

SPCCMUN

HRC Chair Report 1

Committee: Human Rights Council

Topic 1: The Right to Development - the creation of favourable conditions for the enjoyment of rights to information

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Introduction

Human rights are essential to achieving and sustaining development, and a central right among all is the right to information. Civil and political, economic, social and cultural rights all depend on the exercise of the right of access to information.

To all people, having information is an empowerment. It means being able to detect and appeal against administrative injustice, to hold their governments accountable, and to be well informed for voting and decision-making.

To governments, increase in public transparency means the battle against corruption and the abuse of power will prove more efficient and successful. The actualization of the right to information fosters a transparent archiving and record-keeping system, thus making information more accessible and easier to refer to in decision making. Actions of public institutions also become less discrete and corruption becomes harder to harbour.

Central prerequisites to obtaining rights to information include the framework of democratic governance. This includes transparency, accountability of government officials and the advancement of wider participation in decision-making processes.

These were the key elements in the Millennium Development Goals (MDGs) to be achieved by 2015. Adopted by all the world's leaders in 2000, it recognized the link between human rights, democracy, good governance, and the people's access to information. In light of the conclusion of the MDGs, the achievements and prospects of the right to development calls for thorough evaluation and discussion. With its strong correlations to governance competence, the Human Rights Council (HRC) is thus in session to reflect on the implementation of rights to information legislation in national contexts.

Current practices of right to information laws include the basic principle that the burden of proof lies on the one being asked for information, not the one asking for information. In simpler words, the requester of information need not explain their actions while a reason must be provided if the information holder denies the request.

Furthermore, a strong information law is largely assessed by whether or not there are clear procedures and channels for requesters to go through in the process of seeking information, as well as a powerful and impartial overseeing body.

Among different hindrances, right to information is undermined by ineffectual access policies and underdeveloped archiving systems. Data requesters confront unnecessarily intricate procedures to present appeals, high expenses or encounter delays. Exemptions on access to

information laws are especially disputable. The basic principle at work is “maximum disclosure”, dictating, “Individuals should be granted access to all information held by public bodies, except for very limited and clearly specified categories, subject to harm and public interest”. This definition is rather ambiguous and institutions may exploit exemption allowances and self-justify information censorship. Challenges arise, as governments cannot agree on indicators determining what information can be exempted.

General Direction of the HRC Session

The chair recognises a disparity between different countries’ extent of ratifying and implementing right to information policies, as well as their substantive outcomes and effectiveness. Delegates should be reminded that the HRC serves as a review of global progress in granting the right to information, as well as identifying problems and inefficiencies in current programs that strive to do so.

This HRC session is a valuable opportunity to not only establish consensus on the pressing need to create favourable conditions for the right to information, but also to facilitate cooperation. Countries are encouraged to evaluate their policies in comparison with each other; to combine and exchange methodologies for its execution; and to develop collaborative, mutual goals and systems for continuous progress in this area.

Definition of Key Terms

The Relationship between the Right to Development and the Right to Information:

Right to development - the right to participate in, contribute to, and enjoy economic, social, cultural and political development. It is the umbrella right of mankind to take part in development and to enjoy basic human liberties. The right to information is included amongst these as enshrined in Article 19 of the Declaration of Human Rights (adopted by the UN general assembly in 1948) which states “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.”

Other recent specific rights conventions that have been passed include, but are not limited to, the American Convention on Human Rights and The European Convention on Human Rights. These pacts seek to address human rights issues, and therefore rights to information issues, in their respective spheres such as the Organization of American States (OAS) and the Council of Europe (COE).

Where concerned development should be centered around its people, i.e. the central subjects, participants and beneficiaries of development. The approach taken should be human rights-based,

in which no human rights and fundamental freedoms are sacrificed. Finally, development should involve constructive and active participation of the people with no barriers.

Rights to information (RTI) are based on the following elements. The right to information transparency and vital facts is a fundamental human right that encourages development by allowing public participation and debate. It also acts as an extension to the right to privacy, another recognized human right. It is often included in the “greater agenda” for government transparency and campaigns against corruption as well. In short, the right to information facilitates human development by creating informed and involved people.

The right to information strives to eradicate the following:

- Government censorship
- Limitations on the expression of political opinion
- Repression of press freedom
- Lack of transparency in public institutions
- Culture of secrecy
- Corruption and other forms of cover-up in state governments

The right to information has been fundamental in the following ways:

- Bolstering democratic principles of openness, transparency and accountability in societies
- Eradicating poverty in fulfilling the Right to Development, for example, effective anti-poverty programmes require accurate information in the public domain on problems hindering development
- Sparking meaningful debates for the active participation of well-informed people in development
- Acting as a tool to catalyse reforms
- Empowerment of disadvantaged communities by raising awareness of their own situation, and the establishment of a redress mechanism

Creation of favourable conditions - meaningful and constructive policies, legislation and programmes which grant and support the right to information or the process of its achievement.

Civil society - society considered as a community of citizens and non-governmental organizations linked by common interests and collective activities.

Free press - the right for news organizations to publish books, pamphlets, newspapers, or periodicals without restraint or censorship subject only to the existing laws against libel, sedition, and indecency.

Global Right to Information Index - comprises a series of indicators to measure the level of protection for the right to information worldwide. It demonstrates the level of the right to

information worldwide, the degree of compliance of each piece of legislation and its internal coherence, its trends and omissions, and areas such as the adequacy of institutions, the regulation of procedures, and the incorporation of criteria to regulate the administration of access to public information.

Implementation Assessment Tool (IAT) - the IAT diagnoses the extent to which the public administrations are capable of responding to requests and to provide information, as well as providing an implementation methodology. The IAT is designed to assess the specific activities/inputs that the public administration has engaged in to develop well-implemented legislation.

Important Bodies Involved

Organisations

United Nations Development Group: UN body that launches programmes centering on the Right to Development, with the right of information as part of its aim for democratic governance. The right to information is presented as a means to help eliminate poverty, foster economic and social development, strive for transparency, promote citizens' participation as well as the rule of law.

United Nations Human Rights Council: The successor to the UN Commission on Human Rights, the role of the UNHRC is to promote and protect human rights around the globe. The council is made up of 47 member states with a good track record of rights promotion and has addressed many issues ranging from the promotion of rights in conflict zones and country specific situations to addressing specific themes amongst human rights of which one is the right to information.

UN Special Rapporteur on Freedom of Opinion and Expression: The UNHRC will from time to time appoint an expert to investigate a country or specific theme regarding human rights. Their role is to seek and gather information regarding their mandate and present their findings and recommendations to the Office of the United Nations High Commissioner for Human Rights.

Whistleblowers: individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy, usually for the sake of revealing abuses in authority.

Major Countries Concerned

United States of America

The USA has seen increasing prosecutions of persons who reveal public wrongdoings or dishonesty, more commonly known as whistleblowers. Journalists such as John Kiriakou and Edward Snowden are convicted under the controversial Espionage Act.

In 2004, the UN special rapporteur for freedom of expression joined the Organization of American States and the Organization for Security and Co-operation in Europe in issuing a call to all governments to protect whistleblowers from all “legal, administrative or employment-related sanctions if they act in ‘good faith.’” The USA remains dangerously ambiguous on balancing the broad definition of censorship for the sake of “national security”, and granting the right to know about governmental actions to its nationals.

People’s Republic of China

China implemented Regulations of the People's Republic of China on Open Government Information (OGI) in 2008, with a similar framework as Freedom to Information Acts. Demands for information have seen good progress, with up to 70% of requests granted, according to The Economist. However, the right to know still faces challenges such as a passive and intricate request procedure as well as overly broad and flexible exemption allowances. Attempts to confront public bureaus often result in failure. Requesters often resort to court rulings to exert enough pressure on authorities for information release, a process unaffordable and overly complex for nationals without legal expertise. Furthermore, individuals often have to demonstrate personal need when requesting information, which contradicts the basic principles of the right to information. Finally, Article 8 of the OGI states that information revealed must not threaten state, public or economic security and social stability. This open-ended definition creates high flexibility in the arbitrary denial of disclosing information.

India

India has adopted the Right to Information Act since 2005, replacing its predecessor, the Freedom of Information Act. Requesters need not provide any justification or demonstrate personal need to acquire information under the Act. There are specific timeframes in which the public authority must answer the request. However, the new Act still left blind spots in the right to know from privatized institutions, such as non-governmental charities. More importantly, political parties are not included in the scope of the law under an amendment bill passed in 2013. This left room for abuse of power, funding as well as subterfuge to cover up wrongdoings. There are favourable circumstances for corruption to occur, and thus it defeats the purpose of effective governance for civil participation. Moreover, information relating to allegations on human rights can only be given with the agreement of the Central Information Commission, leaving much room for government censorship and violation of human rights, such as use of torture.

Singapore

There are currently no right to information laws implemented in Singapore. General statistics, however, like official audits and population census, are accurate and actively updated. However, there remain many information regulation laws such as The Evidence Act and Official Secrets Act which prohibit disclosure of 'any unpublished official records relating to affairs of State'. Further to this, court jurisdictions cannot compel government officials to testify in court.

There is an over-protection of the government, as the low accessibility places obstacles in the way of people's right to know. For example, cost is incurred for simple items such as floor plans for a public building. Ordinary documents are not available on websites, and formal applications are often required along with the request for information. The disclosure of information is reactionary and wholly dependent on the State's decision. This can promote executive privilege and reduces governmental transparency. There is the lack of a clear procedure for acquiring information, clear and consistent guidelines on information disclosure, or public accountability for not revealing certain information. Singapore upholds the principle that information is a state property.

Issues to consider

Governmental agencies

There are often active civil organisations advocating the right to information. Public awareness is present. In developed countries, NGOs take part in drafting RTI bills and a number of coalitions have been formed at national levels to coordinate efforts, and share capacities and strategies. There are cases of collaboration and advocacy between NGOs and civil groups. At least 100 countries have implemented RTI laws and the RTI has gained public support.

RTI laws are used to good effect with special interests such as the environment, health and social welfare issues. For some nations, there is professional public administration that accepts and recognises the need to comply with the RTI laws.

However, the culture of secrecy still remains an obstacle globally. Certain countries consider information a state property or may restrict access in the name of national security. Economic crises in less developed countries may lead to cutbacks in funds available for civil organisations. RTI laws are yet to gain higher status in many legal systems. Surcharges and complicated procedures for claiming information can undermine public participation and monitoring.

Non-governmental institutions

In the business sector, cultures of secrecy and the lack of transparent information available to the public can lead to corruption or mismanagement of corporations.

Corporate scandals such as the Madoff Ponzi scheme and the collapse of Barings Bank as well as the recent financial crisis have been partly attributed to lack of transparency and public accountability of the private sector. Individuals and corporations have been adept at finding loopholes to evade tax receipts and hide assets.

Supported by major economies and the European Union, there have been calls for a transparent register system to eliminate tax evasion and corruption hidden under “shell-companies”. A new system would require that the names of the real owners of companies (the so-called “beneficial owners”) be made public through central public registries of companies. These public registries would show who owns, controls and benefits from companies. The public will enjoy rights to access, monitor and report based on them.

The press influence

Freedom of the press

The degree of state control in the name of state security is a delicate matter when non-interference with media independence is expected to be upheld at the same time. Challenges to this balance can be divided into two aspects: threats to neutrality and protection of opposition. Furthermore, there are also cases where the press has abused their position in accessing private information.

Threats to neutrality

This may arise when the media and the government take a different stance, and the latter intervenes in goals to prevent dissemination of the alternative opinion. One prominent example is *The Economist* censorship in India where the territorial disputes with China were shown on a map with annotations such as “Area held by China, claimed by India” instead of officially advocated borders by the Indian government. Copies of the magazine were plastered with a white sticker covering the map in question before it was issued.

The right to know is only fully established if the people have access to a variety of stances providing diversified information. Therefore, governmental policies should protect a free press even if they do not align with official positions.

Protection of opposition

This refers to media coverage of information considered harmful or contradictory to the image or authority of a certain stakeholder, be it religious, political or other. The Charlie Hebdo shooting in France and the recent murders of atheist bloggers in Bangladesh offer extreme examples and a grave reminder that freedom of speech also covers the right to satirize people and religions, a concept that the Universal Declaration of Human Rights calls to uphold.

Threats to personal safety and other forms of harassment of individuals and journalists should remain strictly regulated under freedom of speech laws.

Press and breach of privacy

The information delivered to the people through the media has the potential to be false, deceptive, or acquired through illegal or immoral means. For example, the phone hacking scandal of News International in 2011 exposed phone voicemail and messages belonging to public figures such as Prince William of the British Royal family and Tessa Jowell, member of parliament and former cabinet minister.

It may be argued that such disclosures reveal the wrongdoings of those in authority and is an example of whistleblowing. However, it must be balanced with the obvious breach of privacy, and whether or not the act was done in the interests of public disclosure.

Government Culture of Secrecy

A culture of secrecy permeates both developed and developing nations, especially in human rights-related issues and commerce. In the state authority, information regarding allegations of human rights abuses, capital punishment and detentions were highly limited or close to non-existent. These obstacles directly obstruct human rights monitoring, making people vulnerable to silent maltreatment.

Financial secrecy includes the formation of opaque companies and bank accounts, as well as lack of profit-loss details of publicly funded development. Before the recent establishment of the European Union Act to end banking secrecy, bank secrecy practices such as numbered bank accounts were frequently used for money laundering, tax evasion, and other criminal activities. For example, a Swiss bank had protected finances belonging to Osama Bin Laden. As for finances of public development projects, the Suzhou industrial park project in Singapore illustrated the lack of transparency that deprives investors and the public alike of the right to know. While there were estimated losses made official to the people, government loss was not disclosed. The Singaporean government previously had a 35% share in the park property, an investment where funds were drawn from public revenues. In both cases, it is in the public's interest to expose suspected wrongdoings. The culture of secrecy obstructs the people's right to

such information, which may have direct or indirect effects on society and the misuse of government funds or financial crimes.

New Media

The rise of the internet has made information about an individual much more accessible, especially previous actions and convictions. While people have the right to information on details of another individual's past allegations when they have been made public through appropriate media channels, such as public trials, it has certain contentions with the right to be forgotten, a relatively new idea arising with the information age. The right to be forgotten suggests that human life is progressive, and thus an individual should not be perpetually stigmatized due to an action in the past. This includes criminal activities as well as general convictions. The right to be forgotten is most recognized in developed countries, entering into French Law in 2010 and recognized as a human right by the European Court of Justice. The United States, however, favours the right to information, even if it stereotypes an individual due to media stance or past convictions.

It can be suggested as a solution that information about an individual, as long as truthfully and legally published, has the right to remain in the public sphere. However, convictions are "spent" during a specific time to be named and the actions shall be considered irrelevant after this period.

Questions for debate

1. What is the role of journalism in implementing the right to information?
2. How should governments, institutions and the media cooperate to improve access to information?
3. What are some of the legal and physical safety issues surrounding journalism, and what can be done to eliminate them?
4. How extended is the right of information in respect of companies, NGOs and international agencies whose activities are of a public nature and have a direct bearing on public interest?
5. With what justifications do governments withhold or restrict information? Are such rulings consistent, reasonable, and fair?

Further Readings

Public right to information essential to good governance, Ban stresses

<http://www.un.org/apps/news/story.asp?NewsID=34536#.VRaRsJOUd7x>

Human rights by country

<http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>

China: Freedom of information and the environment

<http://www.article19.org/resources.php/resource/2888/en/china:-freedom-of-information-and-the-environment>

India: Right to information

<http://www.rtrtd.nic.in/RIGHT%20TO%20INFORMATION.html>

RTI Rating Organisation

<http://www.rti-rating.org>

http://www.rti-rating.org/country_rating.php

Global Right To Information

<http://www.access->

[info.org/documents/Access_Docs/FOIANet/global_right_to_information_update_28-8-2013.pdf](http://www.access-info.org/documents/Access_Docs/FOIANet/global_right_to_information_update_28-8-2013.pdf)

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Freedom of Information: The Right to Know. (2010, May 3). Retrieved March 27, 2015, from

<http://www.ohchr.org/EN/NewsEvents/Pages/RightToKnow.aspx>

RIGHT TO INFORMATION. (n.d.). Retrieved March 28, 2015, from

<http://www.rtrtd.nic.in/RIGHT%20TO%20INFORMATION.html>