ACCESS TO INFORMATION

Freedom of opinion and expression

2013 thematic report to the Human Rights
Council of the Special Rapporteur on freedom
of opinion and expression

Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information."

- Special Rapporteur on freedom of expression



THE RIGHT OF ACCESS TO INFORMATION

The right of access to information is a central component of the right to freedom of expression. It is both the general right of the public to have access to information of public interest from a variety of sources, and the right of the media to access information. The right of access to information equally applies within and towards international organizations, such as the United Nations.

LEGAL BASIS

- Universal Declaration of Human Rights (article 19);
- International Covenant on Civil and Political Rights ("ICCPR") (article 19.2); and
- Regional human rights treaties.

WHY IS IT IMPORTANT?

Without freedom to access information of all kinds, abuses may take place, policies affecting the general welfare may not be tested and improved and overall public engagement and participation decreases.

RIGHT TO TRUTH

The right of access to information and the right to truth are closely linked. In the context of serious human rights violations, States are required to inform not only the victims and their families, but also society as a whole of what happened. There is an overriding public interest in the disclosure of information concerning serious violations of human rights and humanitarian law. States must take proactive measures to ensure the preservation and dissemination of such information.

NARROW RESTRICTIONS

All information in the possession of the State belongs to the public, with limited and qualified exceptions that must be justified by state authorities. The right to access information may be subject to limitations in accordance with the principles of legality, necessity and proportionality (ICCPR article 19.3). Restrictions based on national security reasons must also comply with these conditions.

Limited scope of exceptions:

reasons for the denial of access to information should be clearly and narrowly designed, bearing in mind the principles of legality, necessity and proportionality.

Open meetings:

legislation should establish a presumption that meetings of governing bodies are open to the public.

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Promotion of open

government: includes informing the public about their rights and that the government officials adhere to a culture of openness.

NATIONAL LAWS ON ACCESS TO INFORMATION

The right of access to information is increasingly guaranteed by national laws. These laws, however, should be followed by efforts to enhance the technical capacity of state institutions to manage and disseminate information. What are the principles to guide the design and implementation of access to information laws?

Processes to facilitate access:

public bodies should establish open, accessible internal systems for ensuring the public's right to receive information. The law should provide for an individual right to appeal to an independent administrative body in case of rejections.

Obligation to publish: public bodies should publish and disseminate documents of significant public interest, subject only to reasonable limits based on resources and capacity.

Maximum disclosure: all information held by public bodies should be subject to disclosure and this presumption may be overcome only in very limited circumstances.

Protection of whistle-blowers:

national laws should
provide protection
from liability for
officials who, in good
faith, disclose information
pursuant to right to
information legislation.

Disclosure takes

Costs:

excessive costs from

intormation.

not be deterred by

making requests for

individuals should

precedence: to ensure
maximum disclosure, laws
which are inconsistent with the
right to access information should be
amended or repealed.

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