



International Service for Human Rights
(ISHR)

RIGHT TO ACCESS INFORMATION

HUMAN RIGHTS DEFENDERS BRIEFING PAPERS SERIES

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PREFACE

This briefing paper examines the scope of the right to access information, with particular emphasis on human rights defenders and their work. This paper draws together the various international standards for the protection of this right, in addition to examining the different standards and challenges to this right for human rights defenders.

The primary audience of this paper are *human rights defenders* working at the international, regional and national levels. This paper seeks to present relevant information in a simple and accessible manner to defenders, and act as a practical tool to support them in their work. It can be used as a resource or background reading for specific trainings for defenders on this topic, in addition to assisting in national advocacy or awareness raising efforts on the right to information, at the regional and national levels.

This paper may also be of use to *national human rights institutions* (NHRIs) when dealing specifically with defenders' issues. In addition, it can be used as resource material for NHRIs when providing advice to States in formulating or reviewing legislation relating to the right to access information at the national level.

This briefing paper also collates and references the work of the UN treaty bodies and the UN Special Rapporteur on human rights defenders on the right to information in relation to defenders. *Academics, students and a wider audience* may therefore also find this paper of use as a guide to the international standards for the protection of the right to information for defenders.

INTRODUCTION

The right to freedom of expression, as defined in Article 19(2) of the *International Covenant on Civil and Political Rights* (ICCPR) includes the ‘freedom to seek, receive and impart information and ideas of all kinds’. While the importance of the right to freedom of expression has traditionally been understood in terms of the right to *impart* information, the right to seek and receive information has taken on increasing significance in recent years. With the ‘information explosion’ that has occurred with the growth of the Internet and increased access to it and electronic, digital and other media such as television and radio, the power of information in general, and in particular its use as a tool for the promotion and protection of human rights, has come to be increasingly acknowledged.

From a human rights perspective, the right to information, that is the right to seek, access and receive information, is intrinsic to the transparent functioning of a democratic government and the effective and well-informed participation of civil society in political processes. The right to information, as a sub-category of the right to freedom of expression, encompasses many different aspects, not least of which are the right to access generally available information and/or information in the public interest, the right of individuals to actively seek information, and the obligation of States to take positive steps towards making certain types of information accessible to the public at large.

The invaluable importance of the right to information for the work of human rights defenders in protecting and promoting human rights cannot be overstated. On a fundamental level, the right to information is essential for human rights defenders to obtain information about violations, to inform the public and the State about the occurrence of violations, to fight corruption, to demand transparency and accountability from authorities, and most importantly to support calls for respect for the rule of law and international human rights obligations.

This paper presents an analysis of the right to information, with specific emphasis on the importance of this right for the work of human rights defenders. While it is clear that the ‘right to information’ is itself recognised in several international, regional and national laws, authoritative standards on the interpretation of this right remain to be established through international human rights jurisprudence. **Section I** of this paper therefore aims to establish a general understanding of the scope and nature of the right to information by examining existing international human rights legal standards such as the concluding observations and recommendations of the United Nations treaty bodies and the contribution of relevant special procedures of the UN Human Rights Council. However, given the limited jurisprudence as yet available on this topic from the treaty bodies, this paper also looks outside the UN human rights system to regional standards to seek a better understanding of the nature of this right. **Section II** examines the particular challenges to the right to access information by human rights defenders, such as State censorship, restrictions on access to the Internet, the restrictive use of security or counter-terrorism legislation and other issues.

I. RIGHT TO INFORMATION UNDER INTERNATIONAL LAW

The right to information¹ is protected by many international and regional instruments. For example, the *Universal Declaration of Human Rights* (UDHR, Article 19), the *International Covenant on Civil and Political Rights* (ICCPR, Article 19(2)), the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* (the Declaration on human rights defenders, Article 6), the *African Charter on Human and People's Rights* (ACHPR, Article 9), the *American Convention on Human Rights* (ACHR, Article 13) and the *European Convention on Human Rights* (ECHR, Article 10). Moreover, both the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (the Special Rapporteur on freedom of expression)² as well as the UN Special Rapporteur on human rights defenders (the Special Rapporteur on defenders), have examined the right to access information in several reports submitted to the former UN Commission on Human Rights and the recently established Human Rights Council.

In addition, this right has been recognised by various international and regional bodies as being critical for the work of human rights defenders. For example, the Inter-American Commission on Human Rights (IACHR) has expressed that access to information is a collective right that is of utmost importance to the work of human rights defenders, as it can play a critical role in defending human rights, and even in preventing violations in the future.³ The ACHPR has also ruled that the denial of information on human rights, particularly rights contained in the *African Charter on Human and People's Rights* (African Charter), constitutes a 'particularly grave' violation of the right to information,⁴ and that information relating to the protection and promotion of human rights is in need of special protection.⁵

This paper will primarily focus on the right as codified by the ICCPR and the Declaration on human rights defenders, as they form the primary basis of protection of the rights of human rights defenders.

Right to freedom of opinion, expression and information in international and regional instruments

International instruments:

- International Covenant on Civil and Political Rights, Article 19
- International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(viii)
- Convention on the Rights of the Child, Article 13

Regional instruments:

- African Charter on the Rights and Welfare of the Child, Article 7
- African Charter on Human and Peoples' Rights, Article 9

¹ This paper uses the terms 'right to information', 'freedom of information', 'access to information' and 'right to access information' inter-changeably.

² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/1998/40, E/CN.4/2000/63, and E/CN.4/2005/64.

³ Report on the Situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, §83.

⁴ §50, Report No. 16, 228/99The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and People's rights.

⁵ §52, Report No. 16, 228/99The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and People's rights.

- American Convention on Human Rights, Article 13
- European Convention on Human Rights, Article 10

Declarations:

- Universal Declaration of Human Rights, Article 19
- Declaration on the Rights of Indigenous Peoples, Article 16 and Article 31
- American Declaration of the Rights and Duties of Man, Article 4
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on human rights defenders), Article 6,
- Declaration of Principles on Freedom of Expression, Inter-American Commission on Human Rights

A. Right to information under the ICCPR

Article 19(2) and (3) of the ICCPR states that:

‘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.* (emphasis added)

3. The exercise of the rights provided for in paragraph 2 of this article carries with it 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’

Like the right to freedom of expression, the right to information is subject to certain permissible limitations according to Article 19(3). Any restriction on the right to information must be provided by law, that is, it must be enshrined in formal legislation and cannot be made through administrative decrees.

Any restriction on the right to access information must be *necessary in a democratic society*, and therefore commensurate with democratic principles of tolerance, respect for diversity, etc. Restrictions must be *proportional* to the end sought, that is, to achieve one of the *stated aims* of preserving respect for the rights or reputations of others such as for the protection of national security, public order or public health or morals.

Additionally, all States that become party to the ICCPR are also under an obligation to ‘take the necessary steps (...) to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant’ (Article 2(2)). This means that not only are States compelled to protect the right of individuals to seek and receive information and ideas of all kinds, but also that States are required to ‘take necessary steps’ in order to fully discharge their obligations under this provision.

B. Right to information under the Declaration on human rights defenders

The Declaration on human rights defenders, adopted by consensus in 1998, draws relevant elements from existing standards that are particularly useful for human rights defenders. While the Declaration is not legally binding, it draws on rights contained in *legally binding* international human rights instruments. Additionally, as States adopted it by consensus, it expresses a collective commitment to promote and protect the rights of human rights defenders.

The Declaration elaborates on many of the rights already protected under the ICCPR as they apply to human rights defenders, and this is particularly the case with the right to information. The Declaration not only explicitly protects the right to information under Article 6(a), but also affords cumulative protection of this right through various other provisions enshrined in this instrument. Each of the provisions will be examined in detail below.

Article 6 (a) of the Declaration on human rights defenders states that:

‘Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;’

This provision of the Declaration clearly and comprehensively protects the right to information for human rights defenders. The provision, as seen above, is framed to protect the rights of individual defenders and organisations or groups with regards to information about all human rights and fundamental freedoms, to:

- **Know** information: The broad language used in this clause implies not only that defenders should be able to access and obtain documents or other forms of information with regards to human rights, but that they are entitled to *know* the information that they seek. This widens the scope of what constitutes access to information by making it clear that it is the information in itself that is of value. This may be particularly relevant where information that may be in the public interest is not necessarily made generally accessible, but is held by a specific individual, government ministry or other authority.
- **Seek and obtain** information: This includes not only the right to *actively seek* information related to human rights, but also access to (*‘obtain’*) information. This clause therefore provides protection from State interference with the right of access to information, and places an obligation on the State to make certain types of information available (see below).
- **Receive and hold** information: This provision is of particular importance for human rights monitoring and recording activities, and protects the right of individuals and organisations or groups to compile and maintain documentation on human rights issues. This provision also protects defenders from State

interference with their monitoring and documenting activities, and specifically prevents confiscation of recorded information.

Article 6(a) of the Declaration not only provides for accessing information on human rights policies or legislation, but also for ‘how those rights and freedoms are *given effect*’ by States. This places an additional obligation upon States to monitor and maintain records of up to date human rights developments in policy, law and practice within its jurisdiction and to make this information available to all those who seek it. This provision is also linked to Article 6 (c) of the Declaration which states that everyone has the right to discuss, form and hold opinions ‘on the observance (...) in law and practice (...) of human rights’. This implies that everyone is entitled to know what the current state of human rights is within the country.

Article 8 of the Declaration provides for everyone to have ‘effective access (...) to the participation in the government (...) and in the conduct of public affairs’. While this provides more generally for all persons to know, seek and receive information about the conduct of the government, it sets a standard for what this entails as everyone must have *sufficient* knowledge to have *effective* access to public participation. This, for example, not only implies knowledge of basic information about the structure of the government, voting procedures, and other generic information, but also knowledge of one’s rights, the obligations of the government to discharge certain obligations, how to complain or submit petitions to governmental bodies, etc. Truly ‘effective access to public participation’, therefore, is based on the idea that States are under an obligation to provide sufficient information to all individuals on how to access governmental bodies, in addition to adopting transparent working methods and decision-making processes in order to ensure both accountability and democratic participation.

This understanding is further supplemented by Article 9(1-5), which also provides for everyone to have an effective remedy in the event of violations of their human rights. In particular, Article 9(3(b)) provides for defenders ‘to *attend public hearings, proceedings and trials*’, in order to gain an understanding of the compliance of a State with its national and international obligations.

Article 14 clarifies that States have to take ‘legislative, judicial, administrative or other appropriate measures to *promote the understanding* of all persons (...) of their (...) rights’. This provision stipulates that States must take positive legal, judicial, administrative or other steps in order to ‘promote understanding’ of human rights. This would involve specific State initiatives to undertake human rights education, in addition to making any human rights related information held by the State easily accessible to all individuals within its jurisdiction. For example: through publications documenting the State’s national and international human rights obligations, providing access to international documents pertaining to human rights (such as periodic reports submitted by the State to the treaty bodies)⁶, and other reports relating to the observance of the concerned State’s human rights obligations.

⁶ The Special Rapporteur on the right to freedom of opinion, expression and information has also stated that this could include the reports and recommendations of bodies such as truth and reconciliation commissions, recommendations of the treaty bodies, etc. For further information, see: Report of the Special Rapporteur on freedom of opinion, expression and information (28 January 1998), E/CN.4/1998/40, §16.

More indirectly, Article 15 calls upon States to promote and facilitate human rights teaching at all levels of education, which can also be seen as one component of the right of defenders to access human rights related information.

The right to information for human rights defenders must thus be seen in light of other relevant provisions of the Declaration, in order to have a holistic and comprehensive view of what the right entails, both for rights holders, and for States.

C. Scope of the right to information and States' obligations

Before further examining the right to information, it is necessary to understand the definition of '**information**'. In this context, information refers to:

'...all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production.'⁷

By '**public body**', the scope of the right to information extends to:

'...all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or 'quangos' (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines).'⁸

Additionally, private bodies that hold information whose disclosure can minimise harm to the public or that is otherwise linked to public interests, could also be included under this definition of a public body.

Broadly speaking, the concept of the 'right to information' thus includes two ways in which an individual may exercise this right. First, individuals have the right to actively *seek* information (i.e. beyond mere passive receipt of information), subject to the restriction specified in Article 19(3) of the ICCPR (see above). Second, the right to information pertains to *generally accessible information*, which means that certain types of information should be *made* generally available.⁹

The obligations of States

The **negative obligations** of States with respect to this right imply that the State cannot interfere with the right of an individual to access information. For example, if a journalist's footage of a violent confrontation between police and demonstrators is confiscated or destroyed, such an act would constitute a violation of the right (of the public) to access information in addition to the right of the journalist to keep his materials. The African Commission on Human and People's Rights (ACHPR) has

⁷ *The Public's Right to Know: Principles on Freedom of Information Legislation*, Article 19, June 1999, p.3.

⁸ *The Public's Right to Know: Principles on Freedom of Information Legislation*, Article 19, June 1999, p.3.

⁹ When referring to 'generally accessible information', it is accepted that when it comes to personal information about an individual, the individual has more right over the information than a third party, unless this information is related to the 'pressing interests of society'. M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 446, §18.

further stated that the imprisonment of journalists interferes with the right of the public to access information provided by journalists.¹⁰ In general, the State has a negative obligation to refrain from interrupting the flow of information to all persons.

The **positive obligations** of States to ensure access to information are manifold, and include among others, the following obligations:

- States must undertake steps to **make existing information accessible** to the public, such as by adequate maintenance of public records, and the criminalisation of the destruction of public records, for example.¹¹
- The positive obligations of States are also increasingly being understood as the duty to **provide and disseminate information**, especially related to public administration.¹² For example, Article 14 of the Declaration on human rights defenders, which calls for States to promote the understanding of all individuals about human rights, also specifies that this could be done through the dissemination of publications describing the State's national and international human rights obligations and providing access to international documents pertaining to human rights.
- Additionally, States should ensure that they have in place a national **access to information regime** (i.e. the legislative and policy framework protecting the right to information) which is fully compliant with international standards. This will be examined in more detail below (see section D.).
- Finally, another positive obligation of States includes protecting rights-holders from violations of the right to information by **third parties**.¹³ This could include preventing private parties (either individuals or, for example, private media organisations) from interfering with the right of the public to access generally available information.

D. Compliance with an 'access to information regime'

The Inter-American Commission on Human Rights (IACHR) has stated that the right to information must be more than the declaration that certain State-held information be made available to the public, but must also include 'specific legislative and procedural characteristics that must be exhibited by any compliant access to information regime'.¹⁴ Any *access to information regime*, that is, the sum of all legislative and policy measures that are in place to ensure the right of the public to access public information, must therefore comply with certain basic principles that are drawn from international and regional standards, and include various legal and policy measures aimed at ensuring this right.

The basic features of a compliant access to information regime, which will be examined in detail below, are drawn from recommendations of the UN Special Rapporteur on freedom of expression and opinion, recommendations of the Inter-American Commission on Human Rights (IACHR), recommendations by the

¹⁰ §107, Report No.22, 228/99The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and People's Rights.

¹¹ *The Public's Right to Know: Principles on Freedom of Information Legislation*, Article 19, June 1999, p.3.

¹² M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 447, §19.

¹³ For a detailed discussion of this issue, please refer to the discussion of Gauthier vs. Canada under the section on arbitrary exclusion from access to information, in section II. Standards and Challenges.

¹⁴ See Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraph 32.

Rapporteur on freedom of expression of the Organisation of American States (OAS)¹⁵ and the ‘Principles on Freedom of Information Legislation’ developed by the non-governmental organisation, Article 19, which has been endorsed both by the UN Special Rapporteur,¹⁶ as well as the OAS Rapporteur on freedom of expression¹⁷. The ‘Principles on Freedom of Information Legislation’ were developed by Article 19 to serve as a standard for monitoring the compliance of national access to information regimes with international standards.

The following summarises the basic characteristics of a compliant access to information regime:

- **Maximum disclosure** is the basic principle that must underlie any compliant access to information regime. This means that *all* information held by public bodies should be subject to disclosure and that exceptions to this rule must be permissible only under very limited circumstances.¹⁸ This also implies that all persons within the territory of a given State are entitled to this right, and do not have to demonstrate a ‘specific interest’ in the information. This also means that if a public authority denies access to requested information, it is required to justify its denial at every stage of the proceedings and suitably demonstrate why the particular case constitutes an exception. Additionally, any laws that are contrary to this principle of maximum disclosure should be repealed or amended.
- **Obligation to publish** represents the positive duty of States to publish and disseminate documents in the public interest, in accordance with ‘reasonable limits based on resources and capacity’. States should be obligated to publish at a minimum, for example, information on how public bodies function, how to submit complaints to a public body, how individuals can input into the drafting of policy or legislation, general information on what information the public body holds and the medium in which it is held, and the content of any decision or policy that can have an impact on the public.
- The UN Special Rapporteur on freedom of expression and opinion has noted the tendency of governments to classify ‘more information than...necessary’ and has stated that a limitation on the right to access information can only be justified if the harm to the interest of the State through the public disclosure of the information outweighs the harm to the right to freedom of opinion, expression and information.¹⁹ Under exceptional circumstances, a public body may **justify denying access** to information, but only if it can suitably demonstrate that disclosure will cause harm to a legitimate aim that is provided for in State legislation, and that the harm to this aim is greater than the public interest in having the information. Such ‘aims’ that can satisfy the need for non-disclosure should be clearly provided by law, and should be limited to cases that are pertinent to national security, public safety, etc.

¹⁵ Annual report of the Special Rapporteur on Freedom of Expression (2003), OAS, §32-40.

¹⁶ Report of the Special Rapporteur on freedom of opinion and expression (2000), E/CN.4/2000/63, submitted in accordance with Commission Human Rights resolution 1999/36, §43.

¹⁷ Report of the Rapporteur on freedom of expression of the Inter-American Commission on Human Rights to the OAS, Vol.III (1999), p.33.

¹⁸ *The Public's Right to Know: Principles on Freedom of Information Legislation*, Article 19, June 1999, p.2.

¹⁹ Report of the Special Rapporteur on freedom of opinion, expression and information (28 January 1998), E/CN.4/1998/40, §13.

Additionally, they must be proven to cause *substantial* harm to the aim, and it needs to be shown that this harm outweighs the benefits of public disclosure.

- States should be required to process requests for information as quickly as possible through **accessible and transparent systems**. Moreover, an independent review of any refusals should be provided for, in addition to a provision for appeals to a designated higher authority, such as a national human rights commission, ombudsman or other body specially designed for this purpose. These bodies should be mandated to receive requests for information from the public, and also issue binding decisions directed at the relevant authority to provide the requested information.²⁰
- The **cost** of accessing information should not be so high as to prevent the public from accessing information, as this would go against the basic underlying principle that everyone should be able to access all public information.
- In order to facilitate public participation at all levels of the democratic machinery, all **meetings of public bodies** should be accessible to the public.
- Most importantly for the work of human rights defenders, any individual who discloses sensitive information should be **protected from retaliation**. This could include information regarding corruption, miscarriage of justice, commission of criminal offences or even failure to comply with legal obligations. ‘Whistleblowers’ could include human rights defenders, media persons, or any other individuals who disclose information that is in the public interest. According to the UN Special Rapporteur on freedom of expression, the most effective realisation of the right to information is in countries where journalists are not required to divulge their sources of information, except in limited circumstances that are clearly defined by law. The protection of sources has also been highlighted by the Special Rapporteur on freedom of expression as a necessary measure to preserve the media’s own access to information.²¹

II. STANDARDS AND CHALLENGES

The right to information is critical both for the ability of human rights defenders to carry out their work, as well as more generally for the protection and promotion of human rights. However, the right of human rights defenders to access information continues to be challenged on many different levels, many of which have been highlighted in the reports of the UN Special Rapporteur on human rights defenders. Some of the challenges faced by human rights defenders with respect to the right to information are outlined below.

²⁰ Report of the Special Rapporteur on freedom of opinion, expression and information (28 January 1998), E/CN.4/1998/40, §14.

²¹ Report of the Special Rapporteur on freedom of opinion, expression and information (28 January 1998), E/CN.4/1998/40, §17.

A. Governmental control over media services

States can directly or indirectly control the public's access to information from a variety of sources such as radio, television, print and other media. States can maintain direct control over the media (through ownership or *de facto* monopolisation of media sources), in which case it has complete control over what information is presented to the public. Alternatively, governments can also place restrictions, bans or otherwise limit the kind of information that is shared with the public by private or otherwise independent media sources. For example, in October 2005, the Special Rapporteur on human rights defenders expressed concern that the Government of Nepal had placed restrictions on telecommunications in rural areas, which severely undermined the ability of human rights defenders to carry out their work. She underlined the importance of FM radio as a means by which persons living in rural areas received important information, and further emphasised that the prohibition of its broadcast would have 'serious implications for the reporting of human rights violations.'²²

Additionally, States can also maintain control over the media by imposing restrictive licensing regimes or other conditions for operating media services, which in effect limit the right of the public to access information. For example, in the case of Uzbekistan, a Tashkent court ordered an international media development organisation to shut down on account of it publishing information and videos 'without a license', although no such license was required by national law.²³

Another challenge to the right to information is access to diverse sources of information, which poses a particular problem in situations where the State may control all media sources, and may even choose to expel or shut down certain sources of news or information. For example, in Eritrea in 2001, the Special Rapporteur drew attention to the shutting down of the private press, placing of all Internet cafes under government supervision, and expulsion of foreign correspondents from the country, which caused a 'near black-out' on human rights violations in the country through the global media.²⁴

B. Access to State policies, laws and other governmental information

As provided under several different provisions of the Declaration on human rights defenders, States are required to take positive steps to ensure the right to information, and in particular to ensure that defenders have access to information that enables them to carry out their work. According to Article 6(a) of the Declaration, this implies that States have to provide information regarding human rights policy and legislation, and also how these rights and freedoms are 'given effect' practically. Additionally, according to Article 14 of the Declaration, States are required to take 'legislative, judicial, administrative and other appropriate measures' to promote a general understanding of human rights within their jurisdiction, which includes providing

²² Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §1151.

²³ Report of the Special Rapporteur of the Secretary-General, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, E/CN.4/2006/95/Add.1, 22 March 2006, §572.

²⁴ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §563.

information about a State's compliance with national and international human rights obligations.

It is important to note the relevance of this information for the work of human rights defenders, and also to note that the failure of the State to provide this information could seriously impede their work. For example, the Special Rapporteur noted in the case of Mongolia, that difficulty in accessing governmental information about the implementation of human rights laws and policies was a cause of serious concern, as defenders conducting research and advocacy against the death penalty were unable to access this information as it was classified as a 'State secret'.²⁵

C. Restricting access to the Internet and other information technology

Restrictions on access to the Internet have also been considered a violation of the right to freedom of expression by several treaty bodies and the Special Rapporteur on freedom of expression. For example, in the case of the Syrian Arab Republic, the Human Rights Committee expressed its concern that the Government had blocked the access of human rights defenders and activists to certain Internet sites that had relevance to their work.²⁶ The Committee on the Rights of the Child has also considered cases where restrictions on the Internet have constituted a violation of the right to access information.²⁷

The Special Rapporteur on freedom of expression has also expanded upon the right to access information via the Internet more generally by stating that the right to freedom of expression 'imposes an obligation on all States to devote adequate resources to promote universal access to the Internet' through public access points, and that the international community should prioritise offering assistance to States that are as yet unable to do so.²⁸

In addition, the Special Rapporteur on human rights defenders has expressed concern on the right to access information with respect to restrictions on access to the Internet. In China, for example, due to the tight control over the print and news media maintained by the authorities, defenders tend to use the Internet in order to express their views and as a platform for human rights advocacy.²⁹ However, in September 2005, the Chinese government passed a regulation relating to the Internet, which would restrict its use to disseminate information.

Additionally, arrests and detention of human rights defenders who use Internet forums, blogs and other Internet tools to carry out their human rights work, to

²⁵ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §1095.

²⁶ Human Rights Committee, Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, § 13.

²⁷ Committee on the Rights of the Child, Concluding Observations on Republic of Korea, CRC/C/124 (2003) 24, § 114; Uzbekistan, CRC/C/111 (2001) 117, § 560.

²⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, in accordance with the Commission on Human Rights resolution 2005/38 and Human Rights Council resolution 1/102, (2 January 2007) A/HRC/4/27, Annex, p.23-24.

²⁹ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §362.

disseminate their views or to share information about human rights, are increasingly being targeted by repressive governments.

D. Security and counter-terrorism legislation

In several reports, the UN Special Rapporteur on human rights defenders has drawn attention to the use of security and counter-terrorism legislation in order to limit the access to information of individuals. In Pakistan, for example, the Special Rapporteur has drawn attention to the use of laws such as the Anti-Terrorism Act, the Official Secrets Act, the Security of Pakistan Act, and particular provisions of the Penal Code that have limited the ability of defenders to carry out their work, notably by restricting their access to information.³⁰ Additionally, such laws have also been used to prevent defenders from accessing places of alleged violations such as prisons or sites of military operations. In particular, the Special Rapporteur has drawn attention to the fact that such restrictions seriously impede the ability of defenders to conduct human rights monitoring activities, which is explicitly protected by the Declaration on human rights defenders. A similar law in Eritrea called the Official Secrets Act, restricts access to information relating to national security.³¹ In the case of Nigeria, the Special Rapporteur has also expressed concern that laws such as the national Official Secrets Act, are vaguely worded and hence subject to ‘discretionary interpretation.’³²

E. Retaliation for divulging information

As we have seen in section I(D), one of the principles that should govern a compliant access to information regime is that any individual who discloses information should be protected from retaliation (see p.8). Since raising awareness and demanding accountability are both central to the work of human rights defenders, this particular principle is crucial for their protection when they reveal information that they believe to be in the public interest. In the case of Bangladesh, for example, the Special Rapporteur on human rights defenders has stated that ‘human rights defenders that are at higher risk of retaliation are those who criticise the authorities and members of the ruling parties for human rights abuses; those who reveal links between politicians, police and criminal armed gangs; those who reveal corruption in the ruling administration and law enforcement personnel (etc.).’³³ Any retaliation such as threats, attacks, or physical or psychological harm to human rights defenders who disseminate or publicise information in the course of their work of promoting and protecting human rights, seriously compromises not only the right of defenders to seek and disseminate this information, but also the right of the public to receive information on the situation of human rights in the relevant country.

³⁰ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §1284.

³¹ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §174.

³² Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §1225.

³³ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §181.

F. Protection from third party interference with the right to information

The Human Rights Committee found violation of the right of access to information in the case of *Gauthier v. Canada*, through a combined reading of Article 19 and Article 25 (the right to take part in the conduct of public affairs).³⁴ The government of Canada had restricted the right to enjoy publicly funded media facilities of the Parliament to media persons by according special privileges to media-persons who were members of a private organisation called the Canadian Press Gallery. Non-members, such as the complainant, journalist Robert Gauthier, could not take notes during a Parliamentary sitting or have access to a mailbox for the receipt of press communiqués.

The Committee reached two important conclusions on the basis of this case. First, that governments could not allow private organisations to control access to public places (such as parliamentary press facilities) without any guarantees against arbitrary exclusion from access. Additionally, the Committee also concluded that effective remedies must be made available to any complainant to determine the legality of his exclusion. The Committee's decision was based on recognising the importance of access to information about democratic processes and the political right of citizens to be informed of the conduct of elected bodies. In particular, it highlighted the importance of 'the right to seek and receive information on the conduct of political (parliamentary) affairs; and implies a privileged treatment of the media in the enjoyment of the right to information. It additionally emphasises the positive obligation of States to protect individuals from the interference of this right by third party private actors, especially those that have been placed in charge of 'essentially public functions'. Additionally, the Committee also ruled that no individual should be forced to join an association (like the Canadian Press Gallery in this case) in order to enjoy free access to information.

H. Restrictions on freedom of movement and sites of violations

Restrictions on freedom of movement of human rights defenders can often directly or indirectly lead to the violation of the right to access to information of human rights defenders. Limitations on freedom of movement of defenders can occur by being barred from traveling abroad, seizure of travel/identity documents, or detention at airports, in order to prevent defenders from reporting on the situation in their own country to international or other fora. Additionally, barring access to sites of human rights abuses, including prisons or detention facilities, and denying access to victims, could also constitute a violation of the right to information.³⁵

The Special Rapporteur on human rights defenders has, for example, examined reports from Israel in this regard. The setting up of checkpoints and other physical obstacles in the Occupied Palestinian Territories not only endangers human rights defenders, but also seriously hinders their work, by preventing them from accessing sites of violations and victims, their ability to gather information and conduct monitoring activities. Additionally, by placing such restrictions on their movement,

³⁴ Communication No. 633/1995, Human Rights Committee; M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 447, §20.

³⁵ Report of the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, E/CN.4/2005/101, 13 December 2004, §59.

this also places serious obstacles to communication, thus preventing defenders from contacting each other and sharing information. The isolation of human rights defenders because of these restrictions on their freedom of movement increases their vulnerability to attacks.³⁶ Additionally, the Special Rapporteur has also pointed out that restrictions on freedom of movement which may limit the capacity of defenders to monitor and report violations also ‘affect the transparency and openness with which human rights defenders can carry out completely legitimate activities’. This could lead to a situation of increased risk for defenders, in addition to undermining the validity of their human rights work. States must ensure that laws and policies take into account the right of defenders to enter sites of alleged violations in order to monitor and report on violations.³⁷

CONCLUSION

The right to information, as seen in this paper, is crucial to the work of human rights defenders in promoting and protecting human rights. The right to information is important in order to ensure the accountability and transparency of public bodies, expose corruption, disseminate information in the public interest, publicise human rights violations and their perpetrators, and ultimately to put public pressure on State institutions in order to secure justice for victims of violations.

However, the right to information, particularly in the case of human rights defenders, is constantly under threat. In this paper, factors such as governmental control over media services, restrictions on the use of the Internet and other digital media, security and counter-terrorism legislation, and retaliation against defenders for divulging information have been examined, in addition to several other challenges.

Effective and compliant right to information legislation and policies can enable defenders to carry out their work more effectively and more safely. The recommendations and observations of the treaty bodies and special procedures can act as a strong basis for advocacy to improve domestic frameworks of protection for the right to information for human rights defenders.

³⁶ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, §828.

³⁷ Report submitted by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, E/CN.4/2006/95, 23 January 2006, §86.

E-Resources on access to information

- Article 19: <http://www.article19.org/>
- International Freedom of Expression eXchange: <http://www.ifex.org/>
- Reporters Without Borders: <http://www.rsf.org/>
- Index on censorship: <http://www.indexoncensorship.org/>
- International Pen: <http://www.internationalpen.org.uk/>
- Amnesty International: <http://www.amnesty.org/en/freedom-of-expression>
- Human Rights Watch : <http://www.hrw.org/en/category/topic/free-expression>

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ABOUT THIS PUBLICATION

The *Human Rights Defenders Briefing Papers* are a series of six briefing papers providing simple and practical information on rights relevant to the work of human rights defenders. Other papers cover right to freedom of assembly, freedom of association, freedom of expression, access to funding and access to international bodies.

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