



RESOLUTION No. 2/09
DOCUMENTS AND HISTORICAL ARCHIVES OF THE INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS

(Approved November 13, 2009 during the 137th Regular Period of Sessions)

The right of access to information is a fundamental right protected by the right to freedom of expression. Article 13 of the American Convention on Human Rights establishes that the right to freedom of thought and expression includes “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 medium of one’s choice.” There is regional consensus on the importance of protecting this right, as stated in various resolutions of the General Assembly of the Organization of American States on the subject and in the Inter-American Democratic Charter.¹

The IACHR’s Declaration of Principles on Freedom of Expression reiterates the importance of this right, establishing that (i) all people should be afforded equal opportunities to “receive, seek and impart information by any means of communication without any discrimination, for any reason” (principle 2); (ii) every person has the right to access information about himself or herself expeditiously and not onerously (principle 3); and (iii) “access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies” (principle 4).²

The human rights protection bodies of the Inter-American System of Human Rights have repeatedly underscored the importance of exercising the right of access to information. Through its Office of the Special Rapporteur for Freedom of Expression, the IACHR has established that the right of access to information is important and transcendent, since it (i) “a critical tool for democratic participation, oversight of the State and public administration, and the monitoring of corruption”; (ii) makes individual and collective self-determination possible, particularly democratic self-determination, because it tends to guarantee that collective decisions are adopted in a conscious and informed manner; and (iii) is a key instrument for the exercise of other human rights, particularly by the most vulnerable individuals.³

The Inter-American Court of Human Rights has established that “the State’s actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest can permit participation in public

¹ OAS, Resolution AG/RES. 1932 (XXXIII-O/03) dated June 10, 2003 on “Access to Public Information: Strengthening Democracy;” OAS, Resolution AG/RES. (XXXIV-O/04) dated June 8, 2004 on “Access to Public Information: Strengthening Democracy;” OAS, Resolution AG/RES. 2121 (XXXV-O/05) dated June 7, 2005; OAS, AG/RES. 2252 (XXXVI-O/06) dated June 6, 2006 on “Access to Public Information: Strengthening Democracy.” See the Inter-American Democratic Charter approved by the OAS General Assembly on September 11, 2001, Articles 4 and 6.

² Declaration of Principles on Freedom of Expression, approved by the IACHR at its 108th regular session, October 2-20, 2000.

³ IACHR, *Annual Report 2008*, Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression, OAS/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, paras. 143 and ff.

administration through the social control that can be exercised through such access.”⁴ However, as established in the American Convention on Human Rights and interpreted by the bodies of the Inter-American System, the right of access to information allows for restrictions, which must be governed by the principles of legality, legitimate objective, necessity and proportionality.⁵

In this context, and on the occasion of the 50th anniversary of the IACHR, it is necessary to examine the specific situation of the IACHR archives in light of the abovementioned international standards regarding the right of access to information. Due to the many different functions carried out by the Commission during the past 50 years, its archives contain various types of documents, including both general information regarding the human rights situation in the region and specific information regarding individual cases.

On this subject, it is important to emphasize that the archives of the IACHR contain very sensitive information regarding violations of the human rights of individuals and groups in all countries of the region. In this context and taking into account the abovementioned on the importance and impact of the right of access to information, the IACHR is currently carrying out a process of internal review and dialogue with the National Security Archives in order to establish an institutional policy in this regard. This analysis must take into account factors such as the protection of the security, integrity, and privacy of the persons accessing the Inter-American System; respect for their expectations and interests; and the availability of the human and material resources needed to develop and implement a policy in this regard.

Based on the foregoing, the Inter-American Commission on Human Rights agrees:

1. TO DEVELOP a work plan on opening the historical archives and designing a protocol establishing clear guidelines in this regard;
2. TO INSTRUCT the Executive Secretariat to prepare an agreement to be signed between the Inter-American Commission on Human Rights and the National Security Archives;
3. TO CREATE an Advisory Committee with the main task of examining the specific situation of the IACHR archives, in the context of protecting the right of access to information, as well as the right to protection of victims and other users of the Inter-American System of Human Rights. The Advisory Committee will include a representative from the National Security Archives, a Commissioner, a representative of the Office of the Special Rapporteur for Freedom of Expression, a representative of the Executive Secretariat, representatives from one or more academic institutions that demonstrate their interest in and commitment to this project –provided that it has been approved by the IACHR and the National Security Archives– and domestic historical archival institutions of the OAS Member States interested in the declassification of archives.

⁴ I/A Court H.R., *Claude Reyes et al. Case*. Judgment of September 19, 2006. Series C, No. 151, para. 86.

⁵ IACHR, *Annual Report 2008*, Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression, OAS/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, paras. 166 and ff.