

The Right to Information: A Human Right

On 19 September 2006, the Inter-American Court of Human Rights decided a very important case – *Claude Reyes v. Chile* – in which it held that access to the information held by public authorities is a fundamental human right. Specifically, the Court decided that the right to access publicly-held information is inherent in the right to “seek, receive, and impart information and ideas,” guaranteed by Article 13 of the American Convention on Human Rights (ACHR).

When first generation access to information laws were adopted in countries like Sweden (1766), the United States (1966), the Netherlands (1978) and Canada (1982), they were viewed as governance reforms, rather than measures to give effect to a fundamental human right. Openness would promote accountability and good governance, help root out corruption, foster greater public participation and generally improve relations between government and the people.

By around 1990, most of the established Western democracies had adopted access to information laws, although there were some notable latecomers, such as the United Kingdom (2000) and Germany (2005). And many of the newly democratic countries of East and Central Europe soon followed suit.

By the time this movement started to spread to the rest of the world, around the turn of the millennium, a fundamental change in attitude was beginning to take root. Instead of being viewed as good governance practice, citizens were claiming that access was a human right. In a democracy, government produces information with public funds and pursuant to a mandate given by the people, and that information therefore belongs to the people.

A number of factors contributed to this change. The paternalistic, often patriarchal, governing culture of yesteryear has been replaced by consultation, communication and direct citizen participation. It is hardly possible to change a bus route, much less build a school or change a public policy, without engaging in extensive consultation with those affected. All of this participation, of course, depends on access to information.

New technologies are radically changing the way we relate to information. They have massively democratised access to information, at least for the increasingly large number of people on the right side of the digital divide. Younger generations now grow up with expectations about information, and cultures of using it, that were unimaginable even 20 years ago. “Knowledge is power” has been replaced by “information is ours” (and for free).

We are also far more aware of the harm that secrecy breeds. In India, NGOs have linked openness to the right to life, by using information to expose the fact that illiterate peasants were being cheated out of their basic livelihood wages by corrupt

officials. In Uganda, simple programmes like informing communities of the amount of money that had been transferred to local schools by the national government has reduced 'capture' of those funds from 80% to 20%. In Mexico, the right to information has led to the almost complete disappearance of 'aviadores', government employees who get paid but never report for work.

Formal recognition of a right to information in the Claude Reyes decision has some very far-reaching implications. First, it means that States Parties to the ACHR, which includes 18 of the 19 Latin American countries (Cuba was excluded from participating in the Organization of American States in 1962) must adopt legislation to give effect to the right to information. So far, however, only eleven such countries – Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Uruguay – have done so. The others – Argentina, Bolivia, Brazil, Costa Rica, El Salvador, Paraguay and Venezuela – are in clear breach of their legal obligations to respect rights under the ACHR, and they should make it a priority to address this.

Second, just adopting legislation is not enough. The legislation needs to conform to international standards and it must be accompanied by mechanisms for implementation and enforcement. The process for making requests must be simple and user-friendly; there should not be unnecessary barriers to claiming rights. Exceptions are only legitimate where they are necessary to protect certain overriding public and private interests.

Importantly, requesters should be able to complain about refusals to provide access. Experience has shown that this is best achieved by establishing an independent administrative oversight body, such as an information commission, to receive and adjudicate complaints. Only three of the eleven right to information laws in Latin America – Chile, Honduras and Mexico – establish such bodies.

The right to information has come of age. It has been recognised as a fundamental human right. Over 80 countries around the world, including 11 in Latin America, have adopted right to information laws and many others are considering doing so. The challenge now is to ensure that these laws meet international standards, and then to implement them properly.