

## **Right to information-A Fundamental Human Right**

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### **Freedom of information**

**Freedom of Information (FOI) or right to information is defined as the universal right to access information held by public bodies.**

FOI laws reflect the fundamental premise that all information held by governments and governmental institutions is in principle public and may only be withheld if there are legitimate reasons, such as privacy or security, for not disclosing it. Over the past 10 years, the right to FOI has been recognized by an increasing number of countries, including developing ones, through the adoption of a wave of right to information laws. In 1990 only 13 countries had adopted national right to information laws, whereas there are currently more than 70 such laws adopted across the world with a further 20-30 of them under consideration in other

The importance of the right to information is an increasingly constant refrain in the mouths of development practitioners, civil society, academics, the media and governments. What is this right, is it really a right and how have governments sought to give effect to it?

### **Right to information is fundamental for development.**

Right to access information held by public bodies and its contribution to transparency, media pluralism, good governance, empowerment and poverty eradication were the focus of debates during the international experts meeting on "Freedom of Information and Sustainable Development, Sealing the Link" held last week at UNESCO Headquarters in Paris.

During a two-day session on 17 and 18 March, more than 20 experts from developing countries of four continents, canvassed a range of issues central to the actual enactment

of freedom of information frameworks. This included the role of the civil society for the implementation of a right to information regime, and the importance of the proactive disclosure of information from public bodies in a language and in a form accessible to targeted users, including citizens in disadvantaged and remote communities.

Representatives from specialized NGOs, professional media associations and intergovernmental organizations elaborated a stock of best-practices and lessons-learned, which were presented in an open session

Experts participating in the meeting included: Helen Darbshire, Chairman of the Freedom of Information Advocates Network (FOIANet); Priscilla Nyokabi, Kenyan branch of the International Commission of Jurists; Agnes Callamard, Executive Director of Article 19; Steve Buckley, President of the World Association of Community Radio (AMARC); Sebastian Bartsch, policy-analyst at OECD; Nepo Malaluan from Action for Economic Reform in the Philippines, Shushan Doydoyan, President of the Armenian Freedom of Information Centre; Juman Quneis, scholar at the Birzeit University; and Roberto Saba, Director of the Argentinean Association for Civil Rights (ADC).

This meeting was organized in the framework of the celebration of the **60th anniversary of the Universal Declaration of Human Rights**, and of its article 19 ensuring the right of every individual to “freely seek, receive and impart information”. A report by Toby Mendel, Law Director, Article 19, and author of “Freedom of Information: A Comparative Legal Survey”, UNESCO, 2008 & Roberto Saba, Executive Director, Asociación por los Derechos Civiles (ADC), Argentina reflecting the views of experts who attended the meeting are given below:

### **Report by Toby Mendel & Roberto Saba,**

I would like to come back to what we call freedom of information and right to information and to stress a little bit on the definitions. I'm going to do that because the term freedom of information which we have often used to describe this phenomenon is a quite confusing one. I will start by also precisising the border line of freedom of expression guarantees the right to seek, receive and being a part of information and ideas.

When we first think of freedom of information the usual idea is of speaking and of the right to express oneself. But the right to information is much more important than that.

It's the free flow of information, and more than just the right to speak, it is also the right to seek and receive information held by public bodies.

When brought the first edition of this book in 2003, I claimed that this right was starting to be recognized in international level. In the second edition that it just has been published, I think that it is now very widely recognized as a fundamental human right and a part of the right of freedom of expression.

This right was recognized by the United Nations, by some public and private bodies all over the world. It was also have been recognized by a very many states with a constitution guarantee. It has been noted very often that it's not a real fundamental human right of itself but it's also a cornerstone right in the sense that all other rights depend on it. So it is somehow based on other rights.

It also extends to private bodies exercising public functions. So, basically, if you are in the public zone, if you are caring a public function which is funding by public money, the right applies to you.

There are two key means for exercising the right – the first is the right to request and receive information, you can go to a public body and ask for information, and if they have this information they should provide you; the second aspect which have discussed Transcripts/DRAFT over the last two days is about the obligation of the public bodies to be proactive and to publish information.

I will describe briefly the characteristics of this right. There are 4 key characteristic. The first is the right to establish a presumption of openness, the information held by all public bodies should be accessible. Secondly, infrastructures for exercising the right have to be established. Thirdly, and I have already mentioned that, the right is not an absolute right like the freedom of expression and it may be restricted. There are exceptions, hospitals for example; there are rather exceptions to protect private commercial information, to protect national security, to protect relations between states, and so on. The fourth part concerns public bodies – you can go to public bodies and ask them an information, and if they refuse you that should not be the end of the world. The courts, but also the administrative bodies are more accessible in most cases.

I mentioned earlier that the right to information is seen very much as a cornerstone right.

We have long focused on the importance of the right to information to governments, to democracy, to participation, to expose the corruption There is a whole package of social benefits of the right to information. We are now also recognizing, and that's the subject of this conference that the right to information goes beyond the governments, it also is a fundamental for the development.

UNESCO works in education, science and culture and I think that it is very obvious how all of these are supported by the right to information.

I mentioned before that many countries have adopted the right to information laws and there are 75 countries presently with such laws. My book focus is first to make a legal

comparative survey of 43 countries and the ways that they have implemented the right to information. So, my book looks at international legal bases for the right and looks at the features of the best practices of the right to information system.

I would like to thank UNESCO, and also, I would like to thank many other people who contributed to the book.

The citizens need to learn more about their own rights. We highlight that the access to information is a right and that it also has an instrumental value to help citizens to get other basic rights. So, this link can make this instrumental benefit more concrete and also bring it to practical cases.

We have several conditions and contexts in our group that we discussed. We have common problems in our regions. Most of the priorities that we defined are poverty, the knowledge of rights, corruption problems, and problems of security, lack of participation and many abuses of governments. In all these problems we think that access to information can help us to better understand these problems in our own countries and to improve the quality of our lives.

So, one of our main conclusions was that we, more than depending on access to information, we really need to link this with something more concrete health problems or security problems, or education problems. Thus, it is needed more than a legislation of access to information a whole system of laws in different sectors of the development that provide basic guide lines to disseminate information in different fields . So we need a system of active information which remains for longer in the countries in a way that the right to information becomes more applicable to our daily life in a local level. On the contrary, we have the *Bahari* district where the MP all along shared information with his constituency about what the fund was supposed to do, he communicated with them about the priority. For that community the priority had to be the education – they wanted to have a secondary school in their community; they wanted the young people to have skills and that's how they invested their constituency development fund. The MP was recognized as having represented the interests of his constituency very well.

So when the politicians, the communities and the development agenda come together properly, it does work. That is a good example of how the access to information could help the constituency. If there was a law, those communities, where the MPs are performing very well, will have a way to demand from their MPs or people above them, to get accountability about how the constituency development fund is used. That is a good example of how the information helps people for the development.

### **Report by Roberto Saba.**

We focused on 5 lessons that the group identify and also 3 strategies that we find important. So, let's talk before about the 5 lessons. The first lesson that we draw is that freedom of information is a requirement for participation. We think that governments must promote and secure development.

A lot of groups need to be empowered by relevant information and to be able to participate in the process of making public decisions, particularly regarding the government processes. Different kinds of information are required as precognition of different types of citizen participation. Also, the government must provide to the public information regarding its work no matter if it carries good or bad news.

The second lesson is about the fact that we think that passing the freedom of information law is fundamental but it is not enough. The implementation of the regime of right to information is crucial. We think and we suspect that it is necessary to development to broaden public support to access to information separated. This support means that citizens will or should request information. We were actually concerned here of the fact that sometimes the way that freedom of information is regarded by the public focuses too much on the requests that citizens make. We are supporting here that public supports transparency, supports the access to public information that necessarily correlates with the fact that everybody request information. The second lesson is also about the fact that we think we need to stress an instrumental value and benefits of access to information to people's lives.

The third lesson is about the fact that the good access to information regime requires several society engagements. We think that in order to implement freedom of information regime is necessary to count on a strong society. We think that to get this support from the civil society it is important to involve the society in the process of making the law. Civil society needs to remain engaged for a long term. The challenge is how to avoid Transcripts/DRAFT disappointment and to go on. Finally, to get civil society engagement it is necessary to establish a connection between freedom of information and people's basic everyday's needs.

The fourth lesson is about government, notably the fact that the government is responsible for the implementation of freedom to information regime. A strong political will and leadership is required for the implementation process to take place correctly.

The fifth lesson is about how government should provide target information for participation. We think that the right to access to information involves also that the government provides proactively information and enables people to participate to the decision making process. We think that proactive information provided by the government should be relevant to particular sectors and groups. The information is only relevant whet it is communicated to people correctly and they can make use of it.

Finally we may refer to the strategies. We identified for strengthen the freedom of information advocacy and regimes. First, we need to change attitudes in the government, in the sense that it should be open and honest about what really happens. It is something that is good for the government. Different areas should share information and best practices. Free flow of information in the government in different levels of the government is key for good government and successful development. We need to build structures for the information system in order to improve openness. There is a whole

package of laws regarding information. There should be a strategy to improve the freedom of information regime and the consideration of all these laws. Finally politicians and not only governments should be involved in this society organization of freedom of information.

The second strategy is to build civil society coalitions and partnerships in order to build capacity. It is necessary to broaden the network of supporters of freedom of information. It is also required to build strong links between international, national and local actors. It is necessary to empower the groups and to provide information to them. We need to have more coordination between international and local groups. It is important to get the private sector involve in the development of the access to information regime. It is necessary to strengthen advocacy by documenting our knowledge and institutions about the benefits of freedom of information.

The final strategy is about getting a good law and the recognition of the right to access to information at all levels. We finally thought that it would be important for us to take advantage of the possibility to be here, together in UNESCO, in order to invite or to suggest to UNESCO to continue the promotion of access to information regime...

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