

COGI-tations Forum - September 10, 2009

The right to ask...the right to know - International Right to Know Day 2009

Notes from presenter:

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History

- In the last decade, dozens of countries have enacted formal statutes guaranteeing their citizens' right of access to government information. Elsewhere, even without legal guarantees, citizens are asserting their right to know. Throughout the world, freedom of information movements are changing the definition of democratic governance.
- The constitutions of 50 countries guarantee the right to access of information.
 - Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela, Albania, Bulgaria, Czech Republic, Estonia, Finland, Greece, Hungary, Lithuania, Moldova, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden, Austria, Azerbaijan, Belgium, Georgia, Macedonia, Russia, Ukraine, Nepal, New Zealand, Papua New Guinea, Philippines, Thailand, Cameroon, Democratic Republic of Congo, Ghana, Madagascar, Malawi, Mozambique, Senegal, South Africa, Tanzania, and Uganda,

The Right to Know under International Law

UDHR

Article 19

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

International Covenant on Civil and Political Rights

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries

with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

American Convention on Human Rights

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right 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.

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

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

African Charter on Human and Peoples' Rights

Article 9

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

European Convention on Human Rights

Article 10

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 and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Recent Developments:

- A decision, handed down on the 14 April 2009, by the European Court of Human Rights recognized for the first time that Article 10 of the European Convention on Human Rights guarantees the “freedom to receive information” held by public authorities.
(<http://www.internationallawbureau.com/blog/?p=192>)
- On June 18, 2009, 12 of 47 member-states of the Council of Europe signed the Convention on Access to Official Documents, making history as the “first international binding legal instrument that recognizes a general right of access to official documents held by public authorities.”
(<http://freedominfo.org/news/20090619c.htm>)
- There is currently a bill before the Iraqi parliament that is seen as the first step towards censorship, placing restrictions on Internet sites
<http://www.allheadlinenews.com/articles/7016101997?Iraqi%20Journalists%20March%20To%20Protest%20Restrictions%20On%20Internet>

Article 19 (the NGO) lays out a set on standards by which Freedom of information laws should be judged in their effectiveness

1. Maximum disclosure- all information held by public bodies should be subject to disclosure, this presumption may only be over come in very limited circumstances.
2. Obligation to publish- public bodies should be obligated to publish and disseminate documents of significant public interest, subject only limits based on resources and capabilities.
3. Promotion of open government – all public bodies should be obligated to actively promote an open government and educate the public on their rights to information
4. Limited scope of exceptions- all request for information should be granted unless the public body can show that the information falls within a set of clearly and narrowly drawn set of exceptions
5. Processes to facilitate access- requests for information should be quickly processed and any refusals should be subject to independent review
6. Cost- no one should be deterred from making requests due to cost
7. Open Meetings – meetings of all public bodies should be open to the public
8. Disclosure takes precedence- laws which are inconsistent with the freedom of information law should be amended or repealed
9. Protection for Whistleblowers- individuals who release information on

wrongdoing must be protected from any legal, administrative, or employment sanctions.

Useful Websites

Article 19

www.article19.org

NGO advocating around Article 19 of the UDHR. This website contains a lot of useful information, including standard setting documents, news and publications.

Freedominfo

www.freedominfo.org

This website claims to be the one stop shop for information on freedom of information. Contains a wealth of information though a little difficult to sift through

Right 2info

www.right2info.org

Contains some good information but the majority of the pages on this website remain blank with little to no information

FOIANet

www.foiadvocates.net

An information-sharing network for organizations and individuals advocating around Freedom of information.

Carter Center

http://www.cartercenter.org/peace/americas/ati_conference/right_to_public_information_conf.html

In February 2008 the Carter Center held a conference on the Right to Public Information. This conference drew together 125 stakeholders from 40 countries to examine the current Access to Information field. The concluding document was the "Atlanta Declaration and Plan of Action for Advancement of the Right to Access to Information." A 7 page document including a set of findings, principles and a plan of action for various stakeholders including; the International community, States, and Private organizations.

From the Carter Center pre conference briefing:

- "The promotion of the right to public information has been led by a relatively insular community of practice, often failing to engage all key stakeholders or other critical fields, and without a clear shared agenda for the future advancement of the right to public information." (Pg 2)
- "Since the wave of activities to promote access to public information as a key to democracy and good governance began some ten years ago, the world has experienced a profound paradigm shift. The effects of 9-11 and the war on terrorism have been used (arguably misused) to trump the citizen's right to access critical information. Technological changes are occurring faster than policy can respond, and if not harnessed properly may impede rather than

promote access to information. And the power once held by the state continues to be diffused to other sectors, including the multinational corporations and private sector, international financial institutions, and even civil society organizations, while the documents that these sectors hold are largely hidden from public scrutiny.” (Pg 2)

- There are difficulties within the RTK movement because of the workability of RTK laws. RTK laws are difficult to enforce and require large resource inputs, from special training of staff to resources to pay those staff. Typically resulting in very long delays. (From the article Future Challenges For The RTI Movement by Alasdair Roberts, contained in the Carter Center briefing)
- Five fundamentals of effective freedom of information statutes:
 1. Statutes should begin with the presumption of openness, i.e. information belongs to the citizens not to the state.
 2. Any exceptions should be as narrow as possible and written into the statute so they are not subject to bureaucratic variation and changes in administration
 3. Any exceptions to the release of information should be based on identifiable harm to specific state interests
 4. Even where there is identifiable harm, the harm must outweigh the public interest served by releasing the information
 5. A court, an information commissioner, an ombudsman, or other authority that is independent of the original bureaucracy holding the information should resolve any dispute over access.

Commonwealth Human Rights Initiative

<http://www.humanrightsinitiative.org/programs/ai/rti/rti.htm>

CHRI Right to Information website is designed to provide legislators, advocates and the public with resources on international and Commonwealth principles and standards on the right to information.

Country Specific Information

Israel

<http://www.meida.org.il/eng/>

Mexico

<http://www.gwu.edu/~nsarchiv/mexico/transparency.htm>

This website is actually a George Washington University site but contains extensive information on Mexico