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Access to information as a Fundamental Human Right

Information rights include rights to create and communicate information (e.g., freedom of expression, freedom of association), to control others' access to information (e.g., privacy, data protection and intellectual property), and rights to access information (e.g., freedom of thought, the right to read). Some information rights have been recognized as human rights in international instruments (e.g., Universal Declaration of Human Rights, The **AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA**, on the Rights of the Child, Declaration on the Rights of Indigenous People).

“The philosophical discussion of access to information has focused on intellectual freedom, e.g., rights to free speech and to a free press. While intellectual freedom is crucial, it is at best only half of the answer to people’s crucial information needs. Free speech and freedom of the press gain their primary value from their capacity to provide people with information and knowledge.”¹

I will briefly refer in my presentation to each one of the ten principles on access to information approved by the IJC in late August:

The IAJC took into consideration the paper organized by the Department of International Law of the OAS, the main international declarations on the right of access to information adopted by several intergovernmental organs and non-governmental organizations, including, among others, the principles of Article 19, The Right to Public Knowledge, The Lima Principles, The Ten Principles of the Right to Know of the Open Society Justice Initiative and the Atlanta Declaration and Plan of Action for the development of the right of access to information, under the auspices of the Carter Center;

We hope that the principles adopted by the IAJC would have an impact in the region if we work together in a region where many countries are still in a very basic stage, due to cultural and political traditions of secrecy inherited of authoritarian practices.

Principles:

Principle 1.-

“ In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic

¹ Mathiesen, Kay, Access to Information as a Human Right (September 7, 2008). Available at SSRN: <http://ssrn.com/abstract=1264666>

society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures” .

The most important contribution of the recently approved PRINCIPLES ON THE RIGHT OF ACCESS TO INFORMATION by the Inter-American Juridical Committee, related to freedom of information in the Americas is the claim that “Access to information is a fundamental human right.

Access to information is a fundamental right. Allowing people to seek and receive public documents serves as a critical tool for fighting corruption, enabling citizens to more fully participate in public life, making governments more efficient, encouraging investment, and helping persons exercise their fundamental human rights.

This principle was also established in the decision of the Inter-American Court on Human Rights in *re Claude Reyes y otros v. Chile* of September 19, 2006, in which it was decided that the right to the freedom of expression enshrined in Article 13 of the American Convention on Human Rights comprises the right to access to information.

According to the Court, Article 13 contains an implied right of general access to government-held information, and States must adopt legal provisions to ensure the right is given full effect. The Court specifically ordered Chile to adopt adequate procedures to protect the right in the future and to train public officials to uphold the public's right to information.

The Court stated that: article 13 of the Americas Human Rights Convention, protects the right of all persons to request access to information held by the State, with the exceptions permitted by the restrictions regime of the Convention.

As a result, jurisprudence in the Americas supports now the right of persons to receive such information and the positive obligation on the State to supply it, so that the person may have access to the information or receive a reasoned response when, for ground permitted by the Convention, the State may limit access to it in the specific case.

The IAHR, (who has jurisdiction in most of the countries) also conclude that “access to information held by the State permits participation in public governance.” The Court ruled that “in a democratic society it is indispensable that state authorities are governed by the principle of maximum disclosure, which establishes the presumption that all information should be accessible, subject to a restricted system of exceptions.”

Principle 2.-

“ The right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions.”

The right of access applies to all public administrations, institutions and powers, including private bodies performing public functions or using public funding; that applicants must not explain why they want the information nor what they intend to do with it.

Principle 3.-

“The right to access to information applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium.”

The general principle of publicity is that anyone can request and receive information; that all information be accessible unless covered by exceptions envisaged in a specific law; Certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.

Principle 4.-

“ Public bodies should disseminate information about their functions and activities including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.”

Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure. Access to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost. · Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.

Principle 5.-

“ Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.”

Although governmental participation is a crucial component of our democratic heritage, it is also a fragile one. For every citizen seeking to discover what's going on behind the closed doors of government offices, there's often at least one bureaucrat coming up with reasons to keep things secret. Secret government is dangerous. Public trust is the nucleus

of our democracy and open government keeps public officials accountable and presumably honest. The more government hides, the more distrust there is in government. By using e-mail, for example, the cost of copying is eliminated and public agencies can't manipulate the law to make obtaining public information cost prohibitive and accessible only to those who could afford to pay the costs imposed by officials.

Principle 6.-

“ Exceptions to the right to access should be established by law, be clear and narrow”.

As soon as there is a compromise on the principle that all information should be public, there is clearly a danger that the authorities holding information will seize on any excuse to keep it secret. The principle that exceptions to public access should be 'narrowly drawn' is aimed at cutting off the possibility of such excuses.

Principle 7.-

“The burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”

The body to which the information is requested should clearly define the types of information that may be made an exception and clearly define the circumstances in which these may be made an exception.

Principle 8.-

“ Individuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body.”

“Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.

Principle 9.-

“ Anyone who willfully denies or obstructs access to information in breach of the rules should be subject to sanction.”

Sanction the denial of access to public records and the prosecution of a public official would be an effective reminder to others that giving access to public information isn't discretionary, its mandatory.

Principle 10.-

“Measures should be taken to promote, to implement and to enforce the right to

access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programmes, improving systems of information management, and reporting by public bodies on the measures they have taken to implement the right of access, including in relation to their processing of requests for information.”

With an access to information law, governments must establish record keeping and archiving systems, which serves to make them more efficient, reduce discretionarily and allow them to make better decisions. Steps should also be taken to promote broad public awareness of the access to information law., opening, as an example, public spaces that provide assistance, training and support for people to actively exercise his right to obtain information. Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.

Conclusion

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions. Democracies die behind closed doors. As important as a free press is the access to information to protect the people's right to know that their government acts fairly, lawfully, and accurately. The urgent need to develop basic principles related to the right of access to information, particularly to support the drafting and implementation of legislation, as well as an Inter-American Convention on Freedom of Information, that keeps the standards raised by the principles of the IAJC, to make this right effective is highly recommended.

Only with information, citizens can better secure their democratic rights. Moreover, greater transparency can help reestablish trust between government and its citizens.

