



# THE ROLE OF INTERNATIONAL AGREEMENTS IN PROMOTING TRANSPARENCY AS A MECHANISM TO COMBAT ADMINISTRATIVE CORRUPTION

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## **Abstract:**

*Democratic systems encourage institutions, non-governmental organisations and citizens to work towards improving the governance system and achieving good governance. This is done through the adoption of various programmes aimed at governments to meet international standards of management, such as transparency, as a new approach to monitoring administrative activities within the framework defined by constitutions in the context of communication between the state and society.*

*The commitment to the principles of transparency is leading to changes in management practices. The concept of transparency has been enshrined in numerous international agreements, and its impact extends to the domestic legislation of countries. These agreements have obliged governments to conduct their affairs in a clear and transparent manner that is accessible to society.*

**Keywords:** *International conventions, corruption, transparency, good governance*

## **INTRODUCTION:**

Transparency serves as a channel of communication between officials and stakeholders, including citizens and civil society organisations, based on the openness of decisions. It is an essential element in local government to protect the interests of citizens by identifying mistakes in a timely manner and taking appropriate action.

The need for transparency arises from the relationship between the state apparatus and society. It strengthens the state's standing in the eyes of citizens, who seek to remove ambiguity in order to understand things better. Transparency is thus a double-edged currency, essential in people's lives and in their interaction with the administrative apparatus.

The shift of governments towards democracy and the implementation of good governance standards require countries to achieve transparency in their dealings with citizens as a mechanism for good governance and the fight against administrative corruption. Sharing information with citizens by providing access to public administration data and documents, making them easy to obtain and disseminate, considering requests from citizens, responding to their petitions and complaints, and avoiding ambiguity while facilitating the oversight process all contribute to ensuring the fight against administrative corruption. This, in turn, helps to expose favouritism, bribery and loopholes within the administration, ultimately contributing to the establishment of a state based on the rule of law. Transparency is considered a fundamental pillar of development in democratic countries and of administrative reform to prevent administrative corruption. This is reflected in international agreements and the focus of international organisations. As a result, most countries have incorporated this principle into their national legislation, as transparency has become an integral part of democratic principles.

Against this background, how have international agreements contributed to the consolidation of transparency in the fight against corruption?

In order to answer this question, the research is divided into two sections:

Section One: Conceptual Framework of the Issue

Section Two: The Role of International Conventions in Promoting Transparency

**Section One: Conceptual framework of the topic:**

In this section, we will explain all the elements and concepts related to the topic, starting from the concept of corruption and its relationship with transparency as an anti-corruption mechanism.

### First: The concept of administrative corruption

Transparency International defines corruption as the abuse of entrusted power for personal gain. It undermines trust, weakens democracy, hinders economic development, exacerbates inequality, poverty, social division and environmental crises. Exposing corruption and holding corrupt individuals accountable can only happen if we understand how corruption works and the systems that enable it<sup>1</sup>. The World Bank also defines corruption as the misuse of public office for private gain<sup>2</sup>.

The Algerian legislator defines corruption in Article 02 of Law 06-01 of 20 February 2006 on the prevention of and fight against corruption. It states that corruption includes all the offences listed in chapter four of this law. Examining the content of Chapter Four, we find that corruption includes bribery, unjustified privileges in public procurement, misappropriation of public property by a public official or its illegal use, treason, illegal tax exemptions and reductions, abuse of power, misuse of public funds, money laundering, falsification of official documents, and more<sup>3</sup>.

The most prominent forms of administrative corruption include

- Bribery<sup>4</sup>
- Nepotism<sup>5</sup>
- Graft<sup>6</sup>
- Abuse of administrative influence<sup>7</sup> Embezzlement and theft<sup>8</sup>
- Embezzlement and theft<sup>9</sup>
- Abuse of position Illegal enrichment<sup>10</sup>

<sup>1</sup>- International Transparency Organisation, website:[<https://www.transparency.org/en/what-is-corruption>] (<https://www.transparency.org/en/what-is-corruption>)

<sup>2</sup>- Saadi Noual, The Role of Accountability in Confronting Local Corruption, Al-Wafid Journal of Political Studies, Ibn Khaldoun University, Tiaret, Volume 01, Issue 02, June 2020, p. 99

<sup>3</sup>- Articles 25 to 53 of Law No. 06-01 of 20 February 2006 on Preventing and Combating Corruption, Official Gazette No. 14, 8 March 2006.

<sup>4</sup>- Article 15 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003: "Promising, offering or giving, directly or indirectly, an undue advantage to a public official, for the official himself or herself or for any other person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

<sup>5</sup>- [Nepotism](<https://www.transparency.org/en/corruptionary/nepotism>) , Transparency International website:

"A form of favouritism where someone uses their position of power and authority to secure a job or service for a family member or friend, even though they may not be qualified or deserving."

<sup>6</sup>- Third-party intervention occurs when a person in a political or administrative position uses his or her influence to benefit a person or organisation with an interest in obtaining advantages, contracts or similar benefits.

<sup>7</sup>- Article 18 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003: "To solicit or accept, directly or indirectly, an undue advantage for oneself or for another person in order that the public official or person may use his or her influence, real or apparent, to obtain an undue advantage from the public administration of the State Party."

<sup>8</sup>- Article 17 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003: "Intentionally embezzling or misappropriating property, funds or securities of a public or private nature or any other thing of value entrusted to the public official by virtue of his or her position, or otherwise divulging such information".

<sup>9</sup>- Article 19 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003: "A public official who, in the exercise of his functions, abuses his functions or position by doing or failing to do anything with the intent to gain an undue advantage for himself or for another person or entity, commits an offense."

<sup>10</sup>- Article 20 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003: "Each State Party shall consider adopting, in accordance with its constitution and the fundamental principles of its legal system, such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally by a public official, illicit enrichment, that is, a significant increase in the assets of the official that he or she cannot reasonably explain in relation to his or her lawful income."



- Illicit enrichment, Forgery<sup>11</sup>

The causes of administrative corruption can be attributed to:

- Weak legal frameworks to deter officials and low purchasing power
- Lack of effective oversight mechanisms, which themselves suffer from administrative corruption
- Excessive bureaucratic procedures amidst competition for power
- Monopolisation of executive power in public policy making and marginalisation of other institutions
- Desire for excessive enrichment
- Weak civil society institutions and the absence of party roles<sup>12</sup>.

Despite the potential resources available in developing countries, they suffer from economic underdevelopment<sup>13</sup>. Corruption has a significant impact on increasing the risk of resorting to violence by creating a sense of injustice and undermining the effectiveness of national institutions and social values<sup>14</sup>.

### **Second: The concept of transparency as a criterion of good governance**

Transparency is defined as full clarity in decision-making, planning and presentation to the relevant bodies responsible for monitoring the performance of government on behalf of the people. It is the accountability and constant scrutiny of administrative practices. It is the free flow of information<sup>15</sup>. The United Nations defines transparency as freedom of information in the broadest sense, providing information and operating in an open manner that enables stakeholders to obtain the information they need to protect their interests, make appropriate decisions and identify errors<sup>16</sup>.

Transparency means complete clarity in all stages carried out by the top level of government down to the lower levels, starting with the formulation of policies and their presentation to the bodies responsible for monitoring the performance of government for the purpose of oversight and continuous accountability of employees or politicians, while avoiding abuse of power.

Transparency is gaining importance as an important entry point to fight corruption within the bureaucratic system, leading to comprehensive administrative reform and performance development, serving the citizens, meeting their needs and providing the desired services with high quality and timely delivery.

Transparency serves as a means to reduce corruption at various levels related to the state and society, and it represents:

- The flow and openness of information to facilitate action against various forms of corruption.
- Communication between citizens and decision-makers and those responsible to motivate them to reduce and combat corruption.
- A continuous flow of information about governance from authentic sources, leading to objectivity in performance evaluation and decision making.
- Transparency enhances accountability and credibility, while its absence in politics leads to destabilisation.

<sup>11</sup>- Hamdi Moumar, Tassi Nour El Huda, "The Impact of Implementing E-Government on Reducing Administrative Corruption", Journal of Legal and Political Thought, Amar Thelidji University, El Oued, Volume 06, Issue 02, 2022, p. 1362.

<sup>12</sup>- Ghalya Hayat, "A Theoretical Study on the Concept of Administrative Corruption", Journal of Legal and Economic Research, Institute of Law and Political Science, Afflu, University Center Iflou, Volume 06, Issue 01, 2023, p. 988.

<sup>13</sup>- Shauqi Atallah Al-Jamal, Abdallah Abdul Razzaq Ibrahim, "Ta2", Dar Al-Zahraa for Printing and Distribution, Riyadh, 2002, p. 334.

<sup>14</sup>- World Bank report for 2011 on international development, entitled "Armed Conflicts, Security and Development".

<sup>15</sup>- Saeed Ali Al-Rashidi, "Administration with Transparency", Dar Kunooz Al-Ma'arifah for Publishing and Distribution, Amman, Jordan, first edition, 2007, p. 15.

<sup>16</sup>- Essam Abdel Fattah Matar, "Administrative Corruption", Dar Al-Jamea Al-Jadeeda, Alexandria, Egypt, 2011, p. 260.



- Clarity of legislation, laws and instructions, leading to the accuracy of work performed within the administrative system.
- Citizens must be active participants for transparency to be achieved. It is not enough for governments to simply disseminate information<sup>17</sup>.
- Transparency makes it possible to assess the extent to which the state is fulfilling its stated objectives in its public policies.

Transparency is therefore the right of citizens to know how decisions affecting them are taken and how public resources are managed, and to have access to the information they need to make informed choices. In other words, transparency means the free flow of information and the easy dissemination of practical information to relevant stakeholders<sup>18</sup>.

It should be noted that guaranteeing citizens' right of access to information does not mean that there should be no rules governing it. The conditions imposed should be specified in the law and be necessary.

### **The second aspect: The legal basis for the principle of transparency in international treaties and agreements.**

The principle of transparency has been enshrined in various international treaties and regional agreements, which oblige governments to conduct their affairs in a transparent manner. First, we will discuss international and regional treaties and their promotion of the principle of transparency. We will then look at domestic legislation and how it incorporates the principle of transparency as a mechanism to combat corruption.

#### **First: International Treaties**

##### **1. The Universal Declaration of Human Rights (1948):**

The Universal Declaration of Human Rights is an important document in the history of human rights. It was drafted by representatives from different legal and cultural backgrounds around the world. The Universal Declaration of Human Rights was adopted by the General Assembly in Paris on 10 December 1948, through Resolution 217, as a common standard to which all peoples and nations should aspire. The Declaration set out the fundamental human rights that should be protected worldwide. These rights have been translated into over 500 languages and are set out in 30 articles. It guarantees that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers<sup>19</sup>.

It is worth noting that this article does not directly address transparency, but it does mention aspects that are considered fundamental to the principle of transparency, such as the freedom of individuals to have unimpeded access to prevailing information and ideas. This article serves as a foundational principle that states have subsequently incorporated into their legal frameworks to enhance, consolidate and put into practice transparency.

##### **2- International Covenant on Civil and Political Rights (1966):**

This is a multilateral treaty that entered into force on 23 March 1976. It has 53 articles and a preamble. It emphasises the need for States Parties to respect the civil and political rights of individuals and calls upon States Parties to protect all human rights. It aims to create conditions in which everyone can enjoy their civil and political rights, as well as their economic, social and cultural rights. In the context of our discussion, Article 19 of the Covenant states that everyone has the right to freedom of thought, conscience and religion, which includes the freedom to hold and express opinions without interference. This provision indirectly refers to the principle of transparency by emphasising the openness of information and data and the freedom of citizens to access them<sup>20</sup>.

<sup>17</sup>- Carolyn Ball, What Is Transparency?, Public Integrity, Fall 2009, vol. 11, no. 4, p298.

<sup>18</sup>- Noual Saadi, "The Role of Transparency and Accountability in Confronting Local Corruption", Al-Raed Journal of Political Studies, Volume 1, Issue 2, June 2020, p. 103.

<sup>19</sup>- Article 19 of the Universal Declaration of Human Rights, United Nations, 1948.

<sup>20</sup>- Article 19 of the International Covenant on Civil and Political Rights, United Nations, General Assembly, 16.12.1966.



### 3- United Nations Convention against Corruption (2003):

This Convention was adopted by the United Nations General Assembly Resolution 58/4 on 31 October 2003. It consists of 71 articles, a preamble and a declaration by the Secretary-General. The international community, represented by the United Nations, has recognised the seriousness of the phenomenon of corruption, which has become a global problem affecting all countries and economies. Urgent action is therefore needed to address this problem<sup>21</sup>. Article 5 of the Convention emphasises the need for effective and coordinated policies to combat corruption. These policies should involve the participation of society and embody the principles of the rule of law, good governance, integrity, transparency and accountability. Each State Party is required to assess its effectiveness in combating corruption and to conduct periodic evaluations of the legal framework and relevant administrative measures<sup>22</sup>.

In addition, Article 7 sets out a number of measures to promote transparency and combat administrative corruption, particularly in the public sector. Each State Party is expected to adopt and establish, in accordance with its legal system, systems for the recruitment of public officials and standards for the selection of public officials in accordance with the objectives of the Convention and the fundamental principles of its domestic law. It also aims to increase transparency in the financing of candidates for public office and political parties, and to adopt and strengthen systems to promote transparency and prevent conflicts of interest<sup>23</sup>.

In addition, Article 13 encourages non-governmental organisations and citizens, in accordance with their respective laws, to raise awareness of the dangers of corruption and to participate actively in the fight against corruption by promoting transparency and ensuring effective access to information for citizens. States are also required to take measures to publicize anti-corruption bodies and to establish means of communication with these bodies for reporting purposes<sup>24</sup>.

#### Second: The legal basis for the principle of transparency in regional agreements and treaties

Regional agreements have helped to consolidate the fundamental principle, under the banner of human rights and the rights of peoples, of the right to access, exchange and disseminate information. These agreements have also played a role in institutionalising transparency and requiring states to respect diverse peoples and refrain from violating freedom of expression, which is considered a fundamental principle of human rights. Among the most important of these conventions are

#### 1- European Convention on Human Rights (1950):

This Convention was signed in Rome on 4 November 1950 by European countries under the auspices of the Council of Europe. It entered into force on 3 September 1953. It consists of a preamble and 66 articles. The Convention is supplemented by 12 Protocols. The Convention established the European Commission of Human Rights and the European Court of Human Rights. Article 10 of the Convention deals specifically with the right to freedom of expression, which includes the right to receive and impart information<sup>25</sup>.

<sup>21</sup>- Kofi Annan, Secretary General of the United Nations, stated: "Zero tolerance from now on for betrayal of the public trust, emphasising the importance of core values such as integrity, respect for the rule of law, accountability and transparency in promoting development" (extract) United Nations Convention against Corruption, United Nations, New York, 31/10/2003.

<sup>22</sup>- Article 5 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003.

<sup>23</sup>- Article 7 of the United Nations Convention against Corruption, same reference.

<sup>24</sup>- Article 13 of the United Nations Convention against Corruption, United Nations, New York, 31/10/2003.

<sup>25</sup>- Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Additional Protocol and Protocols Nos. 4, 6, 7, 12 and 13, signed at Rome on 4 November 1950:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority. This article shall not prevent States from making radio, cinema or television enterprises subject to a system of licensing.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or



## 2- American Convention on Human Rights (1969):

The American Convention on Human Rights was signed in San Jose, Costa Rica, on 22 November 1969 by the countries of the American continent. The Convention consists of a preamble and 32 articles. It contains a comprehensive and precise elaboration of the concept of human rights and public freedoms. Although there are some similarities and overlaps with the European Convention on Human Rights, the American Convention contains more detailed and comprehensive provisions, particularly with regard to civil, political, economic, social and cultural rights, which were not adequately addressed in its European counterpart. Article 13 of the American Convention emphasises freedom of expression, stating that everyone has the right to freedom of thought and expression<sup>26</sup>.

## 3- The Arab Charter for Human Rights (2004):

The process of adopting and bringing into existence the Arab Charter on Human Rights has been a protracted one since the 1960s. The Arab Charter for Human Rights was officially adopted by the Council of the League of Arab States on 14 September 1994. However, it did not contribute to the development and improvement of the human rights situation in the Arab region. Therefore, a re-evaluation was undertaken to improve and update the Arab Charter on Human Rights. As a result, a new Charter was formulated during the 16th session of the Arab League in Tunis on 23 May 2004. This new Charter was based on the aspirations of the Arab peoples and consists of a preamble and 53 articles<sup>27</sup>.

Furthermore, Article 32 of the same Charter provides for the guarantee of the right to information, freedom of opinion and freedom of expression. However, these rights and freedoms are exercised within the basic components of society.

## 4- African Charter on Human and Peoples' Rights (1981):

This Charter was officially approved and adopted by the member states of the Organisation of African Unity (now known as the African Union) during its 18th session, held in Nairobi, the capital of Kenya, on 28 June 1981. The Charter consists of a preamble and 68 articles.

On the issue of transparency, the Charter aims to enhance the participation of citizens in the governance of states and the right of access to information. This is reflected in Article 9<sup>28</sup> of the Charter. In addition, Article 13 of the Charter emphasises the right to information and freedom of expression<sup>29</sup>.

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crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>26</sup>- Article 13 of the American Convention on Human Rights, Costa Rica, San José, 22 November 1969:

1. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of his choice.

2. The exercise of the right provided for in the preceding paragraph shall not be subject to prior censorship, but to the subsequent imposition of responsibility, which shall be expressly established by law to ensure that:

- a. Respect for the rights or reputations of others; or
- b. The protection of national security, public order, public health or morals.

3. It shall not be permitted to restrict the right of expression by indirect methods or means, such as the abuse of governmental or unofficial control over the supply of paper, radio frequencies or equipment used in the dissemination of information, or by any other means tending to impede the communication and dissemination of ideas and opinions.

<sup>27</sup>- Nawal Weis, "The Arab Charter of Human Rights: Path, Content, and Mechanisms," *Journal of Legal and Political Research*, Moulay Tahar University, Faculty of Law and Political Science, Saida, Issue 04, June 2015, pp. 109-117.

<sup>28</sup>- Article 9 of the African Charter on Human and Peoples' Rights, Nairobi, 1981, states that every individual has the right to receive information and it is the right of every person to express and disseminate his thoughts within the framework of laws and regulations.

<sup>29</sup>- Article 13 of the African Charter on Human and Peoples' Rights, Nairobi, 1981, states that

- Every citizen has the right to take part freely in the government of his country, directly or through freely chosen representatives, in accordance with the law.
- Every citizen shall also have the right to hold public office in his country.



### 5- Transparency International:

Transparency International is an international non-governmental, not-for-profit organisation. It is a global civil society organisation leading the fight against corruption, bringing people together in a global movement to end the devastating impact of corruption on societies. The organisation was founded in 1993 by Peter Eigen, a German citizen. Its headquarters are in Berlin, Germany. The organisation works to combat corruption and promote transparency and integrity in the public and private sectors worldwide. Its goal is to build more transparent and accountable societies where justice is done and individuals have equal opportunities to succeed. Transparency International is best known for its annual Corruption Perceptions Index, which ranks countries according to their perceived levels of corruption. The organisation's activities include promoting standards of integrity and transparency in government and business, and providing advice and support to improve governance and business practices. It also produces reports and educational materials for the public and institutions to raise awareness of the risks of corruption and the importance of integrity and transparency. In addition to these efforts, the organisation investigates corruption cases and monitors electoral processes and government projects to ensure transparency and integrity.

#### Third: Domestic legislation

The framers of the Algerian Constitution considered it necessary to enshrine the right of access to information, documents and administrative statistics as a constitutional right, considering it an essential element of good governance and a key principle of transparency that establishes an interactive relationship between citizens and the administration. This is laid down in article 15 of the amended and supplemented 1996 Constitution<sup>30</sup>. Algeria has thus complied with its international commitments, previously undertaken under Article 9 of the African Charter on Human and Peoples' Rights.

The implementation of the principle of transparency in the management of public affairs has the potential to foster a healthy relationship between the public and official state institutions. This is achieved by establishing transparency in dealings with citizens, which includes:<sup>31</sup>

1. Enabling the public to exercise popular control over the actions of the administration.
2. Fighting all forms of corruption.
3. To enable the media to fulfil their role.
4. To ensure that all state institutions are subject to the rule of law, in order to guarantee its implementation and respect for its provisions.

The principle of transparency is included in several articles of the Municipal Code. The legislator states that "the Municipal People's Council shall take all the necessary measures to inform the citizens about their affairs and to consult them on the choices and priorities of economic, social and cultural development, in accordance with the conditions established in this Law"<sup>32</sup>.

Citizens also have access to the minutes of local council meetings, with the exception of decisions on disciplinary cases, matters relating to the maintenance of public order and individual local council decisions. It is also possible to follow the progress of legal proceedings<sup>33</sup>.

In order to enhance transparency in local governance, both the Municipality Law No. 10-11 and the Wilaya Law No. 12-07 contain several provisions regarding the use of the media to provide information and data on development projects and local decisions. This is due to the role of the media in

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- Everyone has the right to benefit from public goods and services in full equality before the law.

<sup>30</sup>- Article 51 of the Constitution of the People's Democratic Republic of Algeria for the year 1990, as amended and supplemented, states that "access to information, documents and statistics and their communication shall be guaranteed to citizens".

<sup>31</sup>- Boudiafe Ammar, "Explanation of the Law of Wilaya (Governorate)", Jisr for Publishing and Distribution, First Edition, 2012, p. 189.

<sup>32</sup>- See also Article 11 of Law No. 10-11 on municipalities.

<sup>33</sup>- See Article 14 of Law No. 10-11 on Municipalities.

supporting the values of integrity and transparency, as it contributes to shaping public awareness of the issues at stake<sup>34</sup>.

### CONCLUSION:

Transparency in countries gains importance when it is incorporated by institutions into constitutions and laws, giving it legal value through a set of rights and obligations and establishing strict procedures to combat corruption. Various constitutions around the world have adopted anti-corruption provisions and have worked towards the ratification of various international conventions and treaties under the United Nations. This is because the fight against corruption and the promotion of transparency in governance are among the main objectives of the United Nations in promoting and enhancing human rights. There is also a desire to establish more effective rules to combat and prevent corruption and to promote and strengthen the concept of transparency as a means of enhancing good governance in Algeria, as enshrined in the Constitution.

Algeria has decided to combat all forms of corruption, promote transparency and fight corruption by creating a constitutional authority in the 2020 Constitution. This authority, known as the Supreme Authority for Transparency, Prevention and Fight against Corruption, was established by Law No. 22-08 of 5 May 2022. This law defines the organisation, formation and powers of the Supreme Authority for Transparency, Prevention and Combating Corruption.

It is noteworthy that the Algerian legislator linked the adoption of this law to the provisions of international and regional conventions, such as the United Nations Convention against Corruption of 31 October 2003, the African Union Convention on the Prevention and Combating of Corruption of 11 July 2003 and the Arab Convention for the Fight against Corruption of 21 December 2010. Therefore, international references took precedence over national references in adopting the concept of transparency advocated by various international bodies.

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<sup>34</sup>- The legislative text in article 11, paragraph 03 of the Municipal Law allows the use of means, especially the media, to inform citizens about the development projects planned to be implemented in the territory of the municipality.



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**The laws and international conventions mentioned in the request are**

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