RIGHT TO INFORMATION PERFORMANCE

Introduction

Access to government information enables the public to participate meaningfully in official decision-making and to hold <u>government actors accountable</u> for their decisions (OGP, 2021). <u>Right to information</u> (RTI) laws enable citizens to obtain information and documents from public authorities and relevant private bodies (Transparency International, n.d.). Many <u>modern RTI laws</u> also require governments to proactively publish core information and data, including how the RTI law is working (Centre for Law and Democracy, n.d.).

As of 2021, 132 countries have adopted constitutional guarantees or enacted <u>RTI laws</u> (UNESCO, 2022). However, the quality, comprehensiveness, and actual implementation of these laws vary. In practice, issues about the timeliness of response, inappropriate use of exemptions, difficulties in contesting decisions, lack of independent oversight, and insufficient staffing and technical expertise among the relevant government officials can impede <u>access to information</u> (GDB: Political Integrity Module Design Draft, 2021).

This analysis is part of the <u>Broken Links: Open Data to Advance Accountability and Combat Corruption</u> report, which offers an overview of data frameworks and data availability in OGP countries across eight policy topics using data from the Global Data Barometer.

Takeaways
Nearly half of OGP countries publish data on RTI performance in any form.
Most datasets include information on the number of requests submitted, but less than half of datasets include details about how long it took to fulfill a request, materials withheld and reasons for holding it, appeals to RTI determinations and their results, and the relevant agency or department.
Just over half of the datasets are free to access, but few are published in machine-readable or bulk- downloadable formats.
46% GP countries have a available online

The United States Small Business Administration flagged nearly 2.3 million Paycheck Protection Program (PPP) loans worth at least \$189 billion — about a quarter of the roughly \$800 billion lent out — for further review between August 2020 and September 2021, according to a massive dataset obtained by the Project On Government Oversight (POGO) through a Freedom of Information Act lawsuit. There are 4.3 million flags signifying concerns that loans were potentially fraudulent, the recipient was possibly ineligible, or the loans in question merited closer examination. According to the Justice Department, many who participated in fraudulent activities used the stolen funds to purchase luxury automobiles, private jet flights and swanky vacations. Photo by Phillip Pessar.



Since most countries now have RTI laws, they are dealing with "second generation" problems compliance, backlogs of requests, and achieving consistency in responses to requests. Data on performance of public authorities can help improve measure progress or regress, aid learning and accountability, and help prioritize reforms.

Specifically, data on the performance of an RTI law can help describe when, where, and how people request information as well as whether they get that information, and why or why not (Hazell & Worthy, 2010). (For more information on key data points, refer to Good to Know: What Does "RTI Performance Data" Mean in this Report?.)

Evidence from the Global Data Barometer (GDB, n.d.) shows the following:

- Most OGP countries have an RTI law, regulation, or policy.
- Reporting is typically required on each authority's implementation of the law, regulation, or policy.
- Despite legal requirements, those authorities do not proactively publish data on their performance. When they do, that data is not always open or standardized.

The GDB study is the first global study to bridge the gap between the many <u>useful legal studies</u> (Centre for Law and Democracy, n.d.) and more comprehensive but time-consuming studies about performance (see Good to Know: About GDB Data for more details).¹ Of course, looking at performance data out of context cannot address whether agencies are abusing or mis-administering the RTI. But, without this data, it is difficult to tell whether denial of information is part of a pattern or unique, and it is difficult to know how to address shortcomings in fulfilling this right.

Policy Justification

Effective implementation of RTI laws is important for the prevention and detection of corruption, waste, and abuse. Studies have found that countries with RTI laws have lower levels of corruption (Islam, 2006) and the existence of a freedom of information act is associated with a significant positive trend in controlling corruption (ERCAS, 2013). In addition, RTI can help ensure that governments follow procedures as laid out in the law, act impartially, and give reasons for their decisions. Data on RTI performance can surface patterns of misadministration and outliers that could make the law ineffective.

· Open access to RTI performance data can surface noncompliance during times of crisis. Recently, the COVID-19 pandemic significantly increased pressure on governments to deliver complete, timely information to the public, leading to the suspension of RTI procedures in many countries ("RTI Rating COVID-19 Tracker," n.d.). During these critical times, the public has a heightened need for complete, timely information.

RTI performance data can be used to assess how well the right to information is being respected and fulfilled. Publishing data on the number of requests submitted and how they have been responded to can inform the public if requests are not being addressed according to the legal requirement.

• Understanding time frames: A study in Spain showed that Spanish institutions ignored 57 percent of access to information requests in 2013.² This "mute refusal" can be a common way that RTI laws go unimplemented. In some countries, such as the United States, excessive delays can last years. Understanding time frames can help identify where there are bottlenecks to be addressed.

- Excessive exemptions: All RTI laws require authorities to publish reasons for any denial of information. These reasons must be included in the list of exemptions (see Good to Know: Key Terms). Publishing this data (1) ensures that agencies are giving reasons for denial, (2) helps understand what the most common reasons for denial are, and (3) helps authorities address excessive exemptions. Publication of such data by authorities allows supervising agencies, ombudsmen, and watchdog organizations to identify and curb excessive information refusal. In other cases, it can help identify where legal reform is necessary, such as where people are requesting personal data through RTI or where they are using RTI to engage in corporate espionage, and these would be better addressed through other remedies.
- Appeals data: Data requesters can appeal a response to an information request that was denied as a result of an exemption. Data related to the number of appeals and their resolutions can give the public insight into what has become case law and alert them of any abuse of exemptions and delays in the process.

GOOD TO KNOW

What Does "RTI Performance Data" Mean in this Report?

This module covers findings from the GDB on the publication of RTI performance data in OGP countries. It includes information on the availability of the following types of data related to RTI performance:

- The number of requests submitted
- The time it took to respond to requests
- The number of denials and reasons for withholding information
- · The number of appeals and their results
- Whether the data is available free of charge
- Whether the data is linked to the relevant authority or department

Access to data on RTI performance improves accountability and learning. Open access to RTI administration data allows everyone to see if the RTI law is working.

- Administrators: For administrators, having access enables them to see patterns of practice that might not be evident with individual cases. This allows them to develop problem-specific solutions with authorities.
- Oversight: Similarly, RTI commissions (or their equivalents), ombudsman offices, government watchdogs, and RTI professionals in government can address patterns or egregious cases where there is evidence.
- Public accountability: Finally, members of the public, other branches of government, professional organizations, and NGOs can use the data to hold authorities to account where there are patterns of practice or particular cases inconsistent with the law and where legal reform is necessary.

¹ The Carter Center Implementation Assessment Tool, <u>https://www.cartercenter.org/peace/ati/iat/index.htm</u>.

² Spanish institutions ignored 57% of access to information requests during 2013, Access Info Europe and Fundación Ciudadana Civio, the 'year of transparency,' http://www.access-info.org/en/spain

GOOD TO KNOW

Key Terms

- Public authority: For this analysis, public authorities can include government branches, as well as private bodies performing public functions or those operating with public funds.
- Proactive and reactive disclosure: Information held by public authorities can be accessed by the public via proactive disclosure, when the authority releases information without requests being filed, or via reactive disclosure, when members of the public can file requests for information. Proactive disclosure ensures that members of the public are receiving timely information about the laws and decisions that affect them (Darbishire, 2015).
- Requests submitted: The number of requests submitted, specifically data on successful requests, can indicate how an RTI framework is performing and the level of public awareness around this process.
- Time limits: it is important to process requests promptly, and performance data can alert the public about how long it took to receive a response. Failure to provide a response or "mute refusals" and delays in response are forms of noncompliance.
- Exemptions: Public authorities can exempt information from disclosure in certain instances where those details fall in categories such as national security, attorney-client privilege, ongoing investigations, commercial secrecy, and privacy.
- · Appeals: If a public authority denies the release of information due to an exemption, requestors have the option to challenge the response. Generally, most RTI legal frameworks adopt one of four different models: courts, tribunals, ombudsman, or a specialist commissioner (Hazell & Worthy, 2010).
- Open data: This analysis looks at whether performance data is available online and whether it is available in an open data format. Data and content are considered open if they can be freely used, modified, and shared by anyone for any purpose. This report assesses countries on five key elements of open data: the data is available free of charge, openly licensed, timely and updated, provided in machine-readable format(s), and is available for bulk download. Additionally, it is important to publish metadata, the information published to assist with understanding the data, and any changes made to the collection or reporting methodology. For more details on open data requirements, see What is Open Data? in the Global Overview section of this report.

State of Progress Through OGP

Right to information has historically been a popular area for reform among OGP members. OGP countries are required to have legal frameworks, enabling fair access to information (OGP, 2022). Since the launch of OGP, RTI has been one of the most popular policy areas for reform and has seen effective commitment results. Altogether, 70 members have made 317 total RTI commitments since 2011.³ However, the percentage of members implementing RTI commitments has declined rapidly in recent years (OGP, 2021). Out of the hundreds of RTI commitments, just 34 commitments focus specifically on the collection or publication of RTI performance data.

Few commitments have focused on the publication of RTI performance data. Commitments have focused on the use of online platforms to submit and service RTI requests, improving management of government records, and publicly disclosing data requested through RTI. Seven of the world's ten top-rated countries for RTI legislation improved their legislation or its implementation through OGP.⁴ These countries are Mexico, Serbia, Sri Lanka, Albania, Croatia, Liberia, and El Salvador. Most of these do not explicitly focus on publishing performance data, however. Yet, few commitments focus on

strengthening compliance with RTI legislation and improving record management and proactive disclosure of request decisions. For example, Nigeria (n.d.) is working to improve the record management system for information requests to ensure efficient delivery of information to the requester and mandating annual reports on request and response rates. See Lessons from Reformers: Improving Freedom of Information (FOI) Act Compliance in Nigeria later in this chapter.

Evaluations of RTI commitments have found promising results. Overall, OGP commitments that focus on creating or reforming RTI laws and regulations have been both common and largely successful. According to OGP's Independent Reporting Mechanism (IRM), RTI commitments have been a bit more ambitious than the average OGP commitment but perform similarly on completion and early results (OGP, 2020). Although there have been very few commitments focusing on RTI performance data, they have shown strong results according to IRM analysis.

³ As of April 22, 2022.

⁴ According to the global RTI Rating which measures the strength of the legal framework for the right to access information held by public authorities (the right to information or RTI) based on 61 discrete indicators—each of which looks at a particular feature of a strong legal regime for RTI-divided into seven main categories-namely Right of Access, Scope, Requesting Procedure, Exceptions & Refusals, Appeals, Sanctions & Protections, and Promotional Measures. More details can be found here: https://www.rti-rating.org/.



LESSONS FROM REFORMERS

Improving Freedom of Information (FOI) Act Compliance in Nigeria

Due to their high level of noncompliance regarding Freedom of Information Act requirements, Nigeria (n.d.) <u>committed</u> to improving RTI procedures in their 2019 action plan (OGP, n.d.). Specifically, the aim is to improve compliance by proactively disclosing information, establishing an electronic portal for information requests, and mandating annual reports on request and response rates. The use of electronic portals for submission of FOI requests would ease the process of requesting information. Previously, information requests have been largely paper-based. Additionally, the commitment calls for increasing the number of FOI officers within public agencies, as most agencies currently lack FOI units. If implemented fully, this commitment could have a <u>transformative potential impact</u> on increasing public institutions' compliance with the FOI Act (IRM, 2020).

Nigeria is using its OGP action plan to improve RTI compliance by proactively disclosing information, establishing an electronic portal for information requests, and mandating annual reports on request and response rates. Photo by KC Nwakalor for USAID / Digital Development Communications.

Key Findings from the Global Data Barometer

GOOD TO KNOW

About GDB Data

The Global Data Barometer (GDB) is a global expert survey drawing on primary and secondary data that assesses data availability, governance, capability, and use around the world to help shape data infrastructures that limit risks and harms. Together with regional hubs and thematic partners, GDB researchers collected data on 109 countries, including 67 of the 77 OGP participating countries. The GDB captures data developments between May 1, 2019, and May 1, 2021, and includes 39 primary questions and over 500 sub-questions.

The GDB study examined 67 OGP countries for law, policy, and practice of collecting and publishing RTI performance data. Below is an overview of the findings of openness of data regarding RTI performance.

FIGURE 1. The percentage of countries that publish RTI performance data is higher among OGP countries

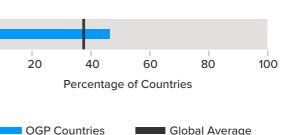
This figure shows the percentage of OGP countries that publish RTI performance data online compared to the global average. The GDB assessed 109 countries, 67 of which are OGP members.

RTI Performance Data is Available Online

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Note: This analysis only considers data that is available as a result of government action. See the About Broken Links section of the full report for details.

Less than half of OGP countries publish RTI performance data. Forty-six percent of the 67 OGP countries surveyed have RTI performance data online (see Figure 1). Having a strong legal requirement is an important factor in publishing RTI performance data (see Legal Frameworks for RTI Performance Data).

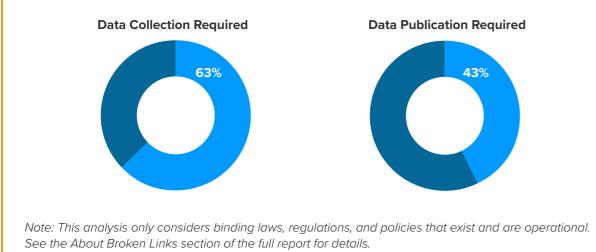


Legal Frameworks for RTI Performance Data

Most legal frameworks do not require publication of RTI performance data. Forty-two of 67 assessed OGP countries (or 63 percent) have a legal framework governing RTI performance data. However, many countries with a law, policy, or regulation lack a mandate to collect and publish structured data on the performance of RTI processes. Despite the absence of legislation requiring publication of RTI performance data, many countries do so.



This figure shows the percentage of OGP countries with collection and disclosure requirements for RTI performance data. The sample includes all 67 OGP countries assessed by the GDB.

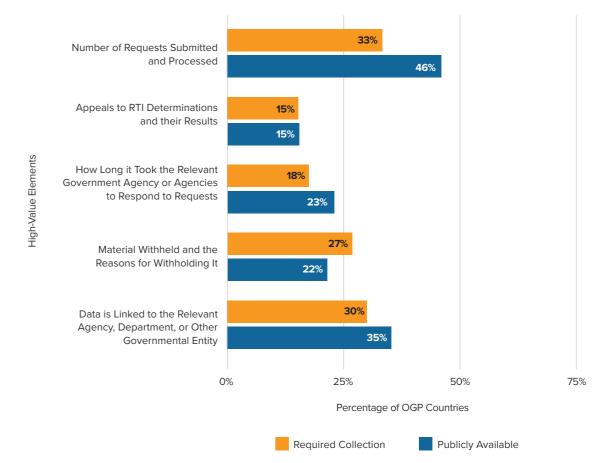


Agency-by-agency data and core measures are

often unavailable. In the majority of assessed OGP countries, the law does not require the collection and publication of data regarding the administration of RTI. This includes the number of requests submitted and processed, appeals against government departments' RTI decisions and their results, how long it took the relevant government agencies to respond to requests, and material withheld and the reasons for withholding it. Additionally, only a third of

FIGURE 3. High-value data related to RTI performance is limited

This figure shows the percentage of OGP countries that publish key elements of RTI performance data. The sample includes only the 31 OGP countries that publish RTI performance data online.



Note: For this analysis, countries with "partial" disclosure are considered cases of "no" disclosure. See the About Broken Links section of the full report for details.

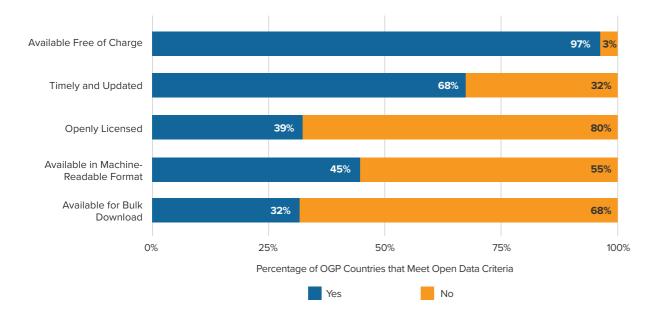
OGP countries have laws requiring that information is linked to the relevant agency, department, or other governmental entity. The limited coverage of publicly available data limits the ability of stakeholders such as citizens, government officials, civil society organizations, journalists, and professional associations to analyze and track whether data is being adequately shared and whether agencies are complying with the law (see Figure 3).

Data has low usability. Although RTI performance data is available online in almost half of assessed OGP countries, few countries publish data in formats that enable reuse. Among OGP countries that publish RTI performance data online, only half

provide data that is machine-readable, and fewer than a third allow for data to be downloaded in bulk. This means the public has limited access to data that can be used for monitoring and accountability purposes (see Figure 4).

FIGURE 4. Data usability among OGP countries is low

This figure shows the percentage of OGP countries whose RTI performance datasets meet open data criteria. The sample includes only the 31 OGP countries that publish RTI performance data online.



Note: For this analysis, countries with "partial" disclosure are considered cases of "no" disclosure. See the About Broken Links section of the full report for details.

Maturity Model for Future Actions

Below is a set of steps, from foundational to advanced, that members across the spectrum of policy implementation can take to improve the collection and disclosure of high-quality RTI performance data. Open data alone, however, is not enough (see the *Beyond Open Data* section for a discussion of other steps that must complement data collection and disclosure).

Expand or improve current RTI legislation or

regulations. The law should require the collection and publication of RTI performance information in open data format. Efforts can include the following:

• Mandate collection and publication: Mandate collection and publication of performance data for each authority covered by the RTI law.

- Mandate collection and publication as structured data: Ideally, such reforms would require agencies to submit such data using standardized, validated reporting methods in structured data format on an open platform.
- Mandate standardized annual reports: In addition to submitting datasets, require agencies to summarize their RTI performance, using a standard format, covering key indicators highlighted in this chapter.
- Mandate anonymized, request-level data: In a few of the most advanced systems, authorities publish lists of actual information requested and the disposition of those requests, which provide significantly more granular and useful information.

Improve availability and usability of RTI performance data.

- Proactive and frequent disclosure: Governments should proactively disclose RTI performance data online, free of charge, and in a timely manner.
- Provide data in open format: Provide data that is in nonproprietary formats, is machine-readable, and is bulk-downloadable so the public can access data for monitoring and accountability purposes.
- **Public validation:** Data presentations should allow for members of the public to <u>flag data</u> that may need further validation or correction (OGP, 2015).
- **Prioritize digitalization:** Create online platforms through which citizens can request information and then use the platforms to provide access proactively to detailed performance data. See *Lessons from Reformers: Uruguay, Right of Access to Public Information* for an example of this type of reform.

Provide information that covers important data points of RTI performance.

- Addressing missing performance data: Standardize data for ease of comparison and reporting. Publish details such as the number of requests submitted and processed, how long it took the relevant government agency or agencies to respond to requests, request disposition, reasons for denial, and appeals against RTI decisions, and their results.
- Engage statistical officers: In decentralized systems, engage chief statisticians and chief information officers to work toward common reporting. In more centralized or lower capacity settings, involve national statistical offices, which can help to make reporting performance data operational, useful, and accurate.

Data standards and interoperability:

Standardizing data and introducing common identifiers for key information elements can allow for learning and comparison across time, across levels of government, and between agencies. Introduction of common identifiers, in particular, can reduce the administrative burden (by relying on other validated databases) of tracking RTI.

- Across time: Make performance data consistent and comparable across requests and over the years by ensuring continuity of key indicators across years. This can help identify major changes in performance over time. Of course, the value of longitudinal data should be weighed against adaptation over time when adopting standard reporting techniques. (For example, laws, regulations, or jurisprudence may change the definition of an exemption.)
- Across localities and agencies: To the extent that a government or voluntary association can coordinate the adoption of standards for data, encourage (or mandate) other entities to use similar fields where comparison is possible through the production of guidance, appropriate validation methods, and incentives for standardization.
- Incorporate common identifiers: To the extent that authority RTI performance data can be compared, standardize identifiers that may be used in other important data (such as budgeting or spending data). Such common identifiers may include authority or agency identifiers and dates.



LESSONS FROM REFORMERS

Uruguay, Right of Access to Public Information

Ten years after the approval of the Law on Access to Public Information, the government of Uruguay used its 2016–2018 action plan to strengthen implementation of that existing legislation. Uruguay's (n.d.) <u>commitment</u> sets up an online System of Access to Information to submit and track requests for information and expands the publication of details regarding compliance with law requirements, such as the uses of exemptions and reasonings behind declaring information confidential. As part of this commitment, civil society advocates were also actively involved in defining the criteria for opening information on human rights violations during Uruguay's military dictatorship (1973–1985). According to the IRM assessment, the implementation of this commitment constituted a significant advance for the opening of the government (OGP, 2020).

Efforts to strengthen accountability of government entities continue as part of Uruguay's (n.d.) most recent <u>action plan</u> (2021–2024), which would implement a National Index of Transparency and Access to Information that will evaluate the websites of the reporting entities and would, as a result, improve the quality of published information.

Uruguay used their OGP action plan to set up an online system to track requests for information and more recently committed to implementing a system to evaluate websites of reporting entities to improve the quality of information. Photo by Carlos Reusser.

Beyond Open Data

The Maturity Model for Future Action section above focused on how to improve the administration of data on RTI performance. This section focuses on how to strengthen actual usage of that data for purposes of accountability and learning. While collecting and publishing usable open data on the performance of the RTI law can provide citizens with information to hold government and appeal institutions to account, other RTI reforms can make a real difference too. The following are some ways RTI reforms can make a difference Beyond Open Data.

Strengthening RTI Practices

· Centralized and distributed request systems:

The chief implementing agency can design and encourage (or mandate where the law allows) standardized request systems for each authority covered by the RTI law. These will allow for common formatting of requests, easier rerouting of requests filed to the wrong authority, and more standardized reporting. This relieves significant administrative burden for the implementing authorities and makes the final release of RTI performance data much easier.

Capacity and professional incentives

- Training: Provide adequate training to all relevant public officials, especially information officers, on proper recording of data, record keeping, use of standardized data, and the timely provision of information and appropriate use of exemptions.
- Professionalization: Establish a professional track for RTI professionals within agencies and, where possible, create professional certificates for relevant data management.
- Incentives: Align personnel and budgetary incentives with RTI performance data (alongside other evaluation criteria).

Oversight

Effective RTI systems will mandate appropriate oversight mechanisms to ensure compliance with <u>reporting and implementation</u> of the RTI law across branches of government (Mendel, 2015).

- Executive/administrative: Within each authority, establish a body (or give powers to existing inspectorates or ombudsmen) that can review cases, policies, and practices based on individual requests or denials, failures to report, and patterns of denial. Such bodies may publish those reports for public consumption and make recommendations to chief administrators.
- Independent oversight: Empower RTI commissions (or their equivalent) to investigate irregularities and patterns of practice as reflected in performance data and to independently report their findings to the legislature and the public. Allow independent oversight to conduct on-site inspections and impose sanctions for noncompliance (Haughey, 2018).
- Parliamentary oversight: Parliaments may hold ad hoc or standing committees and hearings to oversee the publication of RTI performance data and the major findings from that data.
- Judicial and quasi-judicial review: Expand enforcement capacities to ensure that nonreporting, falsification, and misrepresentation of data has adequate, publicly accessible avenues of redress and remedy. Ensure that there are tribunals with the mandate and capacity to review irregularities and patterns of practice.

Increase Public Engagement

- Public advisory panel: Establish or enhance an advisory group to include RTI users (including journalists, industry, and civil society organizations) and government data producers to:
- Identify problems and solutions: Ensure that the advisory group solicits, amalgamates, and gives feedback on the quality of reporting and recommends solutions revealed by data from agencies.

- Prioritize data: Allow information users to share feedback about their priorities for proactive publication of information. This way, details are focused on current events and needs.
- Digital engagement: Create accessible and open official tools to help users explore data and increase engagement, like <u>Paraguay's tool</u> that provides users with statistics of RTI requests (República del Paraguay, n.d). Currently, only 11 percent of OGP countries have an interactive tool

that displays user-filtered extracts of the data in response to simple questions.

- Public education: <u>Create demand and raise</u> <u>awareness</u> of the benefits of RTI performance data (Foti & Khan, 2015).
- Financial support: Provide education, grants, and support to data intermediaries (such as NGOs or local legal clinics) to create systems that garner input and prioritize data priorities (Foti & Khan, 2015).

GUIDANCE AND STANDARDS

The enactment of domestic RTI legislation became commonplace at the end of the 20th century. The right of access to information is recognized under <u>Article 19 of the Universal Declaration of</u> <u>Human Rights</u> (Article 19, 2012) and <u>Article 19 of</u> <u>the International Covenant on Civil and Political</u> <u>Rights</u> as an element of freedom of expression ("UN Human Rights Committee," 2011).

Sustainable Development Goal 16.10.2, part of the United Nations Agenda 2030, tracks progress on the adoption and implementation of constitutional, statutory, and/or policy guarantees for public access to information (Sustainable Development Goals, n.d.).

The joint declaration published by the three special mandates on freedom of expression at the **UN, OSCE**, and the **Organization of American States (OAS)** in 2004 that recognized the right to access information held by public authorities as a fundamental human right also enjoined governments to ensure effective implementation of RTI legislation (OAS, 2004).

In October 2020, the **OAS** approved the Inter-American Model Law 2.0 on Access to Public Information as a follow-up to the Model Inter-American Law on Access to Public Information of 2010, which, at the time, was promptly embraced in the region as a reference for the development of this right (OAS, 2021). The African Commission on Human and Peoples' Rights Model Law on Access

to Information for Africa of 2013 (ACHPR, 2013), also referenced as a source for further guidance in the Commission's 2019 update to the Declaration of Principles on Freedom of Expression in Africa (ACHPR, 2019), requires public bodies and relevant private bodies to submit annual reports on RTI performance to the relevant oversight mechanism, which is in turn directed to review and publish these reports.

The **EuroPAM** database's set of RTI indicators includes a question regarding whether frameworks require the release of data on requests and appeals to the public (EuroPAM, n.d.).

Find out more from the following organizations:

- <u>Centre for Law and Democracy</u> (n.d.)
- Access Info Europe (n.d.)
- <u>African Freedom of Information Centre</u> (n.d.)
- <u>Article 19</u> (n.d.)
- Additionally, RTI-Rating.org has tracked and cataloged the detailed characteristics of all RTI laws, including amendments thereto and whether through legislation or by decree (Centre for Law and Democracy & Access Info, n.d.).

List of Resources

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Independent Reporting Mechanism, *Nigeria* Design Report 2019–2021, 2020, 47, <u>https://www.</u> opengovpartnership.org/wp-content/uploads/2020/10/ Nigeria_Design_Report_2019-2021.pdf.

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Right to Information Performance is part of the *Broken Links: Open Data to Advance Accountability and Combat Corruption* report that can be found here: <u>https://www.opengovpartnership.org/broken-links/</u>