access to information is a sine qua non of any democratic society, essential for ensuring protection of human rights and preventing and rooting out corruption.
The Covid-19 pandemic has also shown the essential value of transparency of government processes, in the protection of health through management of health systems of course, but also in the way in which public funds are spent on health, in the way in which public procurement is carried out. The pandemic has once again shown that, without sufficient transparency, and checks and balances, the spending of public funds and public procurement processes are exposed to risks of fraud and corruption. This underlines the vital importance of ensuring that all provisions of the UNCAC related to transparency are properly implemented by States Parties.

The UNCAC establishes in a number of its paragraphs that States Party should commit not only to the principle to transparency but to establishing specific mechanisms to ensure respect for the right of information. There are also a number of provisions that require public disclosure and dissemination of specific information relating to the functioning of the administration and its anti-corruption measures. The UNGASS Political Declaration should make a priority of these transparency provisions.

2. Adoption of Access to Information Laws

There should be a renewed commitment by all States Parties to ensure that their national legal frameworks include laws which enable the public to exercise the right of access to information, in line with the requirement in Article 10 of the UNCAC to adopt procedures or regulations that allow members of the general public to obtain information that 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.”

Such a commitment is supported by Article 13 of the UNCAC, dedicated to promoting the participation of society, specifically requires States Parties to ensure “effective access to information” for the public. Article 13 also contains a requirement that States Parties respect, promote and protect the “freedom to seek, receive, publish and disseminate information concerning corruption,” subject to the restrictions provided by for international law.

Specifically, States Parties should adopt full access to information laws that comply with international standards, including by applying to all branches of government, and to all bodies, private or public, which perform public functions and/or operate with public funds.

Any exception to the right of access should be limited, in line with international standards, and should be subject to both a harm and public interest test. The interest of preventing, investigating, or exposing corruption should be considered as an overriding public interest.

3. Access to Information Oversight Bodies

The UNCAC requires States Parties (Article 6) to establish independent bodies that oversee implementation of the principle policies of the convention (as established by Article 5), which includes the principle of transparency.
It is already common practice in many States Parties to establish an independent body such as an Information Commissioner to oversee implementation of the access to information law, to monitor compliance, and to hear complaints against public bodies that have refused to release information.

Through the political declaration, States Parties should commit to establishing an oversight body in order to achieve effective oversight of compliance with national access to information laws and to promote a culture of transparency within the government.

4. Proactive Transparency of Specific Information

Proactive transparency is an integral part of the right of access to information and places specific, positive, obligations on States Parties to develop a legal framework that requires the publication of information of public interest, which includes information whose publication is necessary to prevent and detect corruption.

The UNCAC identifies a number of classes of information that should be made publicly available to assist the fight against corruption and in order for there to be effective government accountability. The required transparency includes:

(i) Employment of Public Officials: Transparency with respect to the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials (Article 7).

(ii) Conflict of Interest-related Information: States Parties are required to “endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.” (Article 7.4)

(iii) Public Administration: States Parties are required to enhance transparency in the public administration with regard to its organization, functioning, and decision-making processes (Article 10).

(iv) Decision-making process in government: States are required (Article 13.1.a) to enhance the transparency of and promote the contribution of the public to the decision-making process.

(v) Public Sector Finances: States Parties are required (Article 9.2) to promote transparency and accountability in the management of public finances. This is to be achieved by, inter alia:

(a) Procedures for the adoption of the national budget;
(b) Timely reporting on revenue and expenditure;
(c) A system of accounting and auditing standards and related oversight;
(d) Effective and efficient systems of risk management and internal control;

(vii) Election Campaign Funds / Political Parties: States Parties are required to “enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties” (Article 7.3).
For the UNGASS declaration, we recommend that consideration be given to specific commitments to ensure greater proactive transparency of these key classes of information, as well as to regular reporting on the findings of the auditing, oversight and internal control mechanisms.

5. **Public Procurement Transparency**

Article 9 of the UNCAC Convention recognises the obligations of States Parties to ensure that systems of public procurement are based on the principle of transparency.

The Council of Europe has stated that the key principle for reducing the risks of corruption is maximum transparency in all stages of the procurement cycle.¹ In support of this, a separate study found that if EU Member States published five (5) more items of information about tendering opportunities, savings are estimated to be between EUR 3.6-6.3 billion per year.²

More transparency through open data in public procurement will ensure accountability through facilitating monitoring. Opening up the data to external monitoring enables journalists, CSOs and citizens to see how taxpayers’ money is being spent and allows the performance of public services to be independently scrutinised. Professionals working in the area will know that their actions are being monitored and that they will thus be held accountable for their actions. Through holding accountable those working in the sector through transparent procurement, we can subsequently expose corruption.

The UNGASS political declaration should include commitments that State Parties will take action to ensure that their procurement systems are in line with the UNCAC Convention by being open by default with data published on all stages of the procurement process in a standard format, producing adequate levels of transparency with real-time data.

6. **Private Sector Transparency – Company and Beneficial Ownership Registers**

The UNCAC refers to the need for transparency in the private sector for anti-corruption measures to be effective. In particular, Article 12.2 (b) requires States Parties to promote transparency among private entities, including where appropriate, “measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities”.

Since the UNCAC was adopted, public access to company and beneficial ownership registers has been recognised as a key anti-corruption instrument. It is recommended that the political declaration

¹ Council of Europe, ‘Making public procurement transparent at local and regional levels’ Governance Committee [October 2017] p4
commit States Parties to ensure full and public reporting on the ownership and management of corporate entities.

7. Lobby Transparency

Transparency of the way in which interest groups (lobbies) carry out their work helps prevent corruption in decision making and public procurement. The UNGASS political declaration should include a commitment to transparency of lobbying activity, in line with the International Lobby Regulation Standards.

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