



STATEMENT

28 September 2007

International Right to Know Day: A Whistle-stop Tour of Right to Know Developments across the Globe in 2007

Overview

The right to information is essential in the information age. In the past ten years, there has been a steady growth in the number of countries which have adopted Freedom of Information (FOI) laws to give citizens, journalists and organisations the right to demand information from them. To date, 75 countries have now adopted Freedom of Information (FOI) laws and over 80 countries have also guaranteed the right to information in their constitution.

The past year has seen considerable developments around the world. New laws were approved in Honduras, Jordan, Kyrgyzstan, Nepal, Nicaragua and most recently the Cayman Islands. China adopted national regulations which follow the function of FOI. Norway adopted a new, even more open law while the US is poised to make the first major improvements to their law in a decade. Amendments to weaken FOI laws were rejected in the UK and Bulgaria. Dozens more countries around the world including Chile, Ghana, Malta, Nigeria, and Tanzania also considered bills. In Mexico, the Constitution was amended in 2007 to expand the right of information to the states.

There have also been important developments in the international realm. One of the most important in the last year was the ruling of the Inter-American Court of Human Rights, in *Claude Reyes v. Chile*, that freedom of information is a basic human right implicit in the right to freedom of expression. This will have a profound effect on countries in the region and sets an important precedent for the rest of the world. FOI is now recognised as an important tool to promote democracy and fight corruption by the United Nations, Council of Europe, Organisation of American States, League of Arab States and the African Union.

The Privacy International Global Survey of FOI laws (In English, Russian and Arabic) and Global Map of FOI is available at <http://www.privacyinternational.org/foisurvey>

Brazil: Right to Know, Broadcasting and Truth Processes

Brazilians' right to know is secured by the 1988 Constitution as a fundamental right. Access to public information is also protected under specific legislation in areas such as environmental and budgetary law, although there is no general regulation yet detailing the procedure for accessing information in other areas.

The right to know is essential to the realisation of other human rights. In Brazil, access to information is essential to securing transparency on many social issues including broadcasting licenses and truth processes.

Concession of Broadcasting Licenses

Broadcasting is considered a public service under the Brazilian Constitution and broadcasters receive public concessions to render this service after a public bidding process. However, the lack of transparency in the processing of concessions and renewals and the lack of clear rules applicable to the sector have hampered social control and public participation in this area. On October 5, a number of civil society organisations and social movements, including ARTICLE 19, will launch a campaign for democracy and transparency in broadcasting concessions.

Laurindo Leal Filho, journalist and university professor said:

“[The Ministry of Communications] does not disclose who the concessionaries are. Brazilian people are deprived of their right to know who holds the concessions and exactly when these concessions were granted. People don’t realise they have the right to know who this concessionaries are and that they can hold them accountable and require that they comply with their constitutional obligations. Only then people will start to understand their role in this process.”

Memory and the Right to the Truth

More than 20 years after the end of the dictatorship, families of victims and human rights groups are still campaigning for the archives from this period to be made public. They believe the “official history” of the country must be amended to include precise data and information about the years of military rule. Even information on the many disappearances in that period is not yet in the public domain. The problem is both to get information about which kind of documents exist and to get actual access to them. But these documents are still classified as confidential and, according to applicable legislation, may remain so indefinitely.

Belisario Santos Junior, former Secretary of Justice of the state of São Paulo and member of the Commission for the Dead and Disappeared said:

“In a country that finds itself in such deep levels of corruption and violence, information is a tool for freedom. Violence and corruption work against democracy and rights are so violated. The country wants to know what happened, the historical truth can then be established.”

Bulgaria: Proposed FoI Restrictions Averted in Campaign Success

An Access to Public Information Act (‘APIA’) was passed in Bulgaria in 2000, providing a mechanism for enforcement of the right to access to public information guaranteed by the 1991 Bulgarian Constitution. However, in May 2007 amendments were proposed to the APIA that would have placed undue restrictions on what information was accessible. A large number of organisations, both Bulgarian and international, non-governmental and governmental, along with Bulgarian journalists, public figures and experts, reacted to these proposed amendments by highlighting their concerns to the Bulgarian National Assembly. As a result a drastically altered version of the amendments was passed by the National Assembly in June 2007. These changes protect access to information by ensuring that, amongst other things, requesters do not need to prove a legal interest in obtaining the information, that the time frames for requests remains at 14 days, that fees for requests are limited to the actual costs incurred and that public sector organisations can only refuse partial access to documents if it would require ‘efforts beyond their ordinary expectations’.

To read about ARTICLE 19’s efforts in coordinating the international response to the APIA amendments, see <http://www.article19.org/pdfs/press/bulgaria-foi-press-release-07.pdf>

China: Open Government Regulations Adopted

On 24 April 2007, China's State Council unveiled the first nationwide Open Government Information Regulations, due to take effect from May 2008. The adoption of the regulations follows adoption of legislation at a local level in a number of states and has largely been pushed by government officials in a bid to improve efficiency in the carrying out of their duties. It is hoped that the regulations will go some way to countering the Republic's rampant corruption which costs the economy an estimated 3-5% of GNP per year. In a country notorious for its weak freedom of expression record and culture of secrecy, it is as yet uncertain how well the regulations will be adhered to within central government. However, speculations aside, it's clear that the adoption of the regulations is a momentous step for the overall freedom of expression environment in China.

Council of Europe: First FoI Multilateral Treaty Substandard

The Council of Europe is drafting what is set to become the first multilateral treaty to guarantee a general right of access to publicly held information. Despite a number of positive aspects, three NGOs with observer status on the drafting group - ARTICLE 19, Access Info Europe and the Open Society Justice Initiative - have voiced serious concerns that the treaty in some respects falls below prevailing standards in Europe. On the occasion of Right to Know Day, more than 160 organisations from the continent and elsewhere have signed an open letter to the drafting group, calling for these flaws to be resolved before the treaty is finalised at a meeting from 9-12 October.

To read more about the treaty and ARTICLE 19's involvement, see

<http://www.article19.org/pdfs/press/coe-rti-treaty.pdf>.

Jordan: Adoption of First FoI Law in Middle East/ North Africa Region

In the Middle East and North Africa region, only Jordan has so far recognised the importance of freedom of information and implemented laws giving effect to the right. The Jordanian government, in line with a royal decree, passed an Access to Information Law in June of this year. The law was published in the Official Gazette on June 17, 2007. In November 2006, ARTICLE 19 presented a memorandum analysing the-then Jordanian draft law on Guarantee of Access to Information to members of parliament, journalists and civil society. Within the framework of international standards, the memorandum highlights some worrying restrictions on the right to information such as the qualified right of access, the restrictions on what type of information can be requested, and the lack of a provision that protects whistleblowers amongst others. In addition to the need for providing technical assistance to public officials that create the conditions for the successful implementation of the FOI law, there is a need for additional campaigning to amend the FOI law in Jordan so that it meets international standards and Jordan its international obligations in the area of freedom of expression.

For an analysis of the law, go to: <http://www.article19.org/pdfs/analysis/jordan-foi.pdf>

Mexico: A Right Exercised by Few

On 20 July 2007, a reform was implemented in Mexico to promote and regulate access to information at constitutional level. Against this backdrop, most of the local transparency and access to information laws are being modified, and a reform of the federal law is being promoted.

Implementation of access to information remains poor, however, with only a very small minority actively exercising their right to know. ARTICLE 19 has pointed out on several occasions the role of the government in securing effective implementation through proactively promoting and guaranteeing access to information. In the context of deep social inequality, poverty and disease that prevails in Latin America and Mexico, it is especially important to

promote freedom of information as a way for overcoming these social disadvantages. Information regarding public health matters, social development policies and domestic violence must be spread by the government and mass media through special campaigns designed to promote access to information across all communities.

In the context of the constitutional reform process, the ARTICLE 19 office in Mexico is promoting the establishment of federal and local legal mechanisms on information for all the sectors of the population.

Nigeria: All Talk and No Action

Still pending before the Nigerian National Assembly, Nigeria's Freedom of Information Bill's enactment into law has been extremely long-awaited. The Bill would allow both journalists and citizens to access government information, and is considered to be the single most important piece of legislation to hold the promise of reducing and eventually beating corruption. Moreover, its enactment would improve trust and overall government transparency.

With a new National Assembly and the recently-elected President Umaru Musa Yar'Adua, there is hope that the FOI Bill will be put back on the agenda and not left to linger. The new President is said to support a quick passing of the Bill in line with his strong anti-corruption campaign. The Freedom of Information Coalition (FOIC) are using this time for possible change to launch a petition requesting the FoI Bill to be passed into law before the end of this year (see <http://www.foicoalition.org/> for more information).

The Mo Ibrahim Foundation's inaugural *Ibrahim Index of African Governance* was published this week, which assesses governance under categories such as rule of law, transparency and corruption. Nigeria came 37th out of 48 countries, behind even Zimbabwe. This index only goes to testify to the great need for FOI legislation in Nigeria and her fight against corruption. Without it, talk of an anti-corruption campaign is only hot air coming from expedient politicians playing a popularity contest.

United Kingdom: Proposed FoI Amendments Threaten Right to Know

The Freedom of Information Act 2000 came fully into force in England and Wales in 2005 and was praised as a significant success by the government the following year, an assessment shared by many in civil society and the media. However, official enthusiasm for the Act has waned and proposed legislation now threatens its scope and effectiveness. The Freedom of Information (Amendment) Bill 2007 was put forward by David Maclean MP with the aim of removing the House of Lords and the House of Commons from the definition of 'public authorities' from whom information can be requested. Although the Bill was approved in the Commons, it failed to find a sponsor in the Lords and now fortunately looks unlikely to progress further in its current form. Another piece of legislation that has also been under consideration is the government's Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007. If implemented this would increase the number of information requests that could be refused as being too expensive by changing the way the costs of access are calculated. According to our latest reports, these amendments are fortunately now unlikely to be adopted.

To read about ARTICLE 19's efforts to halt these two proposals for amendment, see <http://www.article19.org/publications/global-issues/freedom-of-information/europe.html>

ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression.

Privacy International was formed in 1990 as a privacy, human rights and civil liberties watchdog. PI is based in London, UK and has organised campaigns and initiatives in more than fifty countries. The PI Freedom of Information Project has been active in promoting access to information laws globally since 1999. It produces the annual Global FOIA Survey and has assisted campaigns and conducted legal analyses of access to information laws and practices in dozens of countries.